

## Summary: Intervention & Options

<b>Department /Agency:</b> <b>Department for Work and Pensions</b>	<b>Title:</b> <b>Impact Assessment of The Fixed-term Employees (Prevention of Less Favourable Treatment ) Amendment Regulations 2008</b>	
<b>Stage:</b> implementation	<b>Version:</b> Final	<b>Date:</b> 23 June 2008
<b>Related Publications:</b>		

Available to view or download at:

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

The Court of Appeal confirmed the High Court ruling that people who work as agency workers are excluded from receiving Statutory Sick Pay (SSP) if their contract or series of contracts is for a period of three months or less. This overturns government policy and the Government wishes to restore its original policy intention.

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

It is the Government's policy that all people who meet the qualifying conditions should have access to SSP. Agency workers whose contracts are for three months or less should not be excluded from access to SSP.

Amending regulations ensure agency workers are treated in the same way as all other employees with regard to entitlement to SSP, whether they are indirectly or directly employed, and regardless of the length of their contract.

### What policy options have been considered? Please justify any preferred option.

- 1) To seek leave to appeal the Court of Appeal Judgment to the House of Lords.
- 2) To accept the Court's decision, leaving agency workers with contracts of 3 months or less as the only group of workers without access to SSP.
- 3) To accept the Court's decision but amend legislation that restores the policy intention and brings agency workers into SSP entitlement. This is the preferred option because it maintains the general approach in statutory payments policy which conveys equal rights on workers regardless of status, provided certain qualifying conditions are met.

### When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

There will be no formal review but regular contact with stakeholders through the quarterly HMRC Statutory Payments Group meetings will review and advise on the impact of these changes

### **Ministerial Sign-off** For final proposal/implementation stage Impact Assessments:

***I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) the benefits justify the costs.***

Signed by the responsible Minister:

.....Date:

## Summary: Analysis & Evidence

Policy Option: 3

Description: Restore SSP eligibility to Agency Workers who have contracts of three months or less.

<b>COSTS</b>	<b>ANNUAL COSTS</b>		Description and scale of <b>key monetised costs</b> by 'main affected groups' Cost of paying SSP to agency workers on contracts of 3 or less is estimated to be around £12.8m. It is estimated that the cost of administering the payments will be about £0.8m. These estimated costs will be met by employers of agency workers. The present value of the total cost has been calculated over 10 years.
	<b>One-off</b> (Transition)	<b>Yrs</b>	
	<b>£ NIL</b>		
	<b>Average Annual Cost</b> (excluding one-off)		
	<b>£ 13.6 million</b>		<b>Total Cost (PV)</b> <b>£ 113.4 million</b>
Other <b>key non-monetised costs</b> by 'main affected groups'			

<b>BENEFITS</b>	<b>ANNUAL BENEFITS</b>		Description and scale of <b>key monetised benefits</b> by 'main affected groups' Fewer benefits payments will be made and this will save the exchequer an estimated £10m per year plus £1.1m in reduced benefit processing costs. Affected workers as a whole will gain from higher sickness payments by an estimated £2.8m a year. Present value of the total benefit has been calculated over 10 years.
	<b>One-off</b>	<b>Yrs</b>	
	<b>£ NIL</b>		
	<b>Average Annual Benefit</b> (excluding one-off)		
	<b>£ 14 million</b>		<b>Total Benefit (PV)</b> <b>£ 116.1 million</b>
Other <b>key non-monetised benefits</b> by 'main affected groups'			

### Key Assumptions/Sensitivities/Risks

The above estimates have been made using data and assumptions outlined in para 8 of the Evidence Base and Annex A. Data is limited. More reliable data on any area could affect the estimated costs/benefits. An increase sickness absence, would affect both the costs and the benefits.

Price Base Year 2008	Time Period Years 10	<b>Net Benefit Range (NPV)</b> <b>£ N/A</b>	<b>NET BENEFIT (NPV Best estimate)</b> <b>£ 2.7m</b>
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What is the geographic coverage of the policy/option?	UK & NI			
On what date will the policy be implemented?	27 October 2008			
Which organisation(s) will enforce the policy?	HMRC			
What is the total annual cost of enforcement for these organisations?	£ negligible			
Does enforcement comply with Hampton principles?	Yes			
Will implementation go beyond minimum EU requirements?	N/A			
What is the value of the proposed offsetting measure per year?	£ n/a			
What is the value of changes in greenhouse gas emissions?	£ n/a			
Will the proposal have a significant impact on competition?	No			
Annual cost (£-£) per organisation (excluding one-off)	Micro n/a	Small n/a	Medium n/a	Large n/
Are any of these organisations exempt?	No	No	N/A	N/A

<b>Impact on Admin Burdens Baseline</b> (2005 Prices)		(Increase - Decrease)	
Increase of	£ 0	Decrease of	£ 0
		<b>Net Impact</b>	<b>£ 0</b>

Key: Annual costs and benefits: Constant Prices (Net) Present Value

## Evidence Base (for summary sheets)

[Use this space (with a recommended maximum of 30 pages) to set out the evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Ensure that the information is organised in such a way as to explain clearly the summary information on the preceding pages of this form.]

### **The Fixed-term Employees (Prevention of Less Favourable Treatment) Amendment Regulations 2008**

#### **Introduction**

1. Statutory Sick Pay (SSP) provides a measure of earnings replacement for employees unable to work because of short-term sickness. It is administered and paid for by employers. Employers have a statutory liability to pay SSP for up to 28 weeks to any employee who is incapable of work under their contract of service for four or more days in a row and who satisfies the qualifying conditions.
2. Some of the qualifying conditions specify situations when entitlement does not arise. In the past one of the exclusion reasons was “where contracts of service were for three months or less.” This exclusion was removed in 2002 when legislation was introduced that provided for employees who were in fixed term employment to be treated equally with other employees who were in permanent employment.

#### **Background**

3. This change formed part of the Government’s agenda on equality in the labour market. It supported the strategy of securing equal provision for all employees, by ensuring that workers on fixed-term contracts are treated no less favourably than a comparable employees on a permanent contract.
4. All Statutory payments have an underpinning principle to treat all workers in the same way regardless of the nature of their employment or the length of their contract and this is applied throughout the provision for SSP. Any person who is treated as an employee for National Insurance purposes is also treated as an employee for SSP purposes. When changes to SSP were made in support of equality for fixed-term employees, these applied to equally to all people who are treated as employees for SSP including Agency workers.
5. An employment agency, backed by a lobby group for employment agencies challenged whether these changes to SSP made under provisions for fixed- term employees applied to agency workers. In June 2007 the High Court ruled that these did not. As a result the changes which removed the exclusion reason “employees with contracts of three months or less” from SSP could no longer apply to agency workers.

#### **Details of the proposed change**

6. It is the Governments intention that all employees who meet the qualifying conditions should have access to SSP. Agency workers whose contracts are for three months or less should not be excluded from access to SSP. These amendment regulations will restore the original policy intention and provide agency workers with access to SSP in line with all other workers.

- 7 The proposed changes amend Regulation 19 of The Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002, so that agency workers are no longer excluded from SSP.

## **Analysis & Evidence**

8. There is little reliable data available for SSP so this information has been prepared using the best evidence possible from: the Labour Force Survey (LFS), Recruitment and Employment Confederation (REC) survey, samples of HMRC computer records, an academic study of agency workers, and previous DWP estimates of costs and benefits arising from SSP changes.
9. Reliable data regarding the number of agency workers in the UK is not readily available. An industry survey estimates there are around 1.08m agency workers (2006 REC survey) which is considerably higher than the official Labour Force Survey (LFS) of about 250,000. There are reasons why the LFS figure is too low (see annex A). The 1.08m figure is used as the basis of estimates in this impact assessment. The lack of reliable data, however, is one reason that the estimates in this impact assessment should be regarded as both illustrative and approximate. BERR is undertaking its own research on the number of agency workers to verify industry estimates.
10. It is estimated that about a third of agency workers, around 360,000 (using the REC figure), are on contracts of 3 months or less, and assumed that of these around 17.5%, or 63,000, will benefit from this measure by being able to claim SSP. Details of the evidence and assumptions used to arrive at these figures are contained in Annex A.
11. The proposed regulatory change will have no impact on the Admin Burdens Baseline because agency workers were not excluded from SSP at the time the baseline was established (31<sup>st</sup> May 2005).

## **Impact on employers**

12. Agency workers with contracts of three months or less will receive SSP from their employers. It is estimated that this will cost those employers about £12.8 million per year. As outlined above, it is estimated that around 63,000 agency workers will receive SSP per year. It is assumed that they will have one spell each of SSP per year with an average duration of three weeks. Given that SSP is currently £75.40 per week, this leads to the cost of £12.8m per year. More detail about this estimate is available in Annex A.
13. Employers of agency workers will also have increased administration costs arising from having to pay SSP to 63,000 extra people. It is estimated that this will cost about £0.8m per year (see annex A).

## **Impact on employees**

14. For agency workers on contracts of three months or less, it will be easier to obtain payment during periods of sickness. Payment of SSP will be made by the employer in line with any wages due rather than the employee having to make a claim for benefit through Jobcentre Plus. They will also receive a slightly higher rate of payment; SSP is currently paid at £75.40 per week in comparison to the relevant Employment and Support

Allowance (ESA) rate for IB of £60.50 (ESA replaces IB in October). It is estimated that this will benefit affected workers altogether by about £2.8 million per year.

## **Impact on Operations**

### **Jobcentre Plus**

15. Jobcentre Plus, will have fewer benefit claims to process, because a person receiving SSP is not entitled to IB (or ESA). It is advised that the average cost of processing an IB claim is £18. On the assumption that the cost of processing an ESA claim will be the same as IB, we expect 63,000 fewer people a year to require ESA; the saving in administration costs for Jobcentre Plus is estimated to be about £1.1m. Details in Annex A

### **HMRC**

16. DWP has policy responsibility for SSP. Responsibility for SSP compliance and operation rests with HMRC. Overall cost impacts for HMRC are expected to be minimal as this is part of the existing checking regime.

## **Economic Impact**

### **Competition Assessment**

17. The proposals do not affect competitiveness between companies. All employers will now have to pay SSP in the same way

### **Small Firms Impact Test**

18. These proposals will mainly affect employment agencies many of whom would qualify as a small business. Employment agencies however already operate the SSP scheme for their own direct employees and for those agency workers who have contracts (or a series of contracts) of 13 weeks or longer. Therefore these firms, like all other small firms, already have mechanisms in place to pay SSP. A new provision is not being introduced; it is an extension of a provision that they operate already. Those employment agencies that are characterised as small will, however, have to process their share of the estimated 63,000 extra people on SSP per year
19. SSP is an employer payment and as such the Government's policy is to maintain a balance between the needs of employees to receive a payment while they are off sick and the burdens on employers in providing that payment.
20. Conscious of this balance the Government set up a review of SSP between November 2006 and June 2007 to consider what changes might be made to simplify the scheme for all. The review group was made up of employer and employee representatives. Small businesses were represented on the working group by Confederation of British Industry, Forum of Private Business, Federation of Small Business and Department for Business Enterprise and Regulatory Reform - Small Business Team. That group found that radical reform of SSP was not achievable without upsetting the balance between employee's rights and necessary burdens on business which the existing scheme achieves.

### **Legal Aid Impact Test**

21. As there are no criminal or new civil penalties related to these proposals, therefore there is no impact on Legal Aid.

## Sustainable Development - Environmental Impact

### Carbon and Greenhouse Gas Assessment

22. There will be a saving to the Department of approximately 2000 reams of papers from the consequential reduction in the use of 63,000 claims forms and associated paperwork for benefit claims.

### Social Impact

#### Health Impact Assessment Test

23. In considering the health impact, the screening questions were applied and showed that a full assessment was unnecessary. These proposals will have a minor beneficial impact on well being as agency workers will receive a slightly increased level of payment more swiftly from their employer, when they are unable to work due to illness.

#### Race, Disability, Gender and Age Equality

24. These proposals will bring a specific group of workers, i.e. agency workers with contracts of 3 months or less, into SSP eligibility when they are unable to work due to sickness. A recent academic study of agency workers (referenced in Annex A) used the LFS to examine the characteristics of agency workers compared with the working population as a whole (detailed in the annex). Most of the following comes from that study. There is nothing to suggest that the proportions from this data do not apply equally to agency workers whose contracts are for three months or less.

25. *Race and Immigration:*

A higher proportion of ethnic race groups will benefit from the policy change given that there is a substantially higher percentage of agency workers from ethnic minority groups.—18% compared with 8% for the working population as a whole. 13% of agency workers are recent immigrants (since 2003) compared to 2% of the entire working population.

People from 'white' backgrounds make up 92% of the working population while only 83% of agency workers are from white backgrounds. As white workers are therefore less likely to be agency workers then they are more likely to be covered by other regulations and have access to SSP through other means.

26. *Disability:*

LFS shows that disabled people make up approximately 12% of the working population and that they only make up between 7 - 9% of agency workers. This change will benefit disabled people as much as non disabled people if they are agency workers.

27. *Gender:*

Similarly there is no significant benefit or disadvantage for women from this change, although a slightly lower percentage of agency workers, 43%, are women compared to 48% of the working population as a whole.

28. *Age:*

Young people will benefit from the change. 34% of agency workers are young people (aged 16-24) compared to 15% of the working population as a whole. However, older workers (60-64) constitute a slightly smaller percentage of agency workers (2%) compared to the entire working population (3%).

29. *Pay:*

The average £7.80 per hour that agency workers receive is 32% lower than the average hourly wage for all workers (which is £11.47). . The policy change will ensure those agency workers on short-term contracts will receive the same level of statutory sick pay as higher paid workers.

30 *Monitoring*

There will be no formal review but regular contact with stakeholders through the quarterly HMRC Statutory Payments Group meeting together with ongoing monitoring of the LFS will review and advise on the impact of these changes.

## **Human Rights**

31. These proposals do not contravene individuals' human rights. All individuals have the same right regardless of their nationality or citizenship.

## **Rural Proofing**

32. Particular rural circumstances would not be adversely affected by these proposals which are beneficial regardless of locality.

## Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

**Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.**

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	Yes	No
Small Firms Impact Test	Yes	No
Legal Aid	Yes	No
Sustainable Development	Yes	No
Carbon Assessment	Yes	No
Other Environment	No	No
Health Impact Assessment	Yes	No
Race Equality	Yes	No
Disability Equality	Yes	No
Gender Equality	Yes	No
Human Rights	Yes	No
Rural Proofing	Yes	No

### Estimation of the costs and benefits of the proposed regulatory change

There is not currently a reliable figure as to the number of agency workers. An industry survey estimates there are around 1.08m agency workers (REC Survey 2006\*) and 1.4m temporary placements (REC 2007\*\*). These are both higher than the official Labour Force Survey (LFS) of about 250,000. The LFS figure is considered too low as respondents do not always perceive themselves as agency workers. Some call themselves "casual worker" or "seasonal workers". Other people may not perceive themselves as temporary agency workers. For these reasons the LFS is considered to seriously underestimate the number of agency workers in the UK.

The **1.08m** figure is used as the basis of estimates in this impact assessment. However, the lack of a reliable figure for the number of agency workers in the UK is one of many factors of uncertainty surrounding the costs and benefit estimates in this document. Those estimates should therefore be regarded as both illustrative and approximate. BERR is undertaking its own research on the number of agency workers to verify industry estimates. Once these are published this impact assessment will be reviewed.

DWP has previously estimated from the LFS that 33% of agency workers are on contracts of three months or less, and a similar proportion (also derived from the LFS) appears in a recent study on agency workers\*\*\*\*. The 33% proportion suggests that around 360,000 workers are potentially affected by the regulatory change.

DWP estimates (based on samples of HMRC computer records) suggest that about **17.5%** of the UK working population has a spell of SSP per year, and that the average SSP spell lasts nearly **three weeks**. It is assumed that these proportions apply to agency workers with contracts of three months or less, and that these workers are continuously employed throughout the year. It is also assumed that agency and other UK workers take a maximum of one spell of SSP per year. 17.5% of 360,000 is 63,000. It is therefore estimated that about **63,000** agency workers with contracts of three months or less will take a spell of SSP every year.

These assumptions could mean that there are at least two reasons why the estimated costs and benefits may be towards the higher end of the range in which will fall the actual costs and benefits. Firstly, not all agency workers on contracts of three months or less will work continuously throughout the year and may therefore be less likely to have a spell of SSP during the year than the average UK worker. Secondly, some agency workers who have successive short-term contracts at the same employer will be able to link these contracts for the purposes of SSP – meaning that they would be eligible for SSP even in the absence of the proposed regulatory change. As DWP is not aware of data regarding these two factors, it has not been possible to adjust estimates.

There are additional factors that will affect the actual costs and benefits which also cannot take into account. These include the following. Firstly, some agency staff do not qualify for incapacity benefit (IB). DWP lacks data as to the proportion to which this applies. However, many of these people will be eligible for other benefits such as income support. Therefore, to simplify the calculations, it is estimated that all agency staff with contracts of three months or less qualify for IB.

Secondly, the rules state that if someone has claimed IB in the previous two years, if that person is away from work they should claim IB, not SSP (even if they are otherwise entitled to the latter). DWP have no data as to the numbers that are affected in this way however it is not thought that it will significantly affect the costs and benefits of the proposed regulatory change.

Thirdly, government employs temporary workers on contracts of three months or less and will therefore be liable to pay SSP to these people. This has not been taken into account in estimates; the impact of this is thought to be negligible but could affect overall savings to government from the regulatory change.

The costs and benefits of the regulatory change will be affected by the percentage threshold scheme (PTS) which allows employers to claim from government some SSP costs if these exceed 13% of employer national insurance contributions in one month. It is extremely difficult to estimate the effect of the proposed regulatory change on PTS claims. Previous DWP estimates of SSP rules changes have assumed that PTS could affect between 4% and 18% of the costs (or benefits) of the change. Roughly the middle of this range, 10% has been adopted to produce our PTS estimates.

The proposed regulatory change will mean employers have more payments of SSP to process – increasing their administration costs. Government will have fewer benefit claims to process, reducing benefit administration costs.

DWP has previously estimated that it takes half an hour on average to process an SSP payment, and that a payroll manager in a medium sized company may earn around £40,000 a year, which with added costs (employers National Insurance Contributions) is £52,000 a year or £1000 a week. The estimate was made two years ago; the latest data\*\*\* suggests that median gross weekly earnings grew on average by 3.3% in 2007; this is therefore upgraded the £52,000 figure to £53,700. On a 40 hour week this is £25.8 an hour and thus **£12.90** per SSP calculation. Thus we estimate that the total cost of processing the extra SSP claims will be about **£0.8m**.

It is estimated that the administration costs are **£18** on average to process an IB claim. It is assumed that the cost of processing an ESA claim will be the same. Thus it is estimated that the saved administration costs of having to process fewer ESA claims will be about **£1.1m**.

The current rate of SSP is **£75.40** per week. By the time the regulatory change is expected to occur (October 2008) the Employment and Support Allowance (ESA) will have replaced IB. The relevant ESA rate is **£60.50**. This will replace the current short-term incapacity benefit lower rate.

It is estimated the **costs** of the regulatory change to employers of agency workers to be about **£13.6 million** a year.

This is calculated as follows:

Relevant number of agency workers x SSP rate x three weeks;  
 $63,000 \times £75.40 \times 3 = £14.25\text{million}$ .

There is a potential additional cost to government from the assumed 10% of the figure that could amount to increased claims under PTS. Hence £1.425m is deducted from the estimated costs to employers, leaving £12.8million

Admin costs to employers:  $£12.90 \times 63,000 = £0.8\text{m}$   
 $£0.8 + £12.8 = £13.6\text{million}$

It is estimated the **benefits** of this regulatory change to the **government** be about **£11.1 million** a year.

This is calculated as follows:

Relevant no. of agency workers x IB weekly rate x three weeks  
 $63,000 \times £60.50 \times 3 = £11.4\text{million}$ .

There is a potential additional cost to government from the assumed increased claims under the PTS – estimated above at £1.425m. Hence this figure is deducted from the estimated benefits to government, leaving £10m.

Saved benefit claim admin costs: £18 x 63,000 = £1.1m  
£1.1m + £10m = £11.1m

The **benefits** to the affected **workers** from the regulatory change come from their receiving higher rates of payment during periods of sickness; SSP at £75.40 per week is £14.90 more than the relevant ESA rate of £60.50 per week. This leaves affected workers as a whole about **£2.8 million** a year better off. This is calculated as follows:

SSP weekly rate – IB weekly rate; x relevant no. of agency workers x three weeks;  
£75.40 - £60.50 = £14.90; 63,000 x £14.90 x 3 = £2.8million.

**Overall benefits** (to affected workers and the government) are therefore estimated to be about **£14 million**.

### **Administrative Burdens:**

These amendment regulations do not affect the admin burden baseline because they restore the original policy intention the full admin burdens of which are already reflected in the DWP Admin Burdens Baseline. When this was established, it accounted for agency workers being entitled to SSP as, at that time, was considered to be the position].

### **Impact on Race, Disability, Gender and Age**

Agency worker characteristics according to the LFS; Most of the following comes from the academic study of agency workers, \*\*\*. It is assumed that the proportions below apply equally to agency workers that have contracts of three months or less.

#### **Race**

7% are black compared with 2% for the working population as a whole  
5% are Asian compared with 4% for the working population as a whole  
6% are other ethnic minorities compared with 2% for the working population as a whole  
83% are white compared with 92% for the working population as a whole

#### **Immigrants**

13% arrived in UK after 2003 compared with 2% for the working population as a whole  
4% are from New EU countries and arrived after 2003 compared with 0.6% for the working population as a whole

#### **Disability**

7-9% compared to 12% for the working population as a whole

#### **Gender**

43% are female compared with 48% for the working population as a whole

#### **Age**

34% aged 16-24 compared with 15% for the working population as a whole  
2% aged 60-64 compared with 3% for the working population as a whole

## **Average Wage**

Agency workers receive £7.80 an hour on average, 32% less than the overall average of £11.47

\* "The REC Census", 2006, Recruitment and Employment Confederation

\*\* Annual Industry Turnover and Key Volumes survey, 2006-2007, Recruitment and Employment Confederation.

\*\*\*"Agency working in the UK: what do we know", May 2008, published by Leeds University.

Available for download at

[http://lubswww2.leeds.ac.uk/CERIC/fileadmin/user\\_upload/NEWS/ceric\\_agency\\_workers\\_report.pdf#](http://lubswww2.leeds.ac.uk/CERIC/fileadmin/user_upload/NEWS/ceric_agency_workers_report.pdf#)

\*\*\*\*First Release: 2007 Annual Survey of Hours and Earnings, November 2007, National Statistics. Available for download at <http://www.statistics.gov.uk/pdfdir/ashe1107.pdf>