EXPLANATORY MEMORANDUM TO

THE POSTED WORKERS (AGENCY WORKERS) REGULATIONS 2020

2020 No. 384

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Business, Energy and Industrial Strategy and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The purpose of this Statutory Instrument (SI) is to transpose the revised EU Posting of Workers Directive[1] into domestic law within Great Britain. The Posted Workers Directive establishes the employment rights and protections that apply to a worker when they are posted (sent temporarily to another Member State of the EU, an EEA country, or the UK).

2.2 This SI modifies the Agency Workers Regulations 2010 to the effect that a hirer that posts an agency worker to an EEA country where the agency worker does not normally work will have to notify the agency of the EEA country of the posting and the date at which the posting will commence. This SI also modifies the Agency Workers Regulations to enable a temporary work agency to bring a claim in the Employment Tribunal against the hirer to recover any losses the temporary work agency may suffer as a result of a penalty imposed by an EEA country for failure to comply with the provisions of the Directive or the Posted Workers Directive.

2.3 The modifications in the SI will expire at the end of the Implementation Period, 31 December 2020.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is England and Wales, and Scotland.

4.2 The territorial application of this instrument is England and Wales, and Scotland.

[1] Directive 2018/957/EU of the European Parliament and of the Council of 28 June 2018 (OJ L 173, 9.7.2018) amending Directive 96/71/EC of the European Parliament and of the Council concerning the posting of workers in the framework of the provision of services (OJ 18, 21/01/1997)

5. European Convention on Human Rights

5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

6.1 On 28 June 2018 the revised Directive became law across the EU. Member States (and the UK under the terms of the Withdrawal Agreement) have a deadline of 30 July 2020 to implement the provisions of the Directive into their own domestic law.

6.2 This Statutory Instrument is required to ensure that legislation in Great Britain is compliant with EU law during the transition period, as required under the terms of the Withdrawal Agreement.

7. Policy background

What is being done and why?

7.1 The revised posting of workers Directive apart sets out revised rights and regulations for the posting of workers, including on issues of remuneration and agency workers.

7.2 The UK is already compliant with the revised Directive apart from in respect of an express obligation on a hirer to inform an agency of the posting of an agency worker. This part of the Directive aims to ensure that the agency is able to fulfil its part of obligations to the agency worker being posted where the hirer proposes to post the agency worker. This SI will bring the UK into compliance with this part of the Directive.

7.3 The SI will bring the UK into compliance with the Directive for the period of time that the UK will still have to comply with it. At the end of the Implementation Period the UK will no longer be required to comply with the Directive as the regulation of posted workers only applies to EU and EEA member states.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

9.1 No consolidation is being done by this Statutory Instrument.

10. Consultation outcome

10.1 Given the limited scope and impacts of the SI, a formal consultation was not conducted. Instead, an information consultation was conducted in confidence with a small group of stakeholders with a particular interest in the SI on the drafting and text of the SI. Stakeholders raised only minor questions of clarification with the drafting of the text and we decided that no changes were required to the text.

11. Guidance

11.1 No guidance is being provided as the department considers that this is not necessary. The provisions of the SI and the corresponding articles of the Directive which they transpose are sufficiently clear.

12. Impact

12.1 There is no significant impact on business, charities or voluntary bodies.

12.2 There is no significant impact on the public sector.

12.3 An Impact Assessment has not been submitted as the overall impact is expected to be negligible.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 No specific action is proposed to minimise regulatory burdens on small businesses.

13.3 There is not considered to be a specific need to further minimise the impact on small businesses as the impact is very minor and no further actions can be taken.

14. Monitoring & review

14.1 The obligations in the legislation will only be in place until the end of the transition period and the impacts will be negligible, so this legislation is not subject to monitoring or review.

15. Contact

15.1 Katherine Rollo at the Department for Business, Energy and Industrial Strategy, Telephone: 020 7215 5878 or email: katherine.rollo@beis.gov.uk can be contacted with any queries regarding the instrument.

15.2 Laura Robinson, Deputy Director for International and Strategy, Labour Markets, at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.

15.3 Paul Scully MP, Parliamentary Under Secretary of State at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.