

TRANSPOSITION NOTE

Directive 2014/67/EU on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services

Article	Objective	Implementation
CHAPTER 1: GENERAL PROVISIONS		
Article 1: Subject matter		
1	Sets out the subject matter of Directive.	Unnecessary to implement explicitly.
Article 2: Definitions		
2	Definitions of key terms	The Posted Workers (Enforcement of Employment Rights) Regulations (Northern Ireland) 2016 reproduce definition 2(a) at regulation 8. Definitions at 2(b) and (c) are not required to be specifically implemented.
Article 3: Competent authorities and liaison offices		
3	Designating competent authorities and liaison offices	Unnecessary to implement explicitly. The obligation shall be satisfied by communicating the contact details of the designated competent authorities to the Commission and other Member States.
Article 4: Identification of a genuine posting and prevention of abuse and circumvention		
4	Identification of a genuine posting and prevention of abuse and circumvention	No further implementation beyond present arrangements is required. The obligation shall be implemented by the relevant competent authority assessing whether the post is genuine, in line with the Directive.

CHAPTER 2: ACCESS TO INFORMATION		
Article 5: Improved access to information		
5	Access to information	Unnecessary to incorporate specific implementing measures into domestic legislation. The relevant information on posted workers in Northern Ireland as well as elsewhere in the UK will be available online and in a translated format where appropriate.
CHAPTER 3: ADMINISTRATIVE COOPERATION		
Article 6: Mutual assistance – general principles		
6.1	Cooperation and provision of mutual assistance without undue delay between Member States	Unnecessary to incorporate specific implementing measures into domestic legislation. Great Britain and Northern Ireland will implement this by cooperating with other Member States and providing mutual assistance without undue delay as required and as specified below.
6.2	Cooperation includes replying to reasoned requests for information	<p>The Northern Ireland and GB competent authorities will work with the competent authorities in other Member States within the framework set out in the Directive. The measures referred to in this Article will be handled by the relevant UK competent authorities in line with existing enforcement practices</p> <p>Information will be exchanged between competent authorities using the Internal Market Information System (IMI). No new legislation is, therefore, required to implement this article and an information sharing gateway has been created by Her Majesty's Revenue and Customs.</p>
6.3	Cooperation includes sending and service of documents	The relevant competent authority will handle these matters in line with IMI practices and no new domestic legislation is, therefore, required to implement this Article.

6.4	Compliance of service providers with national laws requiring the provision of information necessary to supervise their activities in compliance with national laws	No further implementation required. Legislation already requires service providers to provide information to check their activities are in compliance with national laws.
6.5	Delays in responding to requests for information	Unnecessary to implement in Northern Ireland legislation. A Memorandum of Understanding has been agreed between the competent authorities in the UK (including those in Northern Ireland) which includes provision to notify the requesting Member State via IMI as soon as possible.
6.6	Provision of time limits for responding to requests for information	Unnecessary to implement in domestic legislation. The designated competent authorities will comply with requirements.
6.7	Consultation of registers by equivalent competent authorities of other Member States	The public registers are already available and no new legislation is required to implement.
6.8	Information exchanged only to be used for matter for which it was requested	The UK competent authorities (including those in Northern Ireland) are already bound by these conditions under existing legislation.
6.9	Mutual cooperation shall be provided free of charge	The UK competent authorities (including those in Northern Ireland) will carry out any work related to the Directive as part of their remit and free of charge.
6.10	Request for information shall not preclude domestic competent authorities taking action	No specific implementation necessary. The competent authorities will continue to enforce under their existing remit and powers.
Article 7: Role of the Member States in the framework of administrative cooperation		
7.1	Responsibility for inspection of terms and conditions is the responsibility of the authorities of the host Member State	Competent authorities will undertake inspection in accordance with existing practice.
7.2	Member State of establishment of the service provider shall continue to monitor those workers posted to another Member State	The UK designated competent authorities (including those in Northern Ireland) will carry out their activities in accordance with existing practice.

7.3	Member State of establishment of the service provider to provide assistance to host Member State	Unnecessary to implement in domestic legislation. The competent authorities will comply with requests as set out in the Memorandum of Understanding as far as existing information constraints permit.
7.4	Member State to communicate with the Member State concerned on any possible irregularities	Unnecessary to implement in domestic legislation. The UK designated competent authorities (including those in Northern Ireland) will communicate relevant information to the Member State concerned where irregularities are identified.
7.5	Member State of establishment to provide host Member State with information of legality of service provider's establishment	Further implementation unnecessary. This information is already available through the Companies House public register.
7.6	No duty on Member State of establishment to carry out checks on service provider in host Member State	No further implementation necessary. The competent authorities will continue to act in line with domestic laws and practices.
Article 8: Accompanying measures		
8.1	Accompanying measures to promote exchange between officials of mutual assistance	Officials in the competent authorities will contribute to the development of processes and cooperate with other Member States and the Commission accordingly.
8.2	Commission assess need for financial support to improve administrative cooperation	It is not necessary to implement this obligation because it is an obligation on the European Commission.
8.3	Support for initiatives of social partners	No specific implementation required.
CHAPTER 4: MONITORING COMPLIANCE		
Article 9: Administrative requirements and control measures		
9.1	Administrative requirements and control measures which Member States may introduce for monitoring purposes	It is not necessary to implement this requirement further. Current domestic laws impose certain administrative requirements and control measures.
9.2	Imposition of further administrative requirements if necessary	No specific implementation required. The competent authorities will operate using existing measures but will keep under review the effectiveness of this approach.

9.3	No prejudice to other obligations regarding the protection or employment of workers	No new domestic legislation required to implement.
9.4	Procedures for administrative requirements	Unnecessary to implement in domestic legislation. The competent authorities provide information, advice and processes for undertakings to comply with administrative processes through the government information portals.
9.5	Communication to the Commission of administrative requirements	Northern Ireland and Great Britain will comply with this article by notifying the Commission and service providers if it applies or implements any of the measures in articles 9.1 and 9.2. The other obligations in this article are obligations on the Commission and are therefore not necessary to implement.
Article 10: Inspections		
10.1	Checks, monitoring and inspections in accordance with national law and practice	No further implementation necessary. Northern Ireland and Great Britain have existing monitoring regimes for employment rights. Relevant competent authorities will investigate complaints regarding employment rights in line with existing domestic legislation.
10.2	Non-discriminatory/non disproportionate inspections and controls	No further implementation required. Existing codes of conduct for UK competent authorities require all inspections to comply with non-discriminatory principles.
10.3	Member States cooperate in sharing of information pursuant to inspections	It is not necessary to implement this obligation specifically. Implementation measures in relation to the sharing of information and cooperation are set out under articles 6 and 7.
10.4	Member States may monitor application of relevant terms and conditions of employment of posted workers	Unnecessary to implement in domestic legislation. The competent authorities will continue to monitor terms and conditions of employment in line with existing risk-based protocols, particularly in relation to the national minimum wage.

10.5	Labour inspectorates in Member States may modify practices for control and monitoring of working conditions	It is not currently the intention to modify practices. The competent authorities will continue to evaluate the efficacy of their risk-based approach to monitoring terms and conditions of employment and make modifications in response to emerging threats.
CHAPTER 5: ENFORCEMENT		
Article 11: Defence of rights, facilitation of complaints, back-payments		
11.1	Ensure mechanisms for posted workers to enforce their statutory rights	No further implementation necessary. Current domestic laws allow for workers posted to the UK to enforce their rights through the informal and formal mechanisms.
11.2	No prejudice to jurisdiction of courts in Member States	Unnecessary to implement in domestic legislation.
11.3	Trade unions and third parties can engage on behalf of posted workers or employers	This is already allowable under current processes and legislation and no further implementation is necessary.
11.4	Articles 11.1 – 11.3 apply without prejudice to national rules	Unnecessary to implement into domestic legislation.
11.5	Posted workers bringing proceedings protected against unfavourable treatment by their employer	No further implementation necessary. Workers bringing proceedings in Northern Ireland are protected against unfavourable treatment under existing domestic laws.
11.6	Employer liability for contractual entitlements due to posted workers	No further implementation necessary. Such liability on the employer already exists under domestic laws.
Article 12: Subcontracting liability		
12.1	Member States may take additional measures against contractors to tackle fraud and abuse	Following consultation and evidence gathering it has been decided not to take extended measures.
12.2	Member States must provide for subcontracting liability for posted workers in construction sector	This will be effected by Part 2 of the Posted Workers (Enforcement of Employment Rights) Regulations (Northern Ireland) 2016.
12.3	Liability of subcontractor limited to worker's rights acquired under contractual relationship	This will be effected by Part 2 of the Posted Workers (Enforcement of Employment Rights) Regulations (Northern Ireland) 2016.
12.4	Member States may provide for more stringent liability on scope of subcontracting liability	Following consultation and evidence gathering it has been decided not to take extended measures.

12.5	Due diligence defence for contractors is permitted	This will be effected by Regulation 5(3) of the Posted Workers (Enforcement of Employment Rights) Regulations (Northern Ireland) 2016.
12.6	Other appropriate enforcement measures may be taken against contractors	Following consultation and evidence gathering it has been decided not to take extended measures.
12.7	Member States to inform the Commission of measures taken under this Article.	This obligation will be satisfied by providing any such information that is requested, subject to information constraints.
12.8	Commission monitoring application of this Article	It is not necessary to implement this obligation because it is an obligation on the European Commission.
CHAPTER 6: CROSS-BORDER ENFORCEMENT OF FINANCIAL ADMINISTRATIVE PENALTIES AND/OR FINES		
Article 13: Scope		
13.1	Mutual assistance includes cross-border enforcement of financial administrative penalties and/or fines imposed on service providers established in a Member State	No specific implementation required. The Posted Workers (Enforcement of Employment Rights) Regulations (Northern Ireland) 2016 reflect the scope of this article.
13.2	Application of Chapter 6	No specific implementation required.
Article 14: Designation of the competent authorities		
14	Notification through IMI of relevant authorities for this Chapter	Unnecessary to implement in domestic legislation. The relevant competent authorities as designated are party to notification via IMI notifications as set out in the Memorandum of Understanding.
Article 15: General principles – mutual assistance and recognition		
15.1	Requested authority shall recover penalty/fine or notify decision imposing penalty/fine	This will be effected by Regulation 8 of the Posted Workers (Enforcement of Employment Rights) Regulations (Northern Ireland) 2016 and implementation by administrative means.
15.2	Requirements on requesting authority before making request for recovery	Unnecessary to implement explicitly. These are administrative measures and will be complied with as set out in the IMI administration protocol.

15.3	Requested authority take necessary measures to recover penalty/fine	This will be effected by Regulation 8 of the Posted Workers (Enforcement of Employment Rights) Regulations (Northern Ireland) 2016 and implementation by administrative means.
15.4	For recovery/notification of penalty/fine, requested authority to act in accordance with national laws	Unnecessary to implement in domestic legislation.
Article 16: Request for recovery or notification		
16.1	Requirements for detail for request or notification of penalty/fine	Unnecessary to implement in domestic legislation. The requirement shall be implemented as and when a request is made.
16.2	Further notification requirements	Unnecessary to implement in domestic legislation. The requirement shall be implemented as and when a request is made.
16.3	Requested authority take necessary steps to notify service provider and inform requesting authority	Regulation 8 of the Posted Workers (Enforcement of Employment Rights) Regulations (Northern Ireland) 2016. Also implemented by the competent authorities notifying the requested authorities of action taken or grounds of refusal.
Article 17: Grounds for refusal		
17	Grounds for refusal by requested authority for recovery/notification of penalty/fine	Unnecessary to implement in domestic as it will be implemented by the competent authorities only refusing a request on these grounds.
Article 18: Suspension of the procedure		
18.1	Suspension of recovery or notification if underlying claim challenged or appealed by service provider	Unnecessary to implement in domestic legislation. This is an administrative requirement which the competent authorities will comply with.
18.2	Handling of disputes concerning enforcement measures in requested Member State	No further implementation required. Existing domestic national laws and practice set out appeal processes.
Article 19: Costs		
19.1	Amounts recovered shall accrue to the requested authority.	Regulation 8(4) of the Posted Workers (Enforcement of Employment Rights) Regulations (Northern Ireland) 2016.

19.2	Member States will not claim costs from each other arising from mutual assistance	Unnecessary to explicitly implement in domestic laws. The obligation shall be complied with by UK competent authorities.
CHAPTER 7: FINAL PROVISIONS		
Article 20: Penalties		
20	Member States prescribe rules on penalties for infringements of national provisions adopted pursuant to the Directive	No further implementation required. Domestic legislation already provides for penalties for an employer's failure to pay the minimum wage.
Article 21: Internal Market Information System		
21.1	Administrative cooperation in Articles 6, 7, 10(3) and 14-18 implemented through IMI	Unnecessary to implement in domestic legislation. The UK competent authorities will use the IMI as set out in the Memorandum of Understanding.
21.2	Provision of bilateral agreements for cooperation between competent authorities in Member States	The UK does not currently have any bilateral agreements in place but will consider putting these in place if deemed necessary. If it does so it shall notify the Commission in accordance with the obligation.
21.3	Use IMI in context of any bilateral agreements	The UK has no such agreements and has no current plans to put any in place. No new legislation required to implement.
Article 22: Amendment to Regulation (EU) No 1024/2012		
22	Amendment to Regulation (EU) No 1024/2012	It is not necessary to implement this obligation as it operates at EU level. No new legislation required to implement.
Article 23: Transposition		
23.1	Member States bring into force laws and administrative provisions to implement the Directive by 18 June 2016	It is not necessary to implement this obligation explicitly. The obligation is satisfied by implementing on time. The Posted Workers (Enforcement of Employment Rights) Regulations (Northern Ireland) 2016 come into operation on 18 June 2016.

23.2	Communication with Commission of measures of national law	It is not necessary to implement this obligation explicitly. This obligation shall be satisfied by notifying the Commission of the Posted Workers (Enforcement of Employment Rights) Regulations (Northern Ireland) 2016.
Article 24: Review		
24.1	Commission to review Directive no later than 18 June 2019	Unnecessary to implement as this is an obligation on the Commission.
24.2	Content of Commission's review	Unnecessary to implement as this is an obligation on the Commission.
Article 25: Entry into force		
25	Entry into force of Directive	It is not necessary to implement this obligation as it operates at EU level.
Article 26: Addressees		
26	Addressees of Directive	It is not necessary to implement this provision.

Department for the Economy