

<b>Title: Repealing the Swedish Derogation</b>  <b>IA No: BEIS034(F)-18-LM</b> <b>RPC Reference No: RPC-4314(1)-BEIS</b> <b>Lead department or agency: BEIS</b> <b>Other departments or agencies:N/A</b>	<b>Impact Assessment (IA)</b>			
	<b>Date:</b> 15/10/2018			
	<b>Stage:</b> Final stage			
	<b>Source of intervention:</b> Domestic			
	<b>Type of measure:</b> Secondary legislation			
<b>Contact for enquiries:</b> Peter Collins, Labour Market Directorate				
<b>Summary: Intervention and Options</b>			<b>RPC Opinion: Fit for purpose</b>	

Cost of Preferred (or more likely) Option (in 2016 prices)			
Total Net Present Social Value	Business Net Present Value	Net cost to business per year	Business Impact Target Status
-£3.0m	-£2,283.6m	£265.3m	Qualifying provision

**What is the problem under consideration? Why is government intervention necessary?**

Evidence presented to the Taylor Review suggests that there is abuse of the Swedish derogation, using it to avoid the right of agency workers to equal pay with a comparator in the hiring business. Agency workers are receiving lower wages without receiving the compensatory payment between assignments. Many agency workers are not given the choice of their type of contract, either having to accept a derogation contract, or receive no work. There is also evidence of agency workers being unwilling to enforce their rights under the Agency Worker Regulations (to which the Swedish Derogation is a derogation), as they fear being denied work in future.

**What are the policy objectives and the intended effects?**

To prevent businesses from breaching the Agency Worker Regulations by abusing the Swedish derogation to avoid the requirement to offer agency workers equal pay. To ensure that the principle of equal treatment for agency workers is maintained without impacting the flexibility benefits that the agency worker model generates. To address the "two-tier" structure of agency workforce, with workers on Swedish derogation contracts being on a lower rate of pay.

**What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)**

Three policy options were considered; doing nothing, increasing regulation or repealing the Swedish derogation. The preferred option is to repeal the Swedish derogation, as it is the most effective policy to meet the objectives. Doing nothing was considered inappropriate with identified abuse of the derogation. Regulation was considered to be an approach that would increase the regulatory burden on business excessively whilst being less effective than repeal.

The burdensome nature of enforcement would require drastically increased resources on the part of the EAS to regulate hirers as well as employment businesses. This burden which would fall on all businesses would potentially outweigh the lower direct costs from regulation. Furthermore, businesses are already beginning to reduce their use of the derogation and so repeal is a logical final outcome.

**Will the policy be reviewed? It will not be reviewed. If applicable, set review date: N/A**

Does implementation go beyond minimum EU requirements?	N/A			
Is this measure likely to impact on trade and investment?	N/A			
Does this measure comply with our international trade and investment obligations, including those arising under WTO agreements, UK free trade agreements, and UK Investment Treaties?	N/A			
Are any of these organisations in scope?	<b>Micro Yes</b>	<b>Small Yes</b>	<b>Medium Yes</b>	<b>Large Yes</b>
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)	<b>Traded:</b> N/A		<b>Non-traded:</b> N/A	

***I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.***

Signed by the responsible Minister:  Date: 14 December 18

# Summary: Analysis & Evidence

# Policy Option 1

Description: Do nothing, allowing the use of the Swedish derogation to continue in its current form.

## FULL ECONOMIC ASSESSMENT

Price Base Year 2017	PV Base Year 2019	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: 0	High: 0	Best Estimate: 0
<b>COSTS (£m)</b>	<b>Total Transition</b> (Constant Price) Years		<b>Average Annual</b> (excl. Transition) (Constant Price)		<b>Total Cost</b> (Present Value)
Low					
High					
Best Estimate					
<b>Description and scale of key monetised costs by 'main affected groups'</b> With no action taken, there will be no new costs accrued by any groups.					
<b>Other key non-monetised costs by 'main affected groups'</b> With no action taken, there will be no new costs accrued by any groups.					
<b>BENEFITS (£m)</b>	<b>Total Transition</b> (Constant Price) Years		<b>Average Annual</b> (excl. Transition) (Constant Price)		<b>Total Benefit</b> (Present Value)
Low					
High					
Best Estimate					
<b>Description and scale of key monetised benefits by 'main affected groups'</b> With no new action taken, there will be no new benefits accrued by any group.					
<b>Other key non-monetised benefits by 'main affected groups'</b> With no new action taken, there will be no new benefits accrued by any group.					
<b>Key assumptions/sensitivities/risks</b> None Applicable					<b>Discount rate (%)</b> 3.5%

## BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			Score for Business Impact Target (qualifying provisions only) £m:
Costs: 0	Benefits: 0	Net: 0	0

# Summary: Analysis & Evidence

# Policy Option 2

**Description:** Extend the remit of the Employment Agency Standards Inspectorate (EAS) to enforce the AWR for all businesses and agency workers, preventing the abuse of the Swedish derogation through effective enforcement.

## FULL ECONOMIC ASSESSMENT

Price Base Year 2018	PV Base Year 2020	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low:	High:	Best Estimate: -£1.6
<b>COSTS (£m)</b>	<b>Total Transition (Constant Price) Years</b>		<b>Average Annual (excl. Transition) (Constant Price)</b>		<b>Total Cost (Present Value)</b>
<b>Low</b>	1.1		68.5		<b>590.4</b>
<b>High</b>	1.1		116.4		<b>1003.1</b>
<b>Best Estimate</b>	1.1		92.5		<b>796.9</b>
<b>Description and scale of key monetised costs by 'main affected groups'</b>					
The main cost arises from increased wages being paid to agency workers for those who are being denied their right to equal pay. This is estimated to be £136.9 - £232.7 million annually. There will also be ongoing costs for the businesses subjected to EAS inspection, with this falling on both recruitment businesses and hirers of agency workers.					
<b>Other key non-monetised costs by 'main affected groups'</b>					
There will be a significant cost to the EAS of having to enforce AWR on all businesses, not just on employment businesses. This is expected to be extremely burdensome on the EAS. Increased regulation and inspections are anticipated to be highly burdensome on businesses. This is not costed fully.					
<b>BENEFITS (£m)</b>	<b>Total Transition (Constant Price) Years</b>		<b>Average Annual (excl. Transition) (Constant Price)</b>		<b>Total Benefit (Present Value)</b>
<b>Low</b>	0.0		68.4		<b>589.0</b>
<b>High</b>	0.0		116.4		<b>1001.5</b>
<b>Best Estimate</b>	0.0		92.4		<b>795.3</b>
<b>Description and scale of key monetised benefits by 'main affected groups'</b>					
Agency workers will be better able to enforce their right to equal pay, increasing their wages. This is estimated to be a benefit of £136.9 - £232.7 million annually, prior to any tax deductions..					
<b>Other key non-monetised benefits by 'main affected groups'</b>					
There would be an enhanced ability for agency workers to safely enforce their rights under the Agency Worker Regulations, without the fear of losing their job or not being offered future work.					
<b>Key assumptions/sensitivities/risks</b>					<b>Discount rate (%)</b>
Figures are dependent on the number of agency workers, number of employment businesses and the proportion of agency workers on derogation contracts. There is a risk that agency workers will still be unwilling to enforce their rights under the AWR and risk not getting any future work from the employment business.					3.5%

## BUSINESS ASSESSMENT (Option 2)

<b>Direct impact on business (Equivalent Annual) £m:</b>			<b>Score for Business Impact Target (qualifying provisions only) £m:</b>
<b>Costs: 0.2</b>	<b>Benefits: 0.0</b>	<b>Net: 0.2</b>	
			0.8

# Summary: Analysis & Evidence

# Policy Option 3

**Description:** Repeal the Swedish derogation, requiring all agency workers to be given the right to equal pay after the twelve week qualifying period.

## FULL ECONOMIC ASSESSMENT

Price Base Year 2018	PV Base Year 2020	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low:	High:	Best Estimate: -£3.4m
<b>COSTS (£m)</b>	<b>Total Transition (Constant Price) Years</b>		<b>Average Annual (excl. Transition) (Constant Price)</b>		<b>Total Cost (Present Value)</b>
Low	3.2		227.5		1961.5
High	3.6		381.1		3284.0
Best Estimate	3.4		304.3		2622.8
<b>Description and scale of key monetised costs by 'main affected groups'</b>					
The main cost to business will arise from the requirement to pay agency workers who were formerly on derogation contracts the same wage as a permanent employee after twelve weeks service with the same hirer. This is anticipated to cost between £227.5 - £381.1 million annually. There are also significantly lower costs for familiarisation and to re-write contracts.					
<b>Other key non-monetised costs by 'main affected groups'</b>					
There is potential for an increase in short-term hires to avoid the twelve-week pay entitlement, reducing agency worker job stability. Loss of contractual rights for workers who are no longer employees when they come off a derogation contract. Fewer employment opportunities for agency workers as businesses adjust behaviour					
<b>BENEFITS (£m)</b>	<b>Total Transition (Constant Price) Years</b>		<b>Average Annual (excl. Transition) (Constant Price)</b>		<b>Total Benefit (Present Value)</b>
Low	0.0		227.5		1958.2
High	0.0		381.1		3280.4
Best Estimate	0.0		304.3		2619.3
<b>Description and scale of key monetised benefits by 'main affected groups'</b>					
The main benefit will be from increased wages, with workers gaining an estimated £227.5 - £381.1 million annually.					
<b>Other key non-monetised benefits by 'main affected groups'</b>					
It is anticipated that the morale benefits of equal pay for agency workers will increase the productivity of agency workers with benefits to business in the form of higher output.					
<b>Key assumptions/sensitivities/risks</b>					<b>Discount rate (%)</b>
Figures are dependent on number of agency workers, number of employment businesses and the proportion of agency workers on Swedish derogation contracts. There is a risk that repeal will cause a significant change in business behaviour, moving away from using agency workers.					3.5%

## BUSINESS ASSESSMENT (Option 3)

<b>Direct impact on business (Equivalent Annual) £m:</b>			<b>Score for Business Impact Target (qualifying provisions only) £m:</b>
Costs: 304.7	Benefits: 0.0	Net: 304.7	
			£1,326.5 million

## Evidence Base

### Problem under consideration;

In 2010, the Agency Worker Regulations were laid before parliament, coming into force in 2011. These regulations implemented the European Directive on Temporary Agency Work. The basis for the European Directive was to establish a protective framework for temporary agency workers. The framework is designed to ensure that agency workers have at least the same basic working and employment conditions as if they had been recruited directly by the hirer to perform the same job.

Article 5 of the 2010 Agency Worker Regulations (AWR) gives an entitlement to agency workers to have the same basic working and employment conditions as a permanent employee who is working for the same hirer, subject to qualifying periods. Some of these conditions are “Day 1 rights”, such as the right to use the same facilities as permanent employees. Other rights have a twelve-week qualifying period, such as the right to the same working time rights and equal pay. The issue discussed in this impact assessment is around the right to equal pay after twelve weeks of continuous service with the same hirer.

Article 10 of the same AWR details what has become known as the Swedish derogation. This is an opt out from the European Directive on Temporary Agency Work (2008). The Swedish derogation allows agency workers to opt out of the entitlement to equal pay only in exchange for a permanent contract of employment with the employment agency. As part of this permanent contract, the employment agency will in turn commit to paying the worker during a period of non-employment, i.e. when they are not on assignment. This model of contract is also known as a pay between assignment (PBA) contract.

During the Taylor Review into Modern Working Practices, evidence was presented of the potential abuse of the Swedish derogation. The review found examples of workers who had been forced to accept derogation contracts either at the start of an assignment or after eleven weeks of an assignment, before the completion of the continuous service requirement for the right to equal pay.<sup>1</sup> Whilst structuring contracts to avoid equal pay is specifically prohibited by the AWR, the review believed that it was too easy for companies to avoid paying workers between assignments. This includes by keeping them on long assignments (at reduced pay) or by offering them unacceptable assignments when they are out of work. Agency workers that are unhappy about their treatment or suspect unfair use of these contracts are required to take their case to an employment tribunal. This was seen as an overly burdensome route for the individual to enforce their rights. The conclusion of the Taylor Review was to recommend that the Government repeal the Swedish derogation entirely to prevent this abuse.

The Government responded in February 2018 that it would seek more detailed information to help determine the appropriate level of intervention to reduce the abuse. The consultation on the use of Swedish derogation contracts ran between February 2018 and May 2018. The findings of that consultation inform the analysis in this impact assessment.

## Glossary

AWR – Agency Worker Regulations

BPE – Business Population Estimates

BRC – British Retail Consortium

CBI – Congress of British Industry

EAS – Employment Agency Standards Inspectorate

FCSA – Freelance & Contractor Services Association

LFS – Labour Force Survey

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<sup>1</sup> The Taylor Review of Modern Working Practices, page 59

ONS – Office for National Statistics

PBA – Payment between Assignment

REC – Recruitment and Employment Confederation

TUC – Trade Union Congress

## Data Sources

To gather the best available evidence, a wide range of data sources were consulted. Each of these sources has strengths and weaknesses, and these will be referenced throughout this impact assessment. They are discussed at length here as an introduction to the available evidence with which we are working.

### *Recruitment and Employment Confederation (REC)*

REC data is used to estimate the number of agency workers.

REC release annual reports on the industrial trends in the recruitment industry. By surveying their members, REC are able to offer a greater insight into the recruitment sector than many other sources.

As a result, REC estimates provide the best available evidence for numbers of agency workers, with their most recent figures published in December 2017.

REC's most recently available data for the number of employment businesses was published in December 2015. Given that this estimate is now somewhat old relative to the estimate for the number of agency workers, we have opted to use a more recent ONS estimate for the number of employment businesses.

### *Labour Force Survey*

The following estimates are based on LFS data:

- Wage data for agency workers
- Wage data for permanent employees
- Wages differentials between agency workers and permanent employees after 12 weeks of continuous service
- Sectoral breakdown of agency workers

Our primary source for wage data for agency workers and permanent employees is the Labour Force Survey (LFS). The LFS is the largest household survey in the UK. Whilst it is broad-ranging, the great weakness of the LFS is the self-reporting nature of responses to questions.

For this reason, whilst there is a specific question for respondents about whether they are an agency worker, the interpretation of this question is not always clear-cut. For example, a worker who is employed by an agency but paid via an intermediary may not know exactly who employs them. Therefore, asked about the type of business that hires them, the respondent may not know that they are employed by an employment business, and thus are an agency worker. For this reason, it is believed that the LFS under-reports the number of agency workers. As a result, the estimate is not used, and that is why we use REC estimates as outlined above.

The LFS does provide a breakdown of which sectors agency workers may be working in. A key assumption in using this data is the LFS coverage of agency workers is representative of the whole population. This is the best available data we have on the sectoral breakdown of agency work.

The LFS also provides us with the pay data for agency workers that is directly comparable to general employees. LFS pay data has recognised weaknesses (due again to self-reporting), but the more robust ASHE data is not available by agency and non-agency worker, so this assessment is constrained to using LFS estimates. LFS data gives the best available figures for average hourly pay by sector and time in employment for both agency workers and permanent employees. This is used in the analysis for the costs of the policy options later in this impact assessment.

## *HOST Report*

BIS commissioned a report from HOST Policy Research, hereafter referred to as the 'HOST report'. The report is titled "Qualitative Analysis on the use of Pay Between Assignment contracts for Agency Workers, including the role of Umbrella Organisations". The final report was published in 2018.<sup>2</sup> This research was constrained by the research team's inability to secure as many interviews as desired. The Host report describes how many agency workers were unwilling to participate in interviews for fear of losing their jobs, despite the anonymity of the job interviews.

As a result, the qualitative analysis is predominantly anecdotal. A total of eighteen employment businesses and seventeen umbrella organisations were interviewed, along with three end hirers and nine agency workers. All interviews were conducted anonymously. These numbers reflect only a very small proportion of the recruitment sector. ONS estimates that there are 25,970 employment businesses<sup>3</sup>. There is limited robust data on the number of umbrella companies, but the EAS estimate that there are approximately 400-600, a view supported by the Freelancer & Contractor Services Association (FCSA).

The HOST report is able to identify many areas of abuse related to the Swedish derogation. The report provides evidence of agency workers who:

- Are unaware of which type of contract they are on
- Were given no choice to sign a derogation contract, with the only alternative being to not receive work at all
- Do not request derogation contracts
- Do not receive payment between assignments, despite their entitlement

In addition to the responses from agency workers, the evidence produced in the HOST report also addresses evidence gaps from other groups in the recruitment sector. In attempts to identify the sources of the abuse, the HOST report asked similar questions in the interviews with umbrella companies and employment businesses. Answers included evidence for the reasons for use of derogation contracts, who requests them and the effectiveness of payment between assignments. Due to the limited number of interviews, the responses cannot be considered to be indicative of the whole recruitment sector, but they do give evidence that can be considered.

The HOST report asks respondents which sectors they believe that derogation contracts are utilised most heavily in. A group of sectors is identified and considered in the analysis later in this impact assessment.

The HOST report is the best evidence we have available for the use of the Swedish derogation in the recruitment sector. The difficulties experienced in conducting that research highlights the unfeasible nature of a full sector survey, even with a large budget.

## *Consultation Responses*

Following publication of the Government response to the Taylor Review, the Government consulted on the recommendations made with regards to agency workers. The responses to this consultation were considered in the writing of this impact assessment.

Like the HOST report, the responses were not sufficient in number to be indicative of the entirety of the recruitment sector. The responses did however give more detailed information on specific questions, contributing further to the weight of evidence around the use of the Swedish derogation. There was a great deal of similarity between the responses to the Government consultation and the issues identified in the HOST report, suggesting a potentially more systemic issue than might otherwise be identified.

## *Further Stakeholder Inputs*

Further evidence was received from various stakeholders in response to the Government consultation.

**Confederation of British Industry (CBI)** – In 2014, in collaboration with Accenture, the CBI produced a Survey of Employment Trends.<sup>4</sup> This included discussion around flexible forms of working, such as

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<sup>2</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/679564/HOST\\_Final\\_Report\\_final\\_version-.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/679564/HOST_Final_Report_final_version-.pdf)

<sup>3</sup> <https://www.ons.gov.uk/businessindustryandtrade/business/activitysizeandlocation/adhocs/008581recruitmentagenciesintheuk>

<sup>4</sup> <http://www.cbi.org.uk/news/cbi-accenture-employment-trends-survey/>

agency working and specifically references the Swedish derogation and the impact of repealing it. This provides the best available evidence for us to estimate the business reaction to repealing the Swedish derogation. The CBI has also provided indicative evidence from its members as to the estimated costs of repealing the Swedish derogation. We have sense checked our estimated impact against these figures to ensure that the scale of costs to business have been reasonably assessed.

**British Retail Consortium (BRC)** – In addition to their response to the Government consultation, the BRC wrote to the Minister for Small Business in June 2018 with an estimate of the anticipated costs for the retail sector of a repeal of the Swedish Derogation. The BRC estimated the annual cost to the retail sector of repealing the Swedish derogation at £14 million per annum. Again, as with evidence from the CBI, we have used this estimate to sense check our estimate for the likely cost to business.

**Trade Union Congress (TUC)** – The TUC has provided evidence with regards to the scale of the abuse of the Swedish derogation.<sup>5</sup> This evidence includes details of pay penalties and case studies of individual businesses.

## Caveats of Data Sources

We acknowledge that there is inherent uncertainty associated with the estimates given the limitations in the evidence base, particularly around the number of individuals likely to be on Swedish derogation contracts. It is unlikely that further research and consultation will gather more robust data. In addition to the research discussed in this impact assessment and the open consultation held during 2018, we have held several formal and informal discussions with key stakeholders, including REC, CBI, BRC and TUC amongst others to seek out further evidence.

Any additional research would be subject to the same data collection limitations in terms of individuals and businesses being unwilling to speak about their experience of these contracts. Much of this unwillingness stems from the fear of repercussions, a fear that cannot be sufficiently mitigated through anonymity of the responses. This would be further complicated in future research by the increased media scrutiny of, and associating declining use of, these contracts.

At this time there is a sufficient body of evidence indicating that the impacts estimated in this impact assessment are of the correct order of magnitude. This includes the referenced independent estimates provided by the British Retail Consortium and independent research carried out by the Resolution Foundation.

## Key Assumptions

The supporting analysis in this impact assessment is based on several key assumptions. These are detailed below and are frequently referenced later in this impact assessment.

Due to the wide variety of employment types for agency workers, robust figures for the number of agency workers are not easily available. Data sources differ in their estimate for the total number of agency workers. Labour Force Survey (LFS) estimates approximate the number of agency workers as between 750,000 – 800,000 depending on the exact method of calculation used. This is believed to be an underestimate, as highlighted when discussing the general weaknesses with LFS data above. A more accurate figure for the total number of agency workers is the estimate from the Recruitment & Employment Confederation (REC), who estimate that there are approximately **1,300,000 agency workers** in the UK.<sup>6</sup>

Furthermore, the number of employment agencies also needs to be estimated. The most recent available estimate from REC (2014/2015) is 23,980 employment agencies. A more recent estimate is provided by the ONS, who's estimate from March 2017 is that there are **25,970 employment businesses**<sup>7</sup>.

A greater unknown is the number of agency workers on Swedish derogation contracts. As discussed earlier in this Impact Assessment, attempts to gather data on specific aspects of the agency worker

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<sup>5</sup> <https://www.tuc.org.uk/research-analysis/reports/ending-undercutters-charter>

<sup>6</sup> <https://www.rec.uk.com/help-and-advice/research/recruitment-industry-trends2>

<sup>7</sup> <https://www.ons.gov.uk/businessindustryandtrade/business/activitysizeandlocation/adhocs/008581recruitmentagenciesintheuk>



sector have often struggled. This is exacerbated with the number of derogation contracts as agency workers often are unaware of the type of contract they have signed. This was evidenced in both the HOST report and in the Government consultation where respondents said that they were unaware that they had signed away their rights to equal pay when they signed the contract.

Initial estimates for the total number of derogation contracts are derived from two data sources and range from 8-20% of all agency workers. The lower figure was derived by Forde & Slater (2014) where they used a proxy for the Swedish derogation contracts to estimate the total number. Forde and Slater considered the number of agency workers who reported being paid directly by an employment business instead of by the firm they were working for. This direct payment would reflect the nature of the employment with the employment business for a worker on a derogation contract where they are an employee of the employment business.

The upper figure of 20% is derived from responses to a BIS survey of REC members<sup>8</sup>. This is considered an unreliable estimate because it was heavily skewed by a single respondent which had 5,000 agency workers almost all of whom were on derogation contracts. Supporting evidence was considered to reduce the wide range initially identified, and to address the caveats with both data sources. It should be noted that we believed that the 20% figure is unreasonably high, and that the true figure is significantly closer to the 8% figure estimated by Forde & Slater.

This is supported by comments from Kevin Green, the then Chairman of REC, in 2015<sup>9</sup>. Whilst acknowledging the lack of robust data, Green stated that it would not be “unreasonable to estimate that it (Swedish derogation) relates to less than 10% of all temporary workers in the UK”. This figure complements our estimate of 8%, whilst suggesting that the 20% figure estimated in the BIS survey was an overestimate.

We also considered scenario analysis on the total cost of repealing the Swedish derogation for each proportion of agency workers being on derogation contracts. These figures were compared to analysis from alternative sources, for the approximation of scale. The Resolution Foundation’s analysis suggests that the overall pay penalty for agency workers who have completed the 12-week qualifying period is approximately £300 million per annum. When compared to our sensitivity analysis, this suggests that approximately 10% of agency workers are on derogation contracts. Although different methodologies were used, they are sufficiently similar to allow for comparison, between the two final costs. Similarly, the BRC estimated that the cost of repeal of the Swedish derogation would be approximately £14 million per annum to the sector. As one of the larger users of the derogation, this offered further evidence that the approximate scale of 10% of all agency workers being on derogation contracts is a reasonable upper limit.

Furthermore, there is also anecdotal evidence from a range of business stakeholders that they are reducing their use of derogation contracts. This is supported by a recent announcement by BT that they are phasing out all agency workers on derogation contracts by March 2019<sup>10</sup>.

The screenshot shows the CWU website navigation menu with links for News and Activity, About the CWU, UnionLine, Join Us, My Union, and Contact Us. Below the menu is a pink navigation bar with links for Events, Campaigns, Conferences, News, and Publications. The main content area features a breadcrumb trail: Home > News and Activity > News > CWU victory on BT PBA agency contracts. The article title is 'CWU victory on BT PBA agency contracts' in pink. The sub-headline is 'Telecoms & Financial Services August 9 2018'. The main text states: 'A major victory has been won in the CWU's *Close the Gap* campaign with BT finally agreeing to longstanding union demands for an end of what the union has always claimed are exploitative *'Pay Between Assignment'* (PBA) contracts. Following detailed talks the company has agreed to the phasing out of PBA contracts by the end of March 2019. Despite wave after wave of agency conversions in recent years, which have seen more than 800 Manpower employees offered permanent BT contracts, over 1,000 agency employees continue to conduct predominantly call centre roles in the business. In BT Consumer a resourcing revolution is now underway under which agency workers will have the opportunity to secure a permanent BT contract.'

<sup>8</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/386340/bis-14-1257-agency-workers-research.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/386340/bis-14-1257-agency-workers-research.pdf)

<sup>9</sup> <https://www.rec.uk.com/about-us/archived-pages/help-and-advice/corporate-blog-old/a-challenge-to-those-who-criticise-agency-work-and-its-place-in-the-uk-labour-market>

<sup>10</sup> <https://www.cwu.org/news/cwu-victory-on-bt-pba-agency-contracts/>

In deriving the most robust estimate for the number of agency workers on derogation contracts, we considered all of the above. Whilst we acknowledge that a single survey returned a very high figure of 20%, there was a significant weakness in the survey. Only 43 of the 86 employment businesses questioned said that they were using derogation contracts, and of the 43, only 18 employment businesses gave a proportion for the number of agency workers on derogation contracts. Thus, one large employment business with their entire staff of agency workers on derogation contracts heavily skewed the data. It was one of only two employment businesses that estimated more than half of their agency workers were on derogation contracts. The largest bracket of respondents were employment businesses estimating that only 1-10% of their agency workers were on derogation contracts.

In addition to the lack of supporting evidence supporting the estimate of 20% of agency workers on derogation contracts, since Kevin Green's comments in 2015, evidence actually suggests that businesses have been reducing their use of the Swedish derogation. This offers further weight to our assumption that 10% of all agency workers is a reasonable upper limit for the total number of derogation contracts and offers further evidence for the 20% estimation from the BIS survey being too high to be accurate.

As a result, in the absence of any more robust data, our best estimate is that **8-10% of all agency workers are on Swedish derogation contracts**, which corresponds to between **104,000 – 130,000 agency workers**.

For completeness, this impact assessment includes sensitivity analysis using the figure of 20% of agency workers on derogation contracts. This equates to 260,000 agency workers on derogation contracts. The analysis is conducted for illustrative purposes only as the number is significantly higher than our best estimate.

## Rationale for intervention;

There are approximately 1.3 million agency workers in the UK, with benefits to business and workers arising from the flexibility of the arrangements. The consideration given for intervention is focused around the European Directive on Temporary Agency Work (2008). In the European Directive, it is stated that the "basic working and employment conditions applicable to temporary agency workers should be at least those which would apply to such workers if they were recruited by the user undertaking to occupy the same job". Effectively, this means that workers should be given at least equal treatment to permanent employees; not penalised for undertaking temporary work instead of permanent employment.

There is a lack of market power for agency workers due to their model of employment. Agency workers are reliant on an employment business to find them work opportunities, and thus are often unwilling to do anything that could jeopardise their future work prospects. This is a problem identified in both the HOST Report and in the Government consultation on agency working. This issue is particularly significant relative to the enforcement of agency worker rights.

Even if an agency worker were willing to attempt to enforce their rights, they may be unaware of who is the responsible. The Taylor Review identified cases of where agency workers did not have enough information to know who to make a complaint to. This is a particular problem in the recruitment sector due to the tri-partite nature of the employment relationship. It is further exacerbated in the case of the use of an umbrella company. An agency worker may find that they have a different company to handle various aspects of their job. They have an umbrella company which handles their pay and all payroll functions. They have an employment business which offers them work assignments and places them at a hirer. And they have the end-hirer where they conduct their work. This situation creates huge scope for the agency worker to not have the required information to enforce their rights.

The rationale for intervention focuses on:

- Evidence of a pay penalty for agency workers - There is evidence of a pay penalty for the majority of agency workers. This forms the initial basis for the rationale for intervention, although it is not sufficient grounds for intervention in itself. The Swedish derogation in particular gives a lawful reason as to why agency workers would have a pay penalty as agency workers on derogation contracts are not entitled to equal pay.

- Evidence on the scale of abuse of the Swedish derogation - Agency workers on derogation contracts should have been able to enter into the contracts willingly without any requirements imposed onto them to do so, in full knowledge that they would be opting-out of the right to pay parity.
- Evidence that agency workers are increasingly undertaking longer assignments - The Swedish derogation allows agency workers to opt-out of the right to equal pay after twelve weeks in an assignment in exchange for payment between assignments. Evidence provided to the Taylor Review suggested that this was being used to intentionally keep workers on long-term contracts, whilst paying them less than permanent employees doing the same work. This is supported by responses to the Government consultation, and a study by the Resolution Foundation. Through intervention, the Government aims to prevent this denial of agency workers' right to equal pay.
- Lack of evidence that the Swedish derogation contracts benefit workers - Whilst the anecdotal evidence may not be fully representative of the economy, in the consultation that followed the Taylor Review, business respondents were unable to offer evidence for the benefits to workers of the use of the Swedish derogation. This is even though these contracts are designed to offer security and continuity of income (i.e. by providing a payment between contracts). Respondents were unable to provide evidence or examples of this benefit being realised for workers.
- Lack of open dialogue on the Swedish derogation - when additional attempts were made to gather evidence for the extent of the use of the Swedish derogation, there was little concrete evidence forthcoming. Neither business stakeholders nor employment agencies were able to provide data for the number of Swedish derogation contracts. This issue was also encountered in the HOST report, where only nine agency workers were willing to be interviewed, along with only eighteen employment agencies. One plausible reason for this lack of robust evidence is the negative publicity that is attached to the Swedish derogation. In fact, in the HOST report, employment agencies suggested that they do not actively push the Swedish derogation, instead responding to demands from hirers for lower costs, or in some cases direct instructions to use the model. Similarly, some umbrella companies suggested that the demands for Swedish derogation contracts comes from employment agencies. When interviewed, the hirers state that they did not know what type of contract that their agency workers were on as it is an issue for the employment agency, not themselves. The argument for the negative publicity attached to derogation contracts is highlighted by the way that some hirers are moving away from the contract model altogether, such as the BT example outlined above.

### *Lower Wages for Agency Workers*

Whilst some agency workers receive a pay premium, in general agency workers earn lower wages than directly comparable permanent employees at the same hirer. A Resolution Foundation study in late 2017<sup>11</sup> found that marked wage differentials existed between agency workers and permanent employees. These differentials persist even after controlling for personal characteristics and type of work. The study showed that in the period from 2011-2017, like-for-like, agency workers earned on average 23p less per hour than permanent employees, or a total wage difference of £400 million each year. This wage difference is not uniform across the workforce but does highlight a need for intervention. In some occupations, there is a higher rate of pay for agency workers, especially in traditionally higher skilled occupations – on average, agency recruited Managers, Directors and Senior Officials earn £1.12 per hour more than comparable permanent employees. However, there are also occupations where agency workers earn significantly less on average, such as Administrative and Secretarial Occupations, where agency workers earn on average £0.60 less per hour.

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<sup>11</sup> <https://www.resolutionfoundation.org/media/blog/unwrapping-the-agency-worker-pay-penalty/>

### Box 1: Resolution Foundation Analysis

The research from the Resolution Foundation contributed to the evidence base for the scale of abuse of the Swedish derogation. Using LFS data, the research suggested that agency workers as a sector suffer a pay penalty of £400 million annually. This reflects not just agency workers on derogation contracts, but all agency workers. For agency workers who have been on assignment for less than 12 weeks, they will not have completed the service requirement for their right to equal pay. Thus, part of this overall pay penalty may reflect agency workers who are not receiving equal pay because they are on short-term assignments.

This was accounted for by the Resolution Foundation's analysis. They also considered those who have been in place in their current assignment for longer than three months (and thus completed the 12-week minimum service requirement for equal pay). Although the pay penalty gap decreased, the analysis found that there is still a £300 million pay gap each year. This pay gap may reflect agency workers on derogation contracts; they do not have the right to equal pay after 12-weeks. However, this pay penalty may also reflect agency workers who earn less than permanent employees for valid business reasons e.g. less experience. As a result, it cannot be taken as an estimate of the pay penalty incurred through use of the Swedish derogation only. It does however provide an indication as to the likely scale of impact on business and suggests that the impact on business calculated in this Impact Assessment is a reasonable estimate of scale.

We note that the wage differential figures identified by the Resolution Foundation differ from those used in this impact assessment. This is due to differing methodologies. The Resolution Foundation research bases estimates on all agency workers, whilst our analysis focuses on agency workers on derogation contracts. Therefore, the Resolution Foundation used wages data for all agency workers. By comparison our wage data was taken to reflect permanent agency workers only. This is due to the nature of the Swedish derogation. A valid derogation contract requires a permanent contract of employment between the employment business and the agency worker. Thus, we consider that wage data for permanent agency workers to be a better indication of wages of workers on derogation contracts. This impact assessment also uses a different estimate for the number of agency workers; our analysis considers the REC estimate of around 1.3 million agency workers to be the most robust figure available, whereas the Resolution Foundation's analysis is based on LFS data.

We consider our analysis to be more appropriate for the scope of this impact assessment. However, we note that the figures provided by the Resolution Foundation form a good comparator and indicate that our assessment of the likely scale of impact on business is broadly similar.

When the analysis is expanded to consider those, who have been in employment for more than three months (and so are due to come under the equal wage entitlement), it is found that although wage differentials narrow in most occupations, they are still significant. This is despite the completion of the twelve-week qualifying period for equal pay. Wage differentials are actually found to increase in Elementary Occupations and Professional Occupations. This is despite the legal entitlement for equal pay after twelve weeks of service. Again, when looking at the lost wages from this differential, Resolution Foundation estimate this at £300 million for those who have been in employment for greater than three months, despite the right to equal pay in the AWR. While conceding that there is a number of valid business reasons why these differences exist, with agency workers having amassed less on the job experience or skills, the wage differential is still very significant, penalising agency workers.

Since the conclusion of the Taylor review, there have been further studies into the wage differential between agency workers and permanent employees. Anecdotal evidence from TUC research<sup>12</sup> has suggested that in some specific cases studies, there is a significant earnings difference between agency workers and permanent employees.

- Permanently employed staff at certain distribution centres earning 63% more than temporary staff
- One company's call centres can have temporary staff earning up £529 per month less than permanent staff
- Agency workers not being entitled to overtime rates, resulting in a pay differential on anti-social shifts

<sup>12</sup> <https://www.tuc.org.uk/research-analysis/reports/ending-undercutters-charter>

The case around anti-social shifts is perhaps the most concerning, with the TUC research identifying cases where agency workers are faced with significant pay disadvantages on anti-social shifts. In a food manufacturing plant, agency workers are identified as earning £3 less an hour than directly employed staff on weekday night shifts. This figure increases to £6.33 for Sunday night shifts. This is exacerbated further with overtime, as agency workers continue to earn their base rate, with permanent employees earning nearly £10 an hour more.

Although the BIS commissioned study with HOST Policy Research (2018)<sup>13</sup> was unable to gather a large body of evidence, it did suggest further examples of where businesses were using derogation contracts to avoid equal pay. When investigating why employment agencies were using the derogation model, it was found that the decision was primarily driven by hirers from a cost perspective; agency workers would still be able to earn less than a directly comparable employee. This is an attractive benefit to hirers who insisted that employment agencies either provided workers on a derogation contract or would lose business. One employment agency reported that in almost all cases (99%) where derogation contracts are used, it is because it is being driven by the hirer on a cost basis.

This deliberate avoidance of equal pay is a practice prohibited by the AWR. However, since the AWR are not enforced by any governing body, agency workers themselves must go through a lengthy employment tribunal process if they feel they are being abused. It can also be extremely difficult to prove that the decision to use a derogation contract was made on the basis of avoiding the equal pay entitlement. This is an issue that would cause significant problems with a regulatory approach.

The HOST report also found that hirers often are unaware of the type of contract that an agency worker is employed on. Instead of asking for a specific contract, they negotiate with the employment business to have their fee as low as possible, leaving the employment business to find a way to make it financially viable. This results in the agency having little choice but to offer a derogation contract as the hirer is unwilling to pay an amount that would enable equality of pay. Perhaps crucially, the HOST report found little evidence to suggest that agency workers ever request derogation contracts, suggesting that despite the perceived benefits, agency workers do not wish to use them.

#### *Abuse of the Swedish derogation*

Lower pay, in itself, is not a conclusive rationale for intervention. The Swedish derogation was implemented in the UK following an agreement between business and unions and is a lawful model of employment. In exchange for the lower wages during assignments, agency workers are paid a wage between assignments. This is considered a fair trade; agency workers accept the lower wages in exchange for greater financial stability. Furthermore, agency workers on Swedish derogation contracts have a permanent contract of employment with their agency, giving them access to greater employment rights. When used legitimately, it would benefit workers who are on relatively short-term contracts, and so would have an extremely variable income. The Swedish derogation model is designed to help mitigate this problem to give such workers a reasonable degree of income security.

During the Government consultation on agency workers, one stakeholder highlighted the potential for benefits from the Swedish derogation during periods of high unemployment, as they are more likely to be out of work, and greater financial stability may be of interest to the workers. If this were to be the case, as unemployment falls, it would be expected to see agency workers move away from using derogation contracts and towards using standard agency contracts. This change would require workers being given a choice on the type of contract that they are employed on. It should be noted that there is minimal evidence that agency workers are being given a choice about their type of contract. There is also the risk that during periods of particularly high unemployment, the employment business will simply make the agency worker redundant. Depending on the length of service, this may be without any form of redundancy protection for the agency worker, even if they are on a derogation contract. We are unable to consider the impacts of the 2007/08 financial crisis on agency workers as the AWR only came into effect in October 2011<sup>14</sup>.

In the HOST report, it is claimed that agency workers do not have this choice, instead being given a 'Hobson's Choice' of signing a derogation contract or not being given the work assignment. This was supported by evidence provided to the Taylor review, and has been seen in case law, such as in *Bray and others vs Monarch Personnel Refuelling (UK) Ltd*. Workers were forced to accept derogation contracts, either at the start of their employment or after eleven weeks before the right to equal pay

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<sup>13</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/679564/HOST\\_Final\\_Report\\_final\\_version-.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/679564/HOST_Final_Report_final_version-.pdf)

<sup>14</sup> <http://www.legislation.gov.uk/uksi/2010/93/regulation/1/made>

became relevant. As previously noted, this is unlawful under the AWR. It is however possible for an agency worker who is on multiple assignments with the same hirer to have their contract changed between assignments, even if the role on the two assignments is the same. There is also the risk that agency workers who complain would not be given work by the employment agency in future, a fear that agency workers reported in the Government consultation. One respondent stated that “agency workers are more concerned with getting hired and keeping periods without work to a minimum”, fearing that an attempt to enforce their rights could lead to them not receiving any work in future.

With regards to the benefit of payment between work assignments, neither the HOST report, nor the Taylor review found evidence of workers receiving pay between assignments. Whilst some workers are never away from an assignment, working for years with the same hirer, others are being given a single hour of work a week. This is enough to mean that they count as on assignment, and thus are not entitled to extra payment. Consultation with union and business stakeholders was unable to provide an example of a worker receiving genuine payment between assignments. Whilst this does not preclude some agency workers on derogation contracts receiving the correct payments, the evidence suggests that many workers are prevented from receiving the pay they are entitled to.

The HOST report also identified ways that umbrella companies and other intermediaries were avoiding the liability of the payment between assignments. The study reported the deduction of sums from agency worker wages or a method of loaning the agency worker the payment between assignments, only to reclaim the sums once they were back in work. When considering agencies, the report found that the agencies structured contracts to minimise the chance of paying the workers between assignments. Both agencies interviewed also note that they prefer not to utilise derogation contracts as it creates additional administrative burden.

One of the principles of the European Directive on Temporary Agency Work was that agency workers should not be worse off than permanent employees simply for being agency workers. This principle of at least equal treatment is compatible with the Swedish derogation where the derogation is used properly. Agency workers that can choose to work on a derogation contract can make the decision to value stability of income above their valuation of higher wages. Given that evidence suggests that workers do not have the capacity to choose between a derogation and a normal contract, as well as the absence of examples of payment between assignments taking place, it is evident that this principle is being undermined.

### *Summary*

Overall, the main rationale behind intervention is to address the misuse of the Swedish derogation. Whilst it was implemented to address the issue of highly variable incomes for agency workers, it is instead being used to artificially hold agency worker wages down. The original rationale for implementation was in line with the principle of at least equal treatment for agency workers, established in the European Directive on Temporary Agency Work (2008). However, the Swedish derogation is instead being used to avoid the requirement to pay agency workers the same as a comparable permanent employee. This is going against the intention of the derogation. Sir David Metcalf, Director of Labour Market Enforcement told BEIS and DWP Committees “either we enforce it, or we abolish it”. Both options are considered as forms of government intervention.

## **Policy objectives;**

The Taylor Review recommended repealing the Swedish derogation to end the abuse that the review identified. As repeal is an extreme option considering the initially limited evidence, a series of objectives were identified in line with the consultation, before different options were considered to see which best meets the objectives:

- To prevent businesses from breaching the Agency Worker Regulations by abusing the Swedish derogation to avoid the requirement to offer agency workers equal pay.
- To ensure that the principle of equal treatment for agency workers is maintained without hurting the flexibility benefits that the agency worker model generates.
- To address the "two-tier" structure of agency workforce, with workers on Swedish derogation contracts being on a lower rate of pay.

## Counterfactual

The most important of the key inputs discussed above is the number of agency workers on derogation contracts, with the best estimate being 8-10% of all agency workers.

Key to understanding the true counterfactual is the evidence that the use of Swedish derogation contracts is currently declining, no doubt in part due to the negative publicity attached to these types of contract. Reduced use of Swedish derogation contracts has been reported anecdotally by business stakeholders and was recently publicly announced by BT<sup>15</sup>.

Throughout this impact assessment we consider the rationality aspect of business behaviour. As highlighted above, businesses may use the Swedish derogation model as a cost saving measure. However, despite these savings, businesses are still moving away from the model of derogation contracts due to increased media and Trade Union scrutiny. There is evidence that, even in the absence of Government intervention, businesses will continue to reduce their use of derogation contracts.

There is a question of the need for intervention in the face of this trend. If the use of the derogation is declining, there is a case to be made for there being no need for intervention as the issues will slowly be reduced with time. Despite this, the scale of the identified abuse suggests that to do nothing would leave many agency workers vulnerable in the interim.

We do not have any robust data on the rate of the decline in the number of derogation workers and therefore do not know how long it would take for the identified issues to reduce. Given the principle of equal treatment discussed above, as well as the policy objectives, simply waiting for the abuse to fade due to the pressure of negative publicity is not a reasonable course of action. Agency workers that are facing abusive use of the Swedish derogation cannot be left in a vulnerable position in the interim period whilst businesses slowly reduce their use of the derogation.

**It should be noted that the reported decline in the use of Swedish Contracts means that the annual impact on business assessed in this impact assessment is highly likely to decline over time because the use of these contracts is being phased out in the counterfactual. We do not have robust evidence to forecast the rate of decline but note that in later years the cost to business is likely to have decreased. We considered the use of a decreased appraisal period (i.e. less than ten years), but again have no robust evidence on which to make a reasonable estimate. Given that we expect the cost to business to decrease in later years, we note that our 10-year estimate of the net present cost and business net present cost should be treated as a high estimate (closer to the maximum potential impact).**

**To demonstrate how the overall impact of the measure on business over ten years could vary under different assumptions around the decline in use of Swedish Derogation contracts, Annex B presents an analysis of possible scenarios for the counterfactual.**

**Without robust evidence to suggest which scenario is most likely, we have had to present the overall impact in this impact assessment relative to a counterfactual of 'no decline', but as Annex B demonstrates, the total cost to business over ten years could be up to £1 billion lower depending on the actual rate of decline in the use of derogation contracts over time.**

## Options Considered;

This impact assessment considers three options:

- Do nothing
- State Regulation of the Swedish derogation
- Repeal of the Swedish derogation

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<sup>15</sup> <https://www.cwu.org/news/cwu-victory-on-bt-pba-agency-contracts/>

## Policy Option 1 – Do Nothing

As the Swedish derogation is not an unlawful interpretation of the AWR, doing nothing was examined as an option. In light of the decreased use of the Swedish derogation by business, further consideration was given to this option. However, with the abuse identified in various studies and reviews, this option would not be sufficient to meet the identified objectives, crucially around the principle of equal treatment. As discussed above, it would leave agency workers on derogation contracts vulnerable to the abuse that they are currently facing. As a result, this option is discounted.

## Policy Option 2 – State Regulation of the Swedish derogation

### Background

In the Government response to the Taylor Review, consideration was given to the scale of the abuse of the Swedish derogation. The Government acknowledged that if the abuse was widespread, repeal would be considered. However, it was also noted that if the abuse is limited, greater state enforcement and regulation may be a more appropriate response. As a result, a consultation was undertaken to attempt to gain more evidence on the scale of the abuse.

The option to regulate was considered at length as an alternative to repeal as a more moderate option. This included extension of the remit of the Employment Agencies Standards (EAS) Inspectorate to cover all aspects of the AWR, including the Swedish derogation.

Enforcement of the AWR could potentially address other identified issues around the use of agency worker contracts, but crucially it might not address the problems identified with Swedish derogation contracts. As has been repeatedly identified by stakeholders, whilst it is unlawful to structure a contract to deliberately avoid the equal pay entitlement, using the Swedish derogation itself is not unlawful. Furthermore, the AWR can still be enforced through an employment tribunal. The limited number of cases in recent years suggests that this would be ineffective as many agency workers are either unaware of their rights or unwilling to make a claim for fear of not being offered work in future. In total, in 2017 there were 27 employment tribunal judgements around agency workers. For comparison, there was more than 22,000 judgements for cases applying to the Equal Pay Act.

We have considered, in discussion with EAS, what might be the best way to regulate to ensure that the Swedish derogation was not being abused. This would include considering the length of time an agency worker was on a Swedish derogation contract, whether the agency worker was given a choice in their type of contract, or whether they were forced to accept a derogation contract. An employment agency that holds an agency worker on a derogation contract for an extended period of time, without the option to change contract type would be considered to be misusing the derogation.

### Costs and Benefits

#### Costs and Benefits of Increased Wages

Consultation with the EAS has indicated that it could address the issue of the abuse of the Swedish derogation by enforcing the AWR. Employment agencies that hold agency workers on derogation contracts for long periods of time to avoid the equal pay entitlement will be subject to investigation from the EAS. This will protect the agency workers who are being forced to accept derogation contracts and thus have no ability to enforce their right to equal pay.

Effective enforcement will cause those who are being held on low wages through the abuse of the derogation to have their wages increased. It may also change business behaviour to reflect the risk of being found non-compliant when inspected. EAS indicated that when considering whether an agency worker is being denied their entitlement to equal pay, they would consider a range of factors as highlighted above. One significant factor would be the time an agency worker is on a single assignment. EAS colleagues suggested that an agency worker who is kept on a derogation contract for longer than six months is significantly more likely to be subject to an abuse of the Swedish derogation.

**It should be noted that regulation would not create a right to equal pay after six months of service with a single hirer.** Regulation would mean that hirers would come under increased scrutiny as



to whether they were using Swedish derogation contracts lawfully. When the EAS investigate a claim from an agency worker that their contract is structured to avoid the right to equal pay, one of the crucial factors would be the time with the individual hirer. EAS believe that an agency worker who is on an assignment for longer than six months on a derogation contract is more likely to have had their contract structured to avoid the entitlement to equal pay; a breach of the AWR. This alone is not a guarantee of abuse, as there are valid reasons for such a contract, even using the Swedish derogation. Furthermore, if an agency worker were to specifically request a derogation contract, should it offered, the employment business would be significantly less likely to be found to be attempting to avoid the equal pay entitlement. It should be noted that the six-month consideration would not be a hard limit. There would likely be cases where businesses placing agency workers on derogation contracts on assignment for less than six months could be found to be avoiding the right to equal pay. Similarly, there would likely be cases where businesses placing agency workers on derogation contracts on assignment for longer than six months would be found to be compliant with AWR, and not avoiding the right to equal pay.

With regards to the figures presented below, we assume that EAS regulation will cause businesses to consider their payment practices to ensure compliance. We then anticipate that some businesses will change their behaviour, to ensure that they have not structured a contract to avoid the right to equal pay. With the EAS belief that six months is a reasonable point at which the likelihood of finding that businesses are not AWR compliant is increased, we believe that businesses will consider offering equal pay after an agency worker on a derogation contract has been on a particular assignment for longer than six months.

This would only apply if the agency worker was earning less than a comparable worker at the same hirer. If they were earning more than a comparable worker, there is no requirement for their pay to be brought down to the level that permanent worker earns. This would be a cost to business, but a corresponding benefit to workers, with the net cost being neutral, as any increases in wages is a direct transfer from business to workers.

There is the possibility of the worker requesting a derogation contract, despite the lack of equal pay rights. Under these circumstances, there would be no abuse of the Swedish derogation, as it is the workers choice. There is limited evidence to support that this is a common practice, where instead derogation contracts are forced onto workers where they either sign the contract or do not receive work. It would be for EAS to inspect and examine the individual cases to determine whether contracts were being abused.

As regulation would still permit derogation contracts, there would still be some agency workers who, due to their derogation contract, would not be entitled to equal pay after twelve weeks. However, EAS consider that an agency worker on a derogation contract in a single role for more than six months (twenty-six weeks) would reasonably be able to make a claim that under the AWR their contract was structured to avoid equal pay. As a result, our estimated impact is based on equal pay entitlements for agency workers on derogation contracts after six months in the same job with the same hirer. The methodology for this impact is shown in Annex A.

It is estimated that the cost to business of offering equal pay to the 102,918 – 128,647 agency workers on derogation contracts after six months would be £136.9 - £232.7 million annually.

The broadness of this range reflects the number of inputs into our methodology. We also estimate the number of weeks that an agency worker would be able to claim equal pay. With a 26-week qualifying period, for a single worker this could range from 0 weeks in a year to 26 weeks. This range of weeks of equal pay is the greatest driver for the scale of the range.

As this is increased wages, there would be an increase in wages equal to the cost to business, i.e. £136.9 - £232.7 million annually. As the increased wages are equal to the cost to business, there would be a net impact of £0.

#### **Box 2.1: Sensitivity Analysis of 20% of agency workers on derogation contracts**

Consideration is also given to the total cost if 20% of all agency workers were on derogation contracts, as part of our sensitivity analysis. In this scenario, we estimate that the annual cost to business of offering equal pay after six months would be £414.0 - £465.4 million annually. Again, this would be matched by an increase in wages of £414.0 - £465.4 million annually, for a net impact of £0.

It should also be noted that an increase in wages would also result in a benefit to the Exchequer from higher tax revenues and lower benefit payments. This Exchequer benefit would not affect the costs to business. Instead of a complete transfer from business to workers, there will be a transfer from business to workers and the Exchequer.

### Scenario Analysis for Business Behaviour Adjustments

The above figures assume that all employment businesses will adjust their behaviour in the aftermath of increased regulation, and thus would offer equal pay after six months. In practice, this is highly unlikely. We know through anecdotal evidence that there is some abuse of the Swedish derogation, and thus it is unlikely that there will be a behavioural change from these businesses, unless they are inspected by the EAS. Furthermore, even businesses that wish to be fully compliant with the AWR, may find themselves not giving equal pay where they would be required to after an EAS inspection. This reflects the unclear nature of the regulations; there is minimal legal precedent around the whether a particular contract is likely to be found to be compliant. We anticipate that EAS inspections would create precedents to help guide business behaviour, but this would take time to establish. It is possible that a worker who was on a derogation contract would have originally been intended to remain on a particular assignment for a short period of time. If the work assignment was then extended, an inspector may believe that they should have been entitled to equal pay, and that the use of the derogation was an attempt to avoid this right, regardless of the original intention.

As a result, we consider below the potential impact from different proportions of business adjusting their behaviour. As the level of the abuse of the Swedish derogation is known to be significant, we anticipate that there would be a potentially large proportion of employment businesses that do adjust their behaviour. We consider the potential cost to business for a range of figures of businesses that offer equal pay after six months on a single assignment.

Scenario Analysis for Proportion of Businesses that change Behaviour (Cost to Business)					
Proportion of Businesses that are Compliant	5%	10%	25%	50%	100%
Low Estimate	£6.84 m	£13.69 m	£34.21 m	£68.43 m	£136.86 m
Central Estimate	£9.24 m	£18.48 m	£46.2 m	£92.39 m	£184.78 m
High Estimate	£11.64 m	£23.27 m	£58.18 m	£116.35 m	£232.71 m

It should be noted that the extent of the benefit to the agency workers will decrease as the cost to business decreases. Businesses that do not change their behaviour, and thus continue their same wage practices will reduce the cost to themselves but will reduce the benefit to workers by a corresponding amount. They would also then be at a higher risk of sanction if inspected by the EAS.

Given the extent of the abuse of the Swedish derogation identified, we believe that it would be extremely difficult to regulate to the point where all businesses adjust their behaviour. We do not have any robust data for what proportion of businesses will adjust their behaviour, and which not. We do however believe that at least half of agency workers on derogation contracts will find it difficult to enforce their rights to equal pay. This is based on the previously discussed risks of not being offered any work in future.

The responses to the consultation suggested that this is a significant issue with enforcing the AWR. Agency workers are reliant on the employment business to offer them work assignments, and thus are reluctant to attempt to enforce their rights. We believe that this would reduce the likelihood of businesses changing their behaviour to increase pay, as agency workers do not raise issues. Although we do not have robust data on what proportion of agency workers this covers, the absence of significant numbers of employment tribunal cases suggests that it is a very high proportion.

Therefore, we consider that the impact of 100% of businesses changing their behaviour is highly unlikely to occur. Due to the scale of the abuse of the Swedish derogation, we believe that only a very small proportion of businesses would change their behaviour. However, in the absence of what proportion this would actually be, we believe that the scenario where only 50% of businesses adjust to be a reasonable, conservative estimate of an upper limit. We concede that this is still likely to be an overestimate, but we believe that the best available range of wage-costs to business from increasing regulation of the Swedish derogation is £68.43 - £116.35 million annually, with a corresponding benefit of £68.43 -

£116.35 million annually to workers. We do note that if the cost to business reduces, the benefit to workers will reduce as well. The overall net cost will be zero, regardless of what proportion of businesses adjust their behaviour.

We do not consider this to be a direct cost to business as it due to an adjustment in behaviour, as opposed to a direct impact from regulation. It should be highlighted again that extending the remit of the EAS to enforce AWR will not create a right to equal pay after 26 weeks on an individual assignment. The change is instead focused around a trigger point at which it is likely that EAS would scrutinise the use of derogation contracts. Any knock-on impact on business behaviour will be voluntary and is considered an indirect cost. There may be costs to those businesses that are found to be in breach of the AWR, which would be direct costs, but these would fall on non-compliant businesses. As there is no change to the requirements of the AWR, any costs to non-compliant businesses are not included in the overall costs presented.

This does highlight a weakness with the option of regulation with the reduced benefit to workers reflecting a reduced impact on correcting the abuse of the Swedish derogation. It is reliant on businesses voluntarily changing behaviour to ensure compliance with the AWR, in addition to the EAS having sufficient resources to inspect businesses, in addition to following up on complaints.

### **Other Benefits**

Effective regulation of the Swedish derogation would enable it to be utilised in the way that was originally envisaged in both the AWR and in the European Directive for Temporary Agency Work. This would enable workers to have the benefits of a permanent contract of employment, including stability of earnings where requested. This would help address the current issue of one-sided flexibility for agency workers. Where workers choose to operate on derogation contracts it is assumed that they are doing so through a rationality decision. This would give a perceived benefit to the workers welfare where they trade off higher income for greater stability of income. There would also be the benefit of employment businesses having an incentive to find work for an agency worker in order to avoid the need to provide payment between assignments. However, with limited evidence of workers actively choosing derogation contracts, these benefits are extremely difficult to quantify. Furthermore, with no evidence of workers being paid properly between assignments, this would be a benefit only gained if there was effective enforcement around the AWR to ensure that such payments took place.

There would also be greater protections towards all agency workers. There is anecdotal evidence of employment agencies circumventing the AWR to avoid the equal pay entitlement. This includes having workers on 11-week contracts before replacing them with a new worker to avoid the completion of the qualifying period. Whilst this is unlawful, agency workers would have to operate through employment tribunals to prove that they were being moved on from an assignment to avoid the equal pay entitlement. This is extremely difficult to prove. Through the expansion of the remit of the EAS to enforce the AWR, this circumvention could be reduced with benefits to agency workers. Again, this is a non-monetised benefit as the evidence is anecdotal, without robust evidence for the scale of this abuse across the recruitment sector.

### **Other Costs**

**Employment Business Familiarisation** – With the change to enforce the AWR, along with the requirement to ensure that workers are aware that they are opting-out of their right to equal pay, businesses will be expected to undertake a familiarisation process. It is assumed that it will take thirty minutes for employment agencies to familiarise with the change to regulation, based on our experience of the familiarisation impact of previous employment law changes. For example, thirty minutes of familiarisation time was also assumed in the impact assessment for the introduction of the National Living Wage in 2016. Given that employment agencies should already be compliant with the AWR, it should not be especially burdensome. This is also noted in the Taylor Review. In practice, the time taken will vary between employment agencies, but we consider thirty minutes to be sufficient for an average employment agency to understand that there will be enforcement of the AWR. Whilst thirty minutes is not a hugely significant amount of time, we consider it to be sufficient as two other pieces of legislation that employment businesses should be complying with are enforced by EAS. The EAS currently enforces and inspects on both the 1973 Employment Agencies Act and the 2003 Conduct of Employment Agencies and Employment Business Regulations. We do not anticipate it taking any significant period for an employment business to understand that EAS will also be inspecting and enforcing on the Agency Worker Regulations.

The type of employee that would conduct the task of familiarisation at the employment agency will also vary depending on the size of the business. For smaller employment agencies they are less likely to have dedicated HR staff, so it would be the general manager that would familiarise themselves. For a larger employment agency, it is likely that a HR manager will be assigned to the task. The wage data for each type of employee is taken from ASHE data from 2017<sup>16</sup>.

ASHE data gives the average hourly pay of a corporate manager/director as £22.48 and of a human resource manager/director as £24.64. We uplift these hourly costs by 20.66% to cover non-wage costs, in line with Eurostat methodology.<sup>17</sup>

Cost of Senior Managers Time <sup>18</sup>		
Size of Employment Agency	Person undertaking Familiarisation	Cost of 30 minutes time (with 20.66% uplift for non-wage labour costs)
Small and Micro Businesses	Corporate manager/ director	£13.56
Medium and Large Businesses	HR manager/ director	£14.87

REC data is used to estimate the breakdown of employment agencies into business size to give a more accurate cost for the familiarisation of employment agencies:

Breakdown of Familiarisation Costs by Business Size <sup>19</sup>				
Size of Employment Business	Proportion of Employment Businesses	Total No. of Employment Businesses	Cost of Senior Managers Time	Total Cost
Micro	59%	15,356	£13.56	£208,264
Small	21%	5,510	£13.56	£74,724
Medium	16%	4,141	£14.87	£61,553
Large	4%	963	£14.87	£14,321
<b>Total</b>				<b>£358,861</b>

For the 25,970 employment agencies, it is estimated that the cost of familiarisation will be a one-off cost of **£358,861**.

**Hirer Familiarisation** – Through enforcement of the AWR, the remit of the EAS would be required to extend to hirers in addition to employment agencies. This is because the AWR impact on any users of agency workers, not just employment businesses. By contrast, the 1973 Employment Agencies Act and the 2003 Conduct of Employment Agencies and Employment Business Regulations are only enforceable on employment businesses. Therefore, bringing the AWR into the remit of the EAS would be a new burden on businesses who would have to familiarise with the requirements of EAS jurisdiction. Similar for employment agencies, we assume that hirers will take an average of thirty minutes to familiarise with the enforcement of the regulation as they should already be aware of the AWR.

Furthermore, there is no clear estimate for the number of businesses that use agency workers. Consultation with EAS colleagues suggest that any business with at least fifty employees will at some point use agency workers and so will fall under the remit of the EAS. This is the Eurostat definition of a medium or large business. There is also likely to be a number of smaller businesses that use agency workers, although there is no robust estimate for this figure. As a result, we consider the costs of all medium and large businesses using agency workers and conduct sensitivity analysis on the potential costs if small and micro businesses were to use agency workers. The 2017 Business Population

<sup>16</sup> ASHE Table 14.5a, Gross Hourly Pay for all Employees

<sup>17</sup> <http://ec.europa.eu/eurostat/documents/2995521/8791188/3-09042018-BP-EN.pdf/e4e0dcfe-9019-4c74-a437-3592aa460623>

<sup>18</sup> ASHE Table 14.5a, Gross Hourly Pay for all Employees

<sup>19</sup> REC Recruitment Industry Trends, 2015/16, Page 30, Figure 30

Estimates (BPE) gives a breakdown of the number of businesses in the UK by number of employees. Note that businesses with no employees or only a single employee have been excluded.

<b>Number of Businesses by Size in the UK<sup>20</sup></b>	
Micro Business (0-9 Employees)	1,002,010
Small Business (10-49 Employees)	223,825
Medium Business (50-249 Employees)	40,180
Large Business (250+ Employees)	9,805
<i>Total</i>	1,275,820

The estimation for the total number of businesses with at least fifty employees is 49,985. It is assumed that they will all familiarise. Given the size of the employment businesses, it is expected that they will have a HR manager or director undertake the familiarisation. With the cost of a senior managers time shown above, it is anticipated that it will cost £743,043 for medium and large businesses to familiarise.

**Box 2.2: Sensitivity Analysis for 3-5% of small & micro businesses using agency workers**

Whilst there is no available data on how many small and micro businesses use agency workers, it is likely that there will be some use of agency workers beyond the use of medium and large businesses. Across the UK, agency workers make up approximately 4% of the total number of economically active people. We assume that this 4% of agency workers are equally distributed across all businesses. Whilst this contradicts the above assumption that all medium and large businesses use agency workers, we consider it a reasonable basis the sensitivity analysis on small and micro businesses. We take a 25% range either side of the 4% figure of agency workers. Thus, consideration is given for a potential figure of 3-5% of small and micro businesses using agency workers and thus will familiarise with the changing in enforcement. For both small and micro businesses, it is assumed that it will take on average thirty minutes to familiarise with the changes. As these businesses are smaller, it is considered more likely it will be a corporate manager or director that undertakes the familiarisation, with the cost of their time shown above.

	<b>Total Number of Businesses</b>	<b>3% of Total</b>	<b>5% of Total</b>
Small Business	223,825	6,715	11,191
Micro Business	1,002,010	30,060	50,101

The figures of small and micro businesses that are likely to familiarise are shown above. Given the constant cost of the thirty minutes of senior managers time at £13.56, a range is derived using the business population estimates shown.

For small businesses, it is anticipated that it will cost £91,052 - £151,753 to familiarise, whilst for micro businesses it is anticipated to cost £407,618 - £679,363 to familiarise. These are one-off costs, dependent on the original assumption of 3-5% of small and micro businesses using agency workers.

We feel that it is highly unlikely that micro businesses will use agency workers, especially if it will bring them into increased regulation. Therefore, we believe that it will only be the £91,052 - £151,753 figure for small businesses that may be incurred.

**EAS Inspection of Employment Businesses** - With the extension of the remit of the EAS to enforce the AWR, there will be a cost to business from hosting EAS inspectors. EAS currently undertake around 157 inspections annually. Based on evidence provided by EAS, we assume that an inspection currently takes 1.75 hours, which covers two pieces of legislation. By extending the EAS remit to cover a third piece of legislation, we assume this will take an extra 50% of the total time, a total of 0.875 hours. We also assume that it will take an extra half a day of a senior managers time to prepare for the inspection to

<sup>20</sup> <https://www.gov.uk/government/statistics/business-population-estimates-2017>, table 2

cover AWR. In total, 157 employment businesses will have to spend an additional 3.75 hours preparing for and 0.875 hours hosting EAS if they are also looking at compliance with AWR.

Cost of Senior Managers Time <sup>21</sup>		
Size of Employment Agency	Person undertaking Familiarisation	Cost of 4.625 hours' time (with 20.66% uplift for non-wage labour costs)
Small and Micro Businesses	Corporate manager/ director	£125.45
Medium and Large Businesses	HR manager/ director	£137.50

We assume that the size of the businesses inspected each year are proportional to the size of all employment businesses, with the size breakdowns again taken from REC data.

Breakdown of Inspection Costs by Business Size <sup>22</sup>				
Size of Employment Business	Proportion of Employment Businesses	No. of Inspected Businesses	Cost of Senior Managers Time	Total Cost
Micro	59%	93	£125.45	£11,646
Small	21%	33	£125.45	£4,179
Medium	16%	25	£137.50	£3,442
Large	4%	6	£137.50	£801
<b>Total</b>				<b>£20,068</b>

The cost of inspecting employment businesses for compliance with the AWR is estimated to be **£20,068** annually. There is also the potential for additional costs to businesses that are non-compliant as they face EAS sanctions. These sanctions can range from a warning letter requiring remedial action to be undertaken to criminal prosecution for severe breaches of the regulations. The costs presented above reflect only the cost of hosting EAS inspections and will be incurred by all businesses. Any additional costs will then be incurred by non-compliant businesses.

**EAS Inspection of Hirers** – In addition to familiarising with the changes, businesses that hire agency workers will also be subjected to EAS inspections. Annually, EAS conduct 157 inspections of employment businesses. This covers 0.6% of the 25,970 employment businesses in the UK. We then assume that a similar proportion of hirers would be inspected annually by the EAS. With the estimate of 49,985 medium and large businesses, this is approximately 300 hirers inspected each year. Again, using the time assumptions that were based on evidence provided by EAS, it is assumed that each hirer will spend half a day preparing for the EAS inspection, and another 0.875 hours hosting EAS to inspect compliance with AWR. Thus, it would equate to 4.625 hours of preparing and hosting for a medium or large business, with 300 inspections annually. With the estimate of businesses considering medium and large businesses, the person expected to host the inspection would be an HR manager or director. With 300 inspections annually, this is anticipated to be an annual cost to business of **£41,251**.

<sup>21</sup> ASHE Table 14.5a, Gross Hourly Pay for all Employees

<sup>22</sup> REC Recruitment Industry Trends, 2015/16, Page 30, Figure 30

### Box 2.3: Sensitivity Analysis for 3-5% of small and micro businesses using agency workers

We continue to use the estimated number of small and micro businesses that may utilise agency workers as discussed in Box 2.2, again assuming that 3-5% of small and micro businesses use agency workers. We continue with the assumption of 0.6% of businesses being inspected, to give us total figures for the number of small and micro businesses that will be subjected to EAS inspections annually. For both small and micro businesses it is assumed that it will take on average thirty minutes to familiarise with the changes. As these businesses are smaller, it is considered more likely it will be a corporate manager or director that will host the inspection, with the cost of their time shown above.

	Total Number of Businesses	3% of Total	5% of Total	Number Inspected (0.6% of those in scope)
Small Business	223,825	6,715	11,191	40-67
Micro Business	1,002,010	30,060	50,101	180-301

Again, it is assumed that a business will have to spend 4.625 hours preparing for and hosting an EAS inspection, with the cost of the senior managers time being £125.45 per inspection.

For small businesses, it is anticipated that it will cost £5,054 - £8,424 per annum to host EAS inspections, whilst for micro businesses it is anticipated to cost £22,626 - £37,711 per annum to host EAS inspections. These are annual costs, dependent on the original assumption of 3-5% of small and micro businesses using agency workers.

As above, we feel that it is highly unlikely that micro businesses will use agency workers, especially if it will bring them into increased regulation. Therefore, we believe that it will only be the £5,054 - £8,424 figure for small businesses that may be incurred.

**Cost for the EAS** – Enforcing the AWR would require an expansion of the resources available to the EAS. Whilst the EAS currently regulates the 1973 Employment Agencies Act and the 2003 Conduct of Employment Agencies and Employment Businesses Regulations, these only apply to employment agencies, which significantly limits their scope. By contrast, the AWR will apply to hirers in addition to employment agencies, potentially widening the scope to the full 1.3 million businesses<sup>23</sup> in the UK that employ staff. This would be significantly more burdensome, and quite possibly beyond the reasonable scope of the EAS. Currently the EAS has a budget of approximately £800,000 annually to cover employment businesses. We consider it reasonable to assume that to cover a third piece of legislation for employment businesses, this budget would have to increase by 50%. However, by enforcing the AWR, the remit would need to be expanded to cover hirers as well. This would create a need for a significant increase in the EAS budget. as there are substantially more hirers than employment businesses. There are 49,985 businesses with at least fifty workers in the UK, significantly more than the number of employment agencies. To cover these businesses to the same level that the EAS covers employment agencies would require a significant expansion of the resources available to the EAS.

<sup>23</sup> Taken from the Business Population Estimate, <https://www.gov.uk/government/statistics/business-population-estimates-2017>

### Box 2.4 – Expansion of the EAS Budget

Whilst we do not have an exact view of the extent to which the EAS budget would have to increase to enforce regulation to the extent presented above, we present a rough estimate for the extent that the EAS budget would have to increase.

Currently, the EAS budget of approximately £800,000 is used to cover, among other aspects of work, 157 inspections annually, on two pieces of legislation. With an assumption that the amount of work for the EAS increases in proportion to the number of inspections, we can estimate the scale of the increase in resources that would be required. With the 157 inspections on two pieces of legislation per inspection, the EAS inspect 314 pieces of legislation annually. With bringing the AWR into the remit of the EAS, they would inspect each of the 157 employment businesses on an additional piece of legislation. Furthermore, they would inspect approximately 300 hirers annually on a single piece of legislation, for a total of 457 additional pieces of legislation inspection. This is an increase of 145.5% of the EAS workload, and so would expect an increase of 145.5% to the EAS budget. The budget increase would therefore be approximately £1.16 million annually.

If the EAS were to also cover the considered 3-5% of small and micro businesses, they would conduct a further 120-638 inspections annually. This would give total additional inspections of 577-1095 inspections annually. Compared to the 314 currently undertaken, this is an increase of 184-349%. With the current EAS budget of approximately £800,000, this would be an increase of £1.47 – £2.79 million annually. It should be noted that the success of the regulation is likely to be proportional to the increase in resources given to the EAS. The figures presented in this box are simple examples as to a reasonable increase in resources for the EAS to regulate effectively, and thus are not included in NPV calculations in this Impact Assessment.

**Cost to Hirers** – In addition to the cost to the EAS of regulating all hirers of agency workers, the hirers themselves would face a burden from having to comply with the regulations. Whilst this has been monetized with hirers having to familiarise and face inspections, it is anticipated that the regulatory burden will be greater than the costs presented. It is likely to reduce the flexibility of agency workers which is considered one of the greatest strengths of the recruitment sector.

**Cost to Umbrella Companies** – As previously discussed, some agency workers will be paid through an umbrella company. These companies handle payroll functions for some employment agencies and charge a flat administration fee. We do not anticipate any significant costs to umbrella companies as we do not anticipate that they will change their administrative fee as a result of this measure.

#### Summary of Costs and Benefits

	<i>Cost to business</i>	<i>Benefit to workers</i>
<b>Increased Wages (Assumes 50% of businesses change behaviour)</b>	£68.4 - £116.3 million annually	benefit of £68.4 - £116.3million annually.
<b>Employment Agency</b>	<b>familiarisation</b> would have a one-off cost of £358,861. <b>Inspections</b> would have ongoing costs of £20,068 annually.	
<b>Agency Worker Hirer</b>	<b>familiarisation</b> would have a one-off cost of £743,043. <b>Inspections</b> would have ongoing costs of £41,251 annually.	

There are non-monetised benefits from agency workers having the choice to **request derogation contracts** instead of taking whichever contract that is forced onto them. Similarly, there is an anticipated non-monetised benefit from effective enforcement of the AWR for all agency workers. There is also a cost to Government as the EAS would require more resources to regulate effectively.



## Risks

Choosing to regulate to better enforce the AWR continues to carry significant risks. Primarily, the approach is likely to be complex, impinging on the flexibility of the recruitment sector that is one of its greatest strengths. This would contravene one of the identified policy objectives. The burden on the employment agencies is likely to require end-hirers to pay more for workers, but this may not be passed on in the form of higher wages to the workers. The higher cost to hirers of using a temporary agency worker may be used by the employment business to cover the costs of the increased regulation. Therefore, the increased costs to the end-hirer would not entail any benefit to the workers themselves. With agency workers reliant on the low-cost flexibility that their employment model can offer hirers, this is likely to impact on the willingness of hirers to utilise agency workers. Potentially, agency workers could find themselves with fewer opportunities for employment and no increase in their wages.

It would also rely on effective enforcement. Despite the unlawful nature of many of the abuses of agency workers as businesses attempt to circumvent the AWR, there have been relatively few cases brought to employment tribunals to enforce a worker's AWR rights, with a total of twenty-seven in 2017. Extending the remit of the EAS to cover the AWR may not address this issue as workers who fear for their future at work if they complain would most likely continue to have the same fear. This would significantly reduce the effectiveness of any form of regulation.

As discussed above, there is also the risk that many businesses would not be compliant, regardless of enforcement. With the EAS unable to inspect every business annually, there is the possibility that the actual benefit to workers could be significantly lower than estimated under our estimations of businesses changing their behaviour.

A further concern with regulation is that it may slow or reverse the trend of businesses reducing the use of the Swedish derogation. There is currently significant negative publicity around the Swedish derogation, especially focused around possible areas of abuse. Further regulation may reduce this publicity as it appears that the derogation would then be used correctly and be harder to abuse. This would be likely to encourage businesses that were reducing their use to increase it once again. With the effectiveness of the regulations uncertain there would be the danger of the intervention failing to achieve its policy objectives.

Furthermore, our rationale for intervention is around the abuse of the Swedish derogation. Much of our evidence, suggests that the main reason for use of the Swedish derogation is to reduce business costs. As regulation will be burdensome on business and therefore costly, it is likely that there will be attempts to reduce their costs by other measures. This may instead cause use of the derogation to increase, as businesses use it to reduce their wage costs to cover the increased costs from regulation. Whilst there is the risk that these businesses would be subject to investigations and sanctions, there is a significant risk that regulation would fail to address the issues identified earlier in this impact assessment.

Whilst successful regulation may address the issues around the use of the Swedish derogation, EAS colleagues feel that the ease with which companies can abuse the Swedish derogation make this outcome unlikely. This is reflected in the low proportion of businesses adjusting their behaviour in light of increased regulation. Instead, employment agencies would likely find one of many alternative ways to avoiding the equal pay entitlement; for example, offering eleven-week contracts before moving a worker onto a new assignment. This is significantly harder for the EAS to enforce through regulation. As a result, we consider this option to have a much lower level of success at addressing the policy objectives.

# Policy Option 3 – Repeal the Swedish derogation

## Background

In the Government response to the Taylor Review, consideration was given to the scale of the abuse of the Swedish derogation. The Government acknowledged that if the abuse was widespread, repeal would be considered.

With evidence of wider scale abuse becoming apparent, the option to repeal the Swedish derogation entirely was considered at greater length. This option had the benefit of simplicity; by repealing the Swedish derogation, there would be little regulatory burden on businesses and would remove significant scope for potential abuse.

## Costs and Benefits

The main benefit from repealing the Swedish derogation would be with respect to the increased wages earned by agency workers on these contracts, although as this is a direct transfer from business there will be a corresponding loss. There may also be secondary benefits around increased productivity from earning equal pay, as well as greater morale at work, as well as relatively minor costs from familiarisation and re-writing of contracts.

### Cost and Benefits of Increased Wages

The largest costs and benefits are anticipated to arise from the increased wages that agency workers would be entitled to earn after the repeal of the Swedish derogation. As any cost is a direct transfer from business to workers, this will be discussed in isolation to other costs and benefits.

The benefit to agency workers accrues from workers who are now entitled to equal pay after twelve weeks with a hirer. These agency workers who currently earn less than a general comparator would have their wages uplifted to the same level. The methodology used in calculating this cost is shown in Annex A. It is assumed that 8-10% of the approximately 1.3 million agency workers in the United Kingdom are on derogation contracts.

The total benefit to workers from newly paid wages using our methodology is estimated to be £227.5 - £381.1 million annually. As this is a transfer from business to workers, there will be an equal cost to business of £227.5 - £381.1 million annually.

#### Box 3.1: Sensitivity Analysis of 20% of agency workers on derogation contracts

Consideration is also given to the total cost if 20% of all agency workers were on derogation contracts, as part of our sensitivity analysis. In this scenario, using the same methodology, we estimate that the annual cost to business would be £686.6 - £762.3 million annually. Again, this would be matched by an increase in wages of £686.6 - £762.3 million annually, for a net impact of £0.

Whilst a large range is presented, it is reflective of the lack of robust data on the precise numbers of agency worker on derogation contracts. For comparison, the Resolution Foundation's research found that the lost earnings of the longer-term agency workers are approximately £300 million annually.<sup>24</sup> This will also be the cost to business of paying higher wages; any benefit to workers from increased earnings will be a loss to business.

In an attempt to increase the accuracy of our estimates, business stakeholders were consulted. The British Retail Consortium (BRC) estimated the total cost of repealing the Swedish derogation to the retail industry as £14 million annually.

Given that the Retail industry employs approximately 14.2% of all agency workers<sup>25</sup>, and manufacturing employs approximately 14.7% of all agency workers, the figure of £14 million annually for retail seems low based on identified use of the Swedish derogation. It does give further weight to the use of an 8-10%

<sup>24</sup> <https://www.resolutionfoundation.org/media/blog/unwrapping-the-agency-worker-pay-penalty/>

<sup>25</sup> LFS Data, Average of all four quarters in 2017

estimate of all agency workers being on derogation contracts, as an estimate of 20% would suggest a far larger cost to individual businesses.

It should also be noted that an increase in wages paid to workers will lead to an increase in government revenue from higher tax burdens and lower benefit payments to workers. This will be a reduction in the scale of the benefit to workers. Instead of a complete transfer from business to workers, there will be a transfer from business to workers and the Exchequer. This would not increase the costs to business.

## Other Monetised Costs

**Employment Agency Familiarisation** - With the repeal of the Swedish derogation, businesses will need to familiarise with the change. This will reflect the time taken to fully understand the change. Business will liaise with hirers to explain the changes. There may also be a knock-on impact in increased rates for the hiring of temporary agency workers, which will again require updating materials that are sent to clients. We anticipate that there will be a transition period to allow businesses to adjust over time. This period is expected to be approximately one year. Therefore, businesses are likely to carry out this familiarisation exercise in the first year of the appraisal period. It is not anticipated that businesses will need to produce benchmark comparators for their agency workers who will now be entitled to equal pay as these benchmarks should already be calculated for workers who are not on derogation contracts.

Similar to the familiarisation for increased regulation, it is estimated that it will take an average of thirty minutes per employment business to familiarise with the change. Again, it is assumed that the type of employee that will undertake the familiarisation will vary with the size of the employment business.

Cost of Senior Managers Time <sup>26</sup>		
Size of Employment Agency	Person undertaking Familiarisation	Cost of 30 minutes time (with 20.66% uplift for non-wage labour costs)
Small and Micro Businesses	Corporate manager/ director	£13.56
Medium and Large Businesses	HR manager/ director	£14.87

REC data is again used to estimate the breakdown of employment agencies into business size to give a more accurate cost for the familiarisation of employment agencies:

Breakdown of Familiarisation Costs by Business Size <sup>27</sup>				
Size of Employment Business	Proportion of Employment Businesses	Total No. of Employment Businesses	Cost of Senior Managers Time	Total Cost
Micro	59%	15,356	£13.56	£208,264
Small	21%	5,510	£13.56	£74,724
Medium	16%	4,141	£14.87	£61,553
Large	4%	963	£14.87	£14,321
<b>Total</b>				<b>£358,861</b>

For the 25,970 employment agencies, it is estimated that the cost of familiarisation will be a one-off cost of **£358,861**.

**Cost of Updating Contracts** - In addition to business familiarisation, any workers who are on a Swedish derogation contract will require an updated contract from the employment agency. As employment agencies should already hold templates for contracts reflecting a non-Swedish derogation contract, this

<sup>26</sup> ASHE Table 14.5a, Gross Hourly Pay for all Employees

<sup>27</sup> REC Recruitment Industry Trends, 2015/16, Page 30, Figure 30

should not be a burdensome task. As a result, we are estimating that it will take an average of thirty minutes to update a contract per worker on a derogation contract.

### Box 3.2: Why is 30 minutes a reasonable assumption?

Thirty minutes is a relatively short period of time, but it is assumed that employment agencies should already hold the relevant information required to update a contract. As employment agencies are not permitted to force a worker onto a Swedish derogation contract, there should already be up to date templates for both types of contract. Whilst there will be an administrative cost in producing the new contract as well as a requirement for it to be provided to workers, this is not anticipated to be a burdensome task. Previous work from an ORC<sup>28</sup> study estimated the cost of amending a written statement in 2005 as £60 and in 2008 as £58. Whilst amending a written statement is not directly comparable to amending a contract, there is some crossover. However, given that all the requisite information should be available for a contract, the £58 figure is unreasonably high. The study also broke down the cost of amending the written statement into the time required for each task:

Time taken to amend a written statement – by activity (ORC 2008)	
Activity	Time taken (Mins)
Familiarise	18.44
Gather	18.44
Prepare	8.11
Report	12.54
Meet	16.23
<b>Total unit time (mins)</b>	<b>73.75</b>

We assume that many of the tasks that may usually have to be undertaken to amend a written statement would not be required. For example, the time taken to familiarise with the required changes has already been accounted for in the familiarisation costs above. The time taken to gather the required information to update the written statement would not apply here as the employment business should already hold all the required information. It is also unlikely that reporting the change to the agency worker will take 12.54 minutes. The changes can be sent very quickly via email, along with a notification of an upcoming meeting to discuss the changes.

Therefore, of the tasks proposed in the study, the only two that we consider to be relevant is the time to prepare the adjustment to the contract and the time taken to meet with the agency worker to explain the changes. The study estimates these two tasks will take 8.11 minutes and 16.23 minutes respectively, for a total of 24.34 minutes to update a contract.

We acknowledge that the cumulative time of 24.34 minutes is less than the 30 minutes used as an estimate for the time taken to update a contract. During the Government consultation, some respondents from workers and unions reported that many workers are not aware that they are on derogation contracts. As a result, we anticipate that the time taken to meet workers will exceed the 16.23 minutes. This reflects how the workers who are not aware that they are on derogation contracts will require further explanation as to what the changes are. This scope for extra questions from the workers ensures that the costing remains conservative.

With a range of 8-10% of the 1.29 million agency workers on Swedish derogation contracts, it is estimated that there are between 104,000 – 130,000 workers whose contracts would need to be rewritten.

<sup>28</sup> <http://webarchive.nationalarchives.gov.uk/20090609003228/http://www.berr.gov.uk/files/file49199.pdf>

Current Number of Agency Workers on Swedish derogation Contracts	
Lower Bound	Upper Bound
104,000	130,000

It is assumed that the type of employee who would conduct the task of re-writing contracts will vary depending on the size of the employment business. We assume that the proportion of agency workers that receive work through each size of employment business is a similar proportion to the general labour force, as taken from the business population estimate<sup>29</sup>. Therefore, we are able to derive breakdowns for the number of agency workers in each size of recruitment business:

Cost of Re-writing Swedish derogation Contracts <sup>30</sup>		
Size of Employment Agency	Person undertaking Familiarisation	Cost of 0.5 hours' time (with 20.66% uplift for non-wage labour costs)
Small and Micro Businesses	Corporate manager/ director	£13.56
Medium and Large Businesses	HR manager/ director	£14.87

Breakdown of Re-Writing Contracts Cost by Business Size						
Size of Employment Business	Proportion of Agency Workers	Agency Workers - Lower Bound	Agency Workers - Upper Bound	Cost of Senior Managers Time	Cost - Lower Bound	Cost - Upper Bound
Micro	20.2%	20,789	25,987	£13.56	£281,949	£352,436
Small	17.9%	18,422	23,028	£13.56	£249,846	£312,307
Medium	14.7%	15,129	18,911	£14.87	£224,895	£281,119
Large	47.2%	48,577	60,721	£14.87	£722,113	£902,642
<b>Total</b>					<b>£1,478,803</b>	<b>£1,848,504</b>

### Other Burdens on Employment Businesses

Employment businesses rely on the fees that they charge hirers to place a worker. We anticipate that the repeal of the Swedish derogation will cause employment businesses to spend time on implementation, including activities such as reviewing pricing structure to account for the increased cost of those agency workers on derogation contracts.

As the BIS survey<sup>31</sup> found that the majority of employment businesses that offer derogation contracts also offer standard agency contracts, most employment businesses should already have a pricing structure for both types of employment. Therefore, we do not anticipate this being an excessively burdensome task. However, we do believe that given the significance of the impact on the employment business, they are likely to need longer than the thirty minutes we have estimated for time taken to familiarise. We also do not believe that it will be a task undertaken by an HR manager, instead anticipating that it would be undertaken by corporate managers at all size of employment businesses.

Whilst we acknowledge that the actual time taken would vary between employment businesses, we consider that on average 2 hours of a corporate directors' time is sufficient for this activity. This would give time for an employment business to review the current pricing structure, propose a new structure and debate in a meeting. Whilst we acknowledge that some

<sup>29</sup> <https://www.gov.uk/government/statistics/business-population-estimates-2017>

<sup>30</sup> ASHE Table 14.5a, Gross Hourly Pay for all Employees

<sup>31</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/386340/bis-14-1257-agency-workers-research.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/386340/bis-14-1257-agency-workers-research.pdf)

businesses will take less time, this gives scope for employment businesses that only use derogation contracts to produce a new pricing structure for agency worker fees.

<b>Cost of Adjusting Employment Business Pricing Structure<sup>32</sup></b>		
All Employment Businesses	Person undertaking Familiarisation	Cost of 2 hours' time (with 20.66% uplift for non-wage labour costs)
	Corporate manager/ director	£54.25
<b>Business Costs for implementation activity<sup>33</sup></b>		
Total No. of Employment Businesses	Cost of Senior Managers Time (2 hours)	Total Cost
25,970	£54.25	<b>£1,408,873</b>

### **Loss of Payment between Assignments for Workers**

It should be noted that many employment businesses will likely look to move agency workers away from contracts that offer payment between assignments as part of their removal of the Swedish derogation. This would mean that any agency workers who are currently not in work would lose on any payments that they are receiving. However, our evidence has suggested that such payments are extremely rare in practice, and so we do not consider this to be a significant loss to agency workers. Repealing the Swedish derogation would not outlaw payment between assignment contracts, instead ensuring that agency workers on such contracts would have the right to equal pay in line with other agency workers.

### **Impact on Agency Worker Employment Outcomes**

It is believed that the primary driver for business use of the Swedish derogation is to reduce their costs. Repeal of the Swedish derogation will impact on this. A risk is that businesses will not offer agency workers on derogation contracts an alternative form of employment or a permanent contract, instead opting to simply reduce the size of their workforce. This negative employment outcome would be a cost to agency workers, reducing the scale of the wage benefit.

In 2014, the Confederation of British Industry and Accenture ran an employment trends survey<sup>34</sup>. It found that 41% of businesses would reduce use of agency workers if the Swedish derogation were abolished, with 5% of businesses saying that they would stop their use of agency workers entirely.

Instead, businesses reported that they would look to other forms of employment to give them their desired flexibility, with 32% of businesses reporting that they would increase the use of fixed term contracts. A further 26% of businesses said that they would change their model of temporary worker use whilst 16% would increase their use of self-employed workers to compensate for fewer agency workers.

It should be noted is that we do not anticipate a significant reduction in overall employment levels from this measure. Whilst businesses may be less likely to use agency workers on longer-term contracts, it is likely that they will look to replace these agency workers with other forms of atypical workers, including agency workers on short-term contracts. Businesses that have a genuine need for flexibility will be able to utilise other forms of flexible working patterns. They will also be able to continue using agency workers, although they may choose to utilise agency workers on shorter contracts to reduce the risk. Alternatively, businesses may choose to replace their agency workers with workers on zero-hour contracts or other types of short-hour contract. Thus, whilst we acknowledge a likely fall in the number of agency workers on relatively stable long-term contracts, we expect there to be a corresponding increase in other types of employment.

One of the highlighted issues around the current use of the Swedish derogation is that businesses are keeping workers on derogation contracts for significant lengths of time, effectively treating them as permanent workers without paying them as such. It is unlikely that any change would reduce the

<sup>32</sup> ASHE Table 14.5a, Gross Hourly Pay for all Employees

<sup>33</sup> REC Recruitment Industry Trends, 2015/16, Page 30, Figure 30

<sup>34</sup> <http://www.cbi.org.uk/news/cbi-accenture-employment-trends-survey/>

business need for the vast majority of the workers on derogation contracts. Thus, even if the business no longer chose to fill the vacancy with an agency worker, they will find an alternative method of employment. LFS data suggests that approximately 16%<sup>35</sup> of agency workers were in agency work because they couldn't find a permanent job elsewhere. It should also be noted that only a very small proportion of businesses would stop their use of agency workers altogether from the repeal of the Swedish derogation. The survey is now also four years out of date. We consider the more recent developments to provide a better view of likely business behaviour. When stopping their use of the Swedish derogation, BT opted to offer their staff permanent contracts.<sup>36</sup> Given the perceived use of derogation contracts, we believe that this is a more likely outcome, reducing the potential negative employment outcomes on agency workers.

## Lost Employment Rights

One of the perceived benefits of the Swedish derogation is that to utilise it, agency workers must be given a permanent contract of employment. This causes agency workers to be treated as employees of the agency, instead of the worker status that they would usually have as an agency worker. This greater status grants them greater employment protections; for example, workers do not have the right to claim unfair dismissal or statutory redundancy pay. However, agency workers have certain employment rights protected under the AWR, which will reduce this cost significantly. The main area of employment rights that are not protected are around redundancy, with rights such as statutory maternity leave, statutory paternity leave and statutory sick pay are all extended to agency workers regardless of employment status. It should be noted that depending on the length of service, there may not be any redundancy protections for agency workers, whether they are on derogation contracts or not.

## Increased Productivity

Studies have shown that there is a benefit to be accrued to business from ending unequal pay practices. This is focused around the morale effects of unequal pay, with those who are earning less for the same job having a significantly lower productivity.<sup>37</sup> Workers on lower pay for the same job also have lower job satisfaction and higher rates of absenteeism. This is an ongoing cost to business from paying agency workers on derogation contracts less than their permanent employees.

The productivity loss from unequal pay comes from the morale impact of having a lower income than a colleague performing the same task. There is evidence that there is a pay penalty for agency workers, a situation exacerbated for agency workers on derogation contracts. The equal pay that agency workers would be entitled to could potentially reduce this impact. It is also likely to boost the job satisfaction of agency workers. Combined this is anticipated to impact positively on workers productivity.

By repealing the Swedish derogation, hirers will be required to pay agency workers the same as a comparable permanent employee after twelve weeks. With this equal rate of pay, businesses should benefit from higher productivity from their agency workers, offsetting the cost of the higher wages.

Summary of Costs and Benefits		
	<i>Cost to business</i>	<i>Benefit to workers</i>
<b>Increased Wages</b>	£227.5 – £381.1 million annually to businesses	benefit of £227.5 - £381.1 million annually.
<b>Employment Agency</b>	<b>familiarisation</b> would have a one-off cost of £358,861. <b>Re-writing contracts</b> would have a one-off cost of £1,395,786 - £1,912,376. <b>Updating agency fees</b> would have a one-off cost of £1,408,873.	

<sup>35</sup> LFS Microdata, (AGWRK x YPTJOB)

<sup>36</sup> <https://www.cwu.org/news/cwu-victory-on-bt-pba-agency-contracts/>

<sup>37</sup> <http://www.nber.org/papers/w22491>

## Risks

One of the primary risks with repealing the Swedish derogation is the view that businesses would use fewer agency workers. Since the main reason for the use of the derogation was shown by the HOST report to be cost-driven, repealing the derogation may cause businesses to utilise a different form of employment to keep their costs low. Although it is acknowledged that this risk exists, we believe that the more recent evidence suggests that this risk is significantly reduced. This is discussed in greater detail in the costs section above as a non-monetised cost.

A further risk with repealing the Swedish derogation is that it may not address all the perceived issues with agency workers. Employment agencies that use eleven-week contracts to avoid the equal pay entitlement would still be able to continue using this method of avoidance. They may also choose to use this method to continue filling roles that were previously occupied by agency workers on derogation contracts. Whilst this would increase the costs for hirers as they repeatedly train the new placement every eleven weeks, it would not have resolved the problem.

It should be noted that repeal of the Swedish derogation would not prevent agency workers from negotiating for a permanent contract with an employment agency, or from negotiating for payment between assignments. These contracts, whilst part of the Swedish derogation, are not reliant on the derogation. However, after the repeal of the Swedish derogation, an agency worker on a contract that offers payment between assignments would still have the right to equal pay after twelve weeks. This contrasts with the current situation where there is no such right for workers on derogation contracts.

Finally, without state enforcement of the AWR, there would still be a requirement for agency workers to use employment tribunals to enforce their rights. The low number of tribunal cases since the introduction of the AWR suggests that workers are reticent about doing so. This may be due to a fear of not being given work after a claim or may be due to a lack of awareness around an agency workers' rights, although this should be addressed through the planned key facts page.

Against these risks, it should be noted that it will be closing an area of significant abuse of agency workers. It would also increase awareness of the rights of agency workers, especially around the area of equal pay. Agency workers who are not being given equal pay may be more likely to raise a tribunal case, addressing the issue. Furthermore, the costs presented for repeal are static costs, with no dynamic adjustments to mitigate the costs. The risks discussed here highlight the potential dynamic adjustments for business, and so will reduce the costs to business.

## Enforcement

With an amendment to the AWR which removes the provision for derogation contracts that opt-out of the equal pay entitlement, enforcement would continue through the employment tribunals, where a worker would be able to bring a claim for equal pay. Such claims could be brought against the employment agency and the end hirer. There would be no requirement for government involvement in the tribunal process.

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## Summary

### Preferred Option

Of the two policy areas discussed, the preferred option would be to repeal the Swedish derogation. The option of regulation is considered to be more burdensome on business for an at best similar outcome. Regulation would also incur significant costs to government through the inspection process.

Although repeal has high annual costs, the overwhelming majority of the costs is a transfer from business to workers with some of the transfer going to the Exchequer in the form of tax revenue.

As noted in the counterfactual section, it should also be noted that annual costs will decrease over time given that we have evidence that the use of the Swedish Derogation is declining.



The net cost of repeal is lower than the net cost of increased regulation. A principle established in the European Directive on Temporary Agency Work is for at least equal treatment for agency workers when compared to permanent employees. The uplifting of agency workers' pay to match the pay of a comparable permanent employee at the same hirer would better support this principle. In the case of agency workers that are receiving benefit payments in addition to their wages, it is likely that the benefit payments are required to top up their earnings because their wages are too low. Whilst it could be argued that repeal of the derogation may reduce the use of agency workers, the evidence suggests that businesses will continue to require the job positions to be filled, for a minimal overall impact on overall employment.

Enforcement would also be more burdensome for regulation than for repeal. Repeal of the Swedish derogation would result in a straightforward enforcement process in line with the current employment tribunal process. Regulation would instead require complaints to the Employment Agency Standards Inspectorate, who would require significantly increased resources to investigate not just employment agencies, but also the end hirers. This would be an expensive option which will increase the burden on both Government and business significantly, and radically alter EAS's current operating model. There is also the risk that regulation would be less effective as it relies on compliant businesses. As discussed in this impact assessment, there is the risk that not all businesses would be compliant, requiring increased enforcement costs whilst not providing the same benefits as repeal.

In the Government response to the Taylor review, consideration was given to the extent of the abuse of the Swedish derogation. Whilst it was acknowledged that if there was limited abuse, increasing regulation around the derogation may be sufficient, in the case of widespread abuse, repeal would be more appropriate. In the following Government consultation, minimal evidence was provided of proper use of the Swedish derogation. Instead, evidence of abuse has been presented, with agency workers being forced onto derogation contracts and denied the right to payment between assignments that they should be receiving. This widespread abuse cannot be easily addressed through regulation.

There has also been evidence provided that businesses are beginning to reduce their use of the Swedish derogation, with BT publicly stating that they will end their use of the derogation by March 2019.<sup>38</sup> With anecdotal evidence of other businesses beginning to do the same, we are already beginning to move to an outcome of repeal. Whilst this gave weight to the consideration of doing nothing, the number of agency workers subject to abuse meant that we considered that a form of intervention was still required. Given the trend towards repeal, regulation was considered more burdensome on business and government to produce a less optimal outcome. As a result, we consider repeal of the Swedish derogation to be our preferred option.

## Implementation

Although the implementation would be an amendment to the Agency Worker Regulations, it is anticipated that there would be an implementation period to enable employment businesses to move workers away from derogation contracts onto standard agency contracts. The implementation period would be designed to reduce the immediate impact on employment businesses, giving them time to explain the changes to their agency workers and convey the information more effectively

## Small and micro business assessment

As noted above, experts in EAS suggest that the majority of **hirers** of agency workers are medium and large businesses. As such, the repeal of the Swedish derogation is likely to have a disproportionately smaller impact on small and micro businesses. Furthermore, we know that workers in smaller businesses tend to earn less than those in large businesses. For small businesses that use agency workers, this means that the wage differential between and agency and non-agency worker will be smaller. As agency workers on derogation contracts are still entitled to the National Minimum Wage, this would reduce the potential for a significant wage differential, further mitigating the costs.

There will be small and micro sized **recruitment businesses**, which will face familiarisation costs and costs associated with re-writing contracts. These are estimated in earlier sections of this impact assessment. It is estimated that there will be a familiarisation cost of £282,987. There will also be a one-

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<sup>38</sup> <https://www.cwu.org/news/cwu-victory-on-bt-pba-agency-contracts/>

off cost of re-writing contracts of £531,795 - £664,743. These costs are split across 20,866 small and micro recruitment businesses, for a total cost of £39.05 - £45.42 per recruitment business.

We also note that in the HOST report, employment businesses reported that they offered derogation contracts upon the request from the end hirers. As this suggests a degree of bargaining power, it suggests that the main users of derogation contracts are large hirers who take significant numbers of agency workers on a regular basis. These businesses would likely be attracted to the derogation contract model due to the opportunity for cost savings.

Consultation with experts on the recruitment sector suggests that agency workers are primarily employed by medium and large businesses. We have also assumed that the majority of costs from higher wages will be passed onto hirers, not covered by the employment business. This was presented in the original impact assessment for the agency worker regulations.<sup>39</sup> It was assumed that 85-100% of the costs of offering equal pay would be passed onto the hirer by the employment business. Thus, we believe that the vast majority, if not all of the wage costs will fall on medium and large businesses. The main costs that fall onto small and micro businesses will be the familiarisation and administration costs that are incurred by employment businesses.

As the impacts on small businesses are anticipated to be minimal, we do not believe that it is reasonable to exempt small and micro businesses from the repeal of the Swedish derogation. We believe that exempting small and micro businesses would cause confusion in the recruitment sector, creating further burdens for employment businesses and hirers which would hurt the flexibility in the recruitment sector. We do not feel that we would be able to successfully meet the policy objectives by excluding small and micro businesses, and that exclusion would not convey any significant benefits to the businesses themselves.

### **Which workers benefit from the equal pay entitlement?**

Consideration was given to which agency workers would be most likely to benefit from the repeal of the Swedish derogation. We note that very high skilled agency workers are often able to command a pay premium for their work. These workers are highly unlikely to be on derogation contracts as the worker would not accept the lower wages that the contract would offer. As a result, we do not anticipate any significant changes for agency workers in high-paying roles.

We also note that there are unlikely to be any costs arising from agency workers in the lowest skill/lowest paying roles. This is because agency workers on derogation contracts are still entitled to the National Minimum/Living Wage. This leaves minimal scope for agency workers on derogation contracts to earn less than permanent employees as comparable permanent employees are also to be working on or close to the National Minimum/Living Wage. Like agency workers in high paying roles, we do not anticipate any significant changes for agency workers where hirers pay permanent staff the National Minimum/Living Wage.

We anticipate the majority of the costs to fall in areas where hirers pay their permanent staff a small margin above the National Minimum/Living Wage. In this scenario, a hirer would be able to pay an agency worker less than the permanent employee whilst still paying the National Minimum/Living Wage. Similarly, we anticipate significant benefits to agency workers where their permanent colleagues are receiving uplifts for anti-social working patterns, or overtime hours.

### **Summary of costs to private businesses and non-profit organisations**

As the recruitment sector is in the private sector, there are no familiarisation costs that can be removed as they all accrue directly to business. The same is true around costs of re-writing contracts as these would fall on the recruitment businesses themselves.

We have not identified any direct and monetizable benefits to business.

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<sup>39</sup> [http://www.legislation.gov.uk/uksi/2010/93/pdfs/uksiem\\_20100093\\_en.pdf](http://www.legislation.gov.uk/uksi/2010/93/pdfs/uksiem_20100093_en.pdf), page 18

Option	Description	Familiarisation & Implementation (One-Off)	Implementation (Ongoing)	Wage Costs (Ongoing)
Option 1	Do Nothing	£0	£0	£0
Option 2	Extend remit of the EAS to enforce the AWR.	£1,101,904	£61,319	£136.9 - £232.7 million
Option 3	Repeal the Swedish Derogation	£3,273,109 - £3,642,810	£0	£227.5 - £381.1 million

It should be noted that the above costs are not NPV calculations. The ongoing costs are anticipated to be accrued annually for at least a ten-year reference period. However, the wage costs components are anticipated to reduce as the use of the Swedish derogation continues to decline in the ten-year period. As we have no basis for the rate of decline, we have not modelled this reduction, instead assuming a flat annual cost. We acknowledge that this will make the costs an overestimate, but we have no reliable basis upon which to reduce the costs. We have considered the potential reduction in costs when compared to a counterfactual of declining use of the Swedish derogation, and these scenarios are presented in Annex B.

### Assessment of Scale of Impacts

The underlying assumptions used in our analysis have been compared to the available research, including research by the Resolution Foundation, the TUC and CBI to ensure that they are sensible. The sensitivity analysis conducted demonstrates the impact should individual assumptions not be correct. However, even if it is the case that individual assumptions are flawed we are still confident in the order of magnitude for our costs in the context of the independent analysis carried out by the Resolution Foundation and BRC.

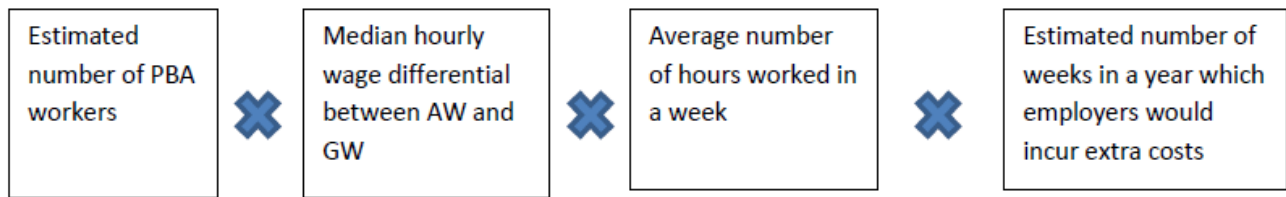
### Calculation of Equivalent Annual Net Direct Cost to Business (EANDCB)

EANDCB figures in this impact assessment have been calculated in line with the Better Regulation Framework<sup>40</sup>. A detailed explanation of the methodology is available in the Impact Assessment Calculator available online.<sup>41</sup>

<sup>40</sup> <https://www.gov.uk/government/publications/better-regulation-framework>

<sup>41</sup> <https://www.gov.uk/government/publications/impact-assessment-calculator--3>

# Annex A.1 – Methodology of Costing the Repeal of the Swedish Derogation



AW – Agency Worker, GW – General Worker (Permanent Employee)

## *Estimating the number of workers on derogation / PBA (Payment Between Assignment) Contracts*

The Recruitment & Employment Confederation (REC) estimates that there are 1,286,469 agency workers in the UK. Our best available data suggests that a figure of **8-10% of all agency workers are on Swedish derogation contracts**, corresponding to **102,918 – 128,647 agency workers**.

There is limited data on which sectors workers on derogation contracts operate in. As a result, two methods are used to identify which sectors should be considered in this analysis:

1. The HOST policy research (2015)<sup>42</sup> highlights some of the findings from discussions with stakeholders. These highlighted which sectors agencies supplied PBA workers to. The 8-10% of PBA workers were distributed across these sectors, weighted by the total number of agency workers in each sector. They were only applied to relevant assignment lengths where agency workers earn less than permanent employees, assuming that all workers on derogation contracts earn less than permanent employees.
2. In a 2014 BIS survey, the three sectors identified by the most respondents as sectors where they supply PBA workers to were Manufacturing, Transport & Storage and Human Health & Social Work Activities. The 8-10% of agency workers were distributed across the three sectors, again weighted by the total number of agency workers in each sector. Again, the PBA workers were only applied to assignment lengths where agency workers earn less than permanent employees.

## *Median Hourly Wage Differential between Agency Worker (AW) and General Worker (GW)*

Labour Force Survey (LFS) data is then used to derive average wage differentials (see Tables A1.6, A1.7 & A1.8) to determine the median hourly wage difference between permanent agency workers and permanent employees by sector and time in employment. The cost is then calculated by multiplying the number of agency workers on derogation contracts in each category by the hourly wage differential, the average number of hours worked in a week for a full-time or part-time agency worker, and the number of weeks in a year that an employer would incur costs.

The hourly rates of pay for permanent agency workers was used, instead of a broader measure that encompasses all types of agency workers as only agency workers on derogation contracts would have a permanent employment relationship with the employment agency. This is one of the requirements of the Swedish derogation; in return for opting-out of the right to equal pay, the agency worker receives a permanent contract of employment with the employment agency and payment between assignments. As a result, they would all be covered in the permanent agency worker category. It should however be noted that whilst all agency workers on derogation contracts are permanent agency workers, not all permanent agency workers are on derogation contracts.

## *Average Number of Hours Worked in a Week*

In addition, agency workers were split between part-time and full-time workers, using LFS data. Part time workers are assumed to work 18-20 hours per week whilst full-time workers were assumed to work 37-40 hours per week. The calculations were kept separate and combined, to give a figure for cost to full-

<sup>42</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/679564/HOST\\_Final\\_Report\\_final\\_version-.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/679564/HOST_Final_Report_final_version-.pdf)

time workers and part-time workers separately. The breakdown of part-time and full-time workers is shown in Table A1.2

### *Estimated number of weeks in a year in which employers would incur extra costs*

The repeal of the Swedish derogation would re-introduce the right to equal pay for all agency workers who were previously on a derogation contract. This right would have a twelve-week qualifying period. Therefore, employers would not incur the cost in every single week in the year. It was assumed that the time in employment for workers was indicative of the length of their standard contract, i.e. a worker who has been in employment for 3-6 months is assumed to have the majority of their contracts of a length of 3-6 months. It was also assumed that a worker is never between assignments. This is something that is often stated as an issue with derogation contracts as a worker is never able to take advantage of the right to pay between assignments.

From the anticipated length of assignments, a low and high estimate for the total number of weeks that a worker is on a contract is generated. These are shown in Table A1.3. For example, for a worker who has been in employment for 3-6 months, it is assumed that the majority of their contracts are 3-6 months long. Therefore, they will on average spend at least 12 weeks on an assignment, and no more than 26 weeks. These estimates for time on a contract are used to consider the number of weeks per assignment that a worker would be entitled to equal pay.

For a worker who works two assignments of 26 weeks in a calendar year, for each assignment they would be entitled to equal pay with a comparable worker at the hirer after twelve weeks. That would result in fourteen weeks per assignment where the employer must give the agency worker equal pay. With two assignments, this is a total of 28 weeks per year. A similar calculation is completed for all lengths of assignment, as presented in Table A1.4.

Under the option of increased regulation, a costing is considered for the introduction of the right to equal pay after 26 weeks. This was considered after consultation with EAS colleagues over what period of time would be considered an unreasonable period to keep workers on derogation contracts. EAS colleagues advised that a worker who was kept on a derogation contract for longer than six months is likely to be an attempt to avoid the equal pay entitlement. A similar calculation was used for the number of weeks an employer would be required to offer equal pay, with the qualifying period set at 26 weeks instead of 12. The numbers of weeks where an employer would have to offer equal pay for each assignment length is shown in Table A1.5.

### **Caveats**

**Dynamic versus static impacts** - It is important to note that the analysis here is a static one and does not take into account any dynamic effects. The cost to employers of losing the Swedish derogation could be mitigated by changing business behaviour, such as hiring agency workers on twelve-week contracts or reducing the number of agency workers used in favour of another type of contract. In 2014, a report from the CBI & Accenture estimated that 41% of businesses would reduce their use of agency workers if the Swedish derogation were repealed, but this would only lead to a 13% increase in the hiring of permanent employees.<sup>43</sup>

**LFS data on pay differentials** is of an aggregate level, considering the average difference in pay according to broad occupation, broad sector and length of assignment. The data does not differentiate factors such as:

- Different skill levels and experience for workers, with more experienced and skilled workers typically earnings a higher wage, regardless of their type of employment
- Employers awarding pay increases to permanent employees who have been with the firm for a long period of time. Agency workers on long-term derogation contracts would most likely not receive this rise.

It is therefore assumed that all pay differentials are derived from workers being on derogation contracts instead of for any other business reasons. It is also assumed that all agency workers on derogation contracts suffer from a pay penalty.

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<sup>43</sup> <http://www.cbi.org.uk/news/cbi-accenture-employment-trends-survey/>

**Sensitivity of number of derogation contracts** – The number of agency workers on derogation contracts is a crucial input for the analysis. The estimate used is for 8-10% of all agency workers on derogation contracts as the 20% figure from the BIS survey is considered too high to be reliable. For every additional 1 percentage point of agency workers who are on derogation contracts, the cost of equal pay is estimated to increase by roughly £18 million annually.

**Changing the minimum service requirement for equal pay for derogation contracts** – In consideration of regulation instead of repeal of the Swedish derogation, methods of regulation were considered. One possibility was to investigate workers who were held on derogation contracts for an extended period of time. This was to prevent using derogation contracts to avoid the equal pay entitlement. If there was such an abuse of the derogation, employment agencies would be at risk of facing a claim for equal pay under AWR. To estimate a cost for this, a proxy for the equal pay entitlement at 26 weeks/six months was used. This changed the number of weeks that a business would be affected by the equal pay claims, but the rest of the methodology was unchanged.

<b>Table A1.1 – Cost to business of repealing the Swedish derogation – assumes equal pay after 12 weeks</b>		
	Host Sectors	REC Sectors
<i>Lower Bound</i>	£229.87 m	£263.93 m
<i>Upper Bound</i>	£346.92 m	£385.14 m
<i>Central Estimate</i>	£288.40 m	£324.54 m

<b>Table A1.2 – Cost to business of regulation the Swedish derogation – assumes equal pay after six months</b>		
	Host Sectors	REC Sectors
Lower Bound	£138.30 m	£167.41 m
Upper Bound	£209.18 m	£235.15 m
Central Estimate	£173.74 m	£201.28 m

## Sensitivity Analysis

As previously discussed, we have also conducted sensitivity analysis on the figures above, using two methods Firstly we considered the change to the costs if 20% of all agency workers were on derogation contracts, a figure that we believe is unrealistically high. Secondly, consideration was given to the wage differentials if wage differentials were estimated using all agency workers identified in the LFS, instead of simply permanent agency workers.

### *20% of agency workers on derogation contracts*

With 20% of all agency workers on derogation contracts, the cost of repealing or regulating the Swedish derogation is anticipated to be significantly higher. It should be noted that we consider that 20% of all agency workers on derogation contracts is unfeasibly high. The figure is only considered because it was identified in a BIS survey of REC members, although the results of the survey were skewed by one respondent reporting nearly all of 5,000 agency workers on derogation contracts.

Using the same methodology as discussed above, having 20% of agency workers on derogation contracts would result in a cost to business as follows:

<b>Table A1.3 – Cost to business of repealing the Swedish derogation – assumes equal pay after 12 weeks (20% of agency workers on derogation contracts)</b>		
	Host Sectors	REC Sectors
<i>Lower Bound</i>	£574.7 m	£659.8 m
<i>Upper Bound</i>	£693.8 m	£770.3 m
<i>Central Estimate</i>	£634.3 m	£715.1 m

<b>Table A1.4 – Cost to business of regulation the Swedish derogation – assumes equal pay after six months (20% of agency workers on derogation contracts)</b>		
	Host Sectors	REC Sectors
<i>Lower Bound</i>	£345.7 m	£418.5 m
<i>Upper Bound</i>	£418.4 m	£470.3 m
<i>Central Estimate</i>	£382.1 m	£444.4 m

*Using all agency worker pay differentials*

In the initial analysis, we used pay differentials derived solely from using permanent agency workers to generate the wage data for agency workers. We repeated the analysis, instead using data for all groups of agency workers, encompassing all temporary agency workers in addition to permanent workers.

<b>Table A1.5 – Cost to business of repealing the Swedish derogation – assumes equal pay after 12 weeks and uses wages for all agency workers instead of permanent agency workers</b>		
	Host Sectors	REC Sectors
<i>Lower Bound</i>	£361.8 m	£377.9 m
<i>Upper Bound</i>	£547.6 m	£573.1 m
<i>Central Estimate</i>	£454.7 m	£486.5 m

<b>Table A1.6 – Cost to business of regulation the Swedish derogation – assumes equal pay after six months and uses wages for all agency workers instead of permanent agency workers</b>		
	Host Sectors	REC Sectors
Lower Bound	£215.6 m	£235.8 m
Upper Bound	£330.5 m	£366.8 m
Central Estimate	£273.0 m	£301.3 m

## Annex A.2 – Tables for the Methodology of Costing the Repeal of the Swedish Derogation

<b>Table A2.1 – The sectors in which derogation contracts are used</b>	
<b>The LFS sectors that broadly correspond to the HOST identified sector</b>	<b>The LFS sectors identified most by REC members</b>
Manufacturing	Manufacturing
Wholesale, retail, repair of vehicles/ Transport and storage	
Health and social work	Health and social work
Transport and storage	Transport and storage
Public administration and defence	
Education	
Information and communication / Admin and support	

<b>Table A2.2 – Proportion of Agency Workers who are Part-Time and Full-Time</b>		
	FT%	PT%
Less than 3 months	75.20%	24.80%
Between 3 months and 6 months	75.70%	24.30%
Between 6 months and 1 year	73.12%	26.88%
Greater than 1 year	74.73%	25.27%

<b>Table A2.3 – Weeks on an assignment for a worker, based off their standard length of contract</b>		
Time in Employment	Low number of weeks	High number of weeks
0-3 months <sup>44</sup>	12 weeks	12 weeks
3-6 months <sup>45</sup>	12 weeks	26 weeks
6-12 months <sup>46</sup>	26 weeks	52 weeks
Greater than 1 year	52 weeks	52 weeks

<sup>44</sup> If businesses were forced to offer equal pay under the AWR, they would have to offer equal pay after 12 weeks. Therefore, for a three-month assignment, there would be no weeks where the equal pay became relevant.

<sup>45</sup> For those who are in employment for six months, the equal pay would become relevant after 12 weeks for 14 weeks per assignment. It is assumed that there would be two assignments each year, so a total of 28 weeks.

<sup>46</sup> For those who are in employment for a full year, it is assumed that they take a new assignment each year, resulting in a twelve-week period where there is no equal pay entitlement, followed by 40 weeks where they must be offered equal pay.



<b>Table A2.4 – Weeks affected by repeal of the Swedish derogation – equal pay after twelve weeks</b>		
Time in Employment	Low No. Weeks Affected	High Number of Weeks Affected
0-3 months <sup>47</sup>	0 weeks	0 weeks
3-6 months <sup>48</sup>	0 weeks	28 weeks
6-12 months <sup>49</sup>	28 weeks	40 weeks
Greater than 1 year	40 weeks	40 weeks
<b>Table A2.5 – Weeks affected by regulation of Swedish derogation – Assumes equal pay after six months</b>		
Time in Employment	Low No. Weeks Affected	High Number of Weeks Affected
0-3 months <sup>50</sup>	0 weeks	0 weeks
3-6 months <sup>51</sup>	0 weeks	0 weeks
6-12 months <sup>52</sup>	0 weeks	26 weeks
Greater than 1 year	26 weeks	26 weeks

<sup>47</sup> If businesses were forced to offer equal pay under the AWR, they would have to offer equal pay after 12 weeks. Therefore, for a three-month assignment, there would be no weeks where the equal pay became relevant.

<sup>48</sup> For those who are in employment for six months, the equal pay would become relevant after 12 weeks for 14 weeks per assignment. It is assumed that there would be two assignments each year, so a total of 28 weeks.

<sup>49</sup> For those who are in employment for a full year, it is assumed that they take a new assignment each year, resulting in a twelve-week period where there is no equal pay entitlement, followed by 40 weeks where they must be offered equal pay.

<sup>50</sup> If businesses were forced to offer equal pay under the AWR, they would have to offer equal pay after 12 weeks. Therefore, for a three-month assignment, there would be no weeks where the equal pay became relevant.

<sup>51</sup> For those who are in employment for six months, the equal pay would become relevant after 12 weeks for 14 weeks per assignment. It is assumed that there would be two assignments each year, so a total of 28 weeks.

<sup>52</sup> For those who are in employment for a full year, it is assumed that they take a new assignment each year, resulting in a twelve-week period where there is no equal pay entitlement, followed by 40 weeks where they must be offered equal pay.

## Annex B: Scenario analysis for counterfactual

The most important of the key inputs discussed above in terms of cost to business is the number of agency workers on derogation contracts, with the best estimate being 8-10% of all agency workers. We have evidence to suggest that this number is declining over time. There is evidence that the negative publicity attached to these types of contract coupled with Trade Union pressure is causing businesses to reduce their use of derogation contracts.

Unfortunately, we do not have any robust data on the rate of the decline in the number of derogation contracts. This means that the annual impact on business assessed in this impact assessment is highly likely to decline over time because the use of these contracts is being phased out in the counterfactual. Our 10-year estimate of the net present cost and business net present cost should therefore be treated as a high estimate (closer to the maximum potential impact).

This annex demonstrates how the overall impact of the measure over ten years could vary under different assumptions around the decline in use of Swedish Derogation contracts,

The scenarios considered are as follows:

**Scenario 1: a 1% decline per annum.** The BT example provided above equates to a 1% decline in the number of derogation contracts. This scenario assumes that this number of derogation contracts could be phased out each year over the ten-year appraisal period.

**Scenario 2: the rate of decline ramps up over time.** This scenario assumes that there is a snowball effect from 2019 when BT ceases to use derogation contracts. We assume that the decrease speeds up from 1% in year 1 to 20% in year 10.

**Scenario 3: a 5% decline per annum.** This scenario assumes a steady decline of 5% per annum.

**Scenario 4: a 10% decline per annum.** This scenario assumes a steady decline of 10% per annum.

Using these scenarios, the number of Swedish derogation contracts each year would be:

	Number of derogation contracts in each year <sup>53</sup>			
	Scenario 1	Scenario 2	Scenario 3	Scenario 4
Year 1	114,625	114,625	109,993	104,204
Year 2	113,478	111,186	104,494	93,784
Year 3	112,344	105,627	99,269	84,405
Year 4	111,220	98,233	94,306	75,965
Year 5	110,108	89,392	89,590	68,368
Year 6	109,007	79,559	85,111	61,532
Year 7	107,917	69,216	80,855	55,378
Year 8	106,838	58,834	76,812	49,841
Year 9	105,769	48,832	72,972	44,857
Year 10	104,712	40,531	69,323	40,371

Based on these numbers of contracts, the annual cost to business would be as follows:

Cost to business in each year				
Year	Scenario 1	Scenario 2	Scenario 3	Scenario 4
Year 1	£297 m	£297 m	£285 m	£270 m
Year 2	£294 m	£289 m	£271 m	£243 m
Year 3	£292 m	£274 m	£258 m	£219 m
Year 4	£289 m	£255 m	£245 m	£197 m

<sup>53</sup> Note that this analysis uses a central estimate of 9% for the number of people on Swedish derogation contracts – as opposed to presenting ranges based on the 8%-10% used elsewhere in this impact assessment

Year 5	£286 m	£232 m	£232 m	£177 m
Year 6	£283 m	£206 m	£221 m	£160 m
Year 7	£280 m	£180 m	£210 m	£144 m
Year 8	£277 m	£153 m	£199 m	£129 m
Year 9	£274 m	£127 m	£189 m	£116 m
Year 10	£22 m	£105 m	£180 m	£105 m
Total cost over ten years (not including familiarisation and implementation costs)	£2,844 m	£2,117 m	£2,291 m	£1,761 m

The total discounted cost to business over ten years, and the equivalent EANDCBs, for each scenario would be:

<b>Total business costs and EANDCB</b>				
	<b>Scenario 1</b>	<b>Scenario 2</b>	<b>Scenario 3</b>	<b>Scenario 4</b>
Total discounted cost to business over ten years (includes familiarisation and implementation costs)	£2,458 m	£1,881m	£2,004 m	£1,564 m
EANDCB	<b>£227.4 m</b>	<b>£174.0 m</b>	<b>£185.3 m</b>	<b>£144.7 m</b>

This analysis demonstrates how the total cost to business and the annualised cost to business vary under different assumptions around the counterfactual





Table C3: Median Wage Differentials Permanent Agency Worker – General Worker Wages by industry sector

		Industry Sector in Main Job																				
		A Agriculture, forestry and fishing	B Mining and quarrying	C Manufacturing	D Electricity, gas, air conditioning and supply	E Water supply, sewerage, waste	F Construction	G Wholesale, retail, repair of vehicles	H Transport and storage	I Accommodation and food services	J Information and communication	K Financial and insurance activities	L Real estate activities	M Professional, scientific, technical activities	N Administrative and support services	O Public administration and defence	P Education	Q Health and social work	R Arts, entertainment and recreation	S Other service activities	T Households as employers	U Extraterrestrial organisations
		Median	Median	Median	Median	Median	Median	Median	Median	Median	Median	Median	Median	Median	Median	Median	Median	Median	Median	Median	Median	Median
Less than 3 months				-4.16			-0.17	-0.19	-1.59	-0.22	-8.39	7.00		-5.81	1.61	11.17	3.05	0.47	6.35	1.85		
Between 3 months and 6 months			3.35				3.89	0.17	1.36	-18.95	10.03	4.37	3.31	1.93	0.07	3.80	4.09	0.11				
Between 6 months and 1 year			0.41				-11.11	-0.05	0.72	0.48	8.06	4.50		-5.17	0.37	3.29	-0.15	0.55				
Greater than 1 year		2.61	3.23	6.00	5.62	3.52	-0.16	0.70	0.66	0.08	-0.02	6.43	2.03	3.63	2.11	0.43	-2.51	1.41	-0.99	3.85		1.96