

From: Name Redacted  
**NICSHR**

**Date: 20 March 2020**

1. NR (*Content 20/03/20*)
2. **Minister**

## **COVID-19 CONTINGENCIES AND TREATMENT OF AGENCY WORKERS**

**Issue:** Agency workers are entitled to fewer legislative employment protections than permanent workers in the NICS and across the public sector. This disparity represents a risk to public safety as well as to effective service delivery in key operational areas and could have a detrimental impact on the income of agency workers themselves.

**Timing:** Urgent. A decision on how agency workers should be treated in the current situation is required in order to mitigate the risks to public safety and service delivery in particular.

**FOI implications:** This submission would be considered in light of the relevant legislation should a request under FOI be received.

**Presentational:** NIPSA has recently raised this issue with you, NICSHR, DfC and CPD and they released their letter to you on social media channels on 19<sup>th</sup> March.

**Equality implications:** A sector-wide approach may be required to seek to ensure equal treatment of all agency workers, who are engaged in work in both the public and private sectors.

**Legislative implications:** None immediately as agency worker contracts can be varied to offer better terms than the legislative minimum.

**Financial implications:** Initial estimates c.£800k in the NICS. Much higher in the wider public sector, including health. No wider

employment sector estimates available. Potentially higher costs if risks associated with no action materialise.

**Recommendation:**

That the Minister considers:

(i) Whether enhanced employment terms should be available to agency workers in the current circumstances;

(ii) If so, what those terms should be and the sectors in which they should apply;

(iii) How funding would be provided to cover the cost of enhanced terms; and

(iv) Whether Executive approval is required to implement any enhanced terms.

**Detail**

The NICS, in common with the wider public sector, uses temporary agency workers to deliver work that for various reasons cannot be carried out by substantive staff. Reasons include absences due to maternity or sickness, time limited contractual work or to assist at times of high demand.

2. There are approximately 2,500 agency workers the NICS at present. Around 1,400 are working in the Department for Communities, largely delivering DWP contract work and supporting the assessment and payment of benefits and entitlements to citizens across the UK. The remaining agency workers are spread across all other NICS departments, with the next highest number in DoF, in areas such as LPS and NISRA as well as in smaller numbers carrying out administrative functions. Most agency workers are at the AA, AO and EO2 grades although there are also agency workers in DSO at the Principal Legal Officer grade. Other professionals are used in areas such as accountancy and medicine in the NICS.
3. Agency workers' entitlements are set out in the Agency Workers Regulations (Northern Ireland) 2011. The legislation gives agency workers the right to the same basic employment and working conditions as if they had been recruited directly, if/when they complete a qualifying period of 12 weeks in the same job. This entitlement is also included in the terms of the framework agreement used by the NICS (among others).

3. There is also a much higher number of agency workers working across the wider public sector, many delivering front line services in healthcare settings. The wider healthcare sector and other sectors using agency workers are separate hirers for than the NICS in terms of accessing agency workers through various frameworks or contractual arrangements. By way of context, the NICS spent around £47 million on agency workers in 2018/19 (c.£21m of this was for DWP work); the Health Trusts spent around £288m in the same period, including spend on doctors and dentists and bank cover. Agency workers are also engaged by large and small private sector businesses, although no information on numbers or spend is available at present.
4. Permanent NICS staff are entitled to Statutory and Occupational Sick Pay, which generally equates to full pay for a period of six months from their first day of sickness absence. The NICS has recently issued guidance to staff and managers regarding Covid-19. In addition to full pay in cases of sickness, this guidance includes provision to work from home or avail of paid special leave if colleagues are required to self-isolate or need to take time off work to care for dependents. In the event a building would have to close, the NICS would find alternative accommodation, facilitate working from home or allow paid special leave.
5. Under the relevant legislation (detail set out below), agency workers are entitled only to Statutory Sick Pay (SSP) – if eligible. This is £94.15 per week. Currently, this would be payable from the first day of an absence due to illness or self-isolation. Agency workers are not entitled to full occupational sick pay or special leave to care for dependants or in cases where working from home is not possible (e.g. cases of building closure). If a building closed and alternative work could not be sourced, the agency worker would not be entitled to any pay, though they could use annual leave if available.
6. While the advice provided by recruitment agencies may be in line with current legislation, there is a real risk, already identified by DfC, that agency workers will continue to come to work, when they should be in self-isolation, due to financial pressures. This presents a severe risk not just to the individual agency worker but the health of other workers and to the ability of a business area, if badly affected, to administer front line services to the public. Ultimately, there is a risk to public health in general if government guidelines on self-isolation and social distancing are not followed. It would appear that a 'do nothing' option, in terms of providing additional support for agency workers so there is no financial incentive to ignore government advice, is not viable given the potential public health and business continuity impact.
7. While this risk has been raised by DfC and more recently by NIPSA (Corr 1256-2020 refers), it applies across the wider public sector and beyond in cases where only the statutory minimum entitlements will be applied. This is not an issue for the NICS in isolation and any decisions made in relation to potential protections

for agency staff in the NICS could have much wider implications and could present presentational issues if it appeared the NICS was protecting one set of agency workers while others were not afforded similar protections.

8. NICS business areas, like all other businesses using agency workers, will already have invested time in training agency workers, for example in areas such as benefits payments where a 12-week training programme is required. Agency workers are regarded as a valuable asset to the NICS and the wider public sector and it is vitally important that agency workers remain available at this time: it is equally important that those workers are supported in following government advice to protect their own and the public health.
9. In order to mitigate the risks identified above, NICSHR proposes the following temporary arrangements for agency workers in the NICS:
  - the extension of full pay, equivalent to OSP, for two weeks if ill or self-isolating;
  - payment of SSP for any further period(s) of sickness absence/self-isolation
  - the facility to access up to one weeks' special leave in order to make alternative childcare arrangements;
  - the facility, where possible and in line with business need, to work from alternative locations or work from home
  - the payment of two weeks' full pay if a building is closed and alternative working arrangements cannot be found by either the hirer or the recruitment agency;
  - the effective date for these measures to be in line with the change to SSP entitlement from day one (13/3/2020)
  - measures to remain under review as the position with Covid-19 develops
  - urgent consideration given to determine whether these or similar measures should be extended to agency workers, regardless of which sector they work in. If so, a method to fund and recoup enhanced payments would have to be considered immediately.
10. Based simply on the annual spend figures for 2018/19 for the NICS alone, it is estimated that the cost of implementing these proposals would be in the range **£800,000**. This is based on an assumption that 30% of agency staff would need to avail of some support.
11. It should be noted that scope for flexibility in relation to alternative working arrangements may be limited in some business areas due to methods of working, security or other issues. It should also be noted that there may be

presentational issues if this proposal is accepted, not least in light of redundancies and cuts across other sectors such as hospitality and tourism in the absence of government support for those affected. It is also important to note the views of the wider public sector or private employers have not been sought given the urgency of the situation. Information on costs to other sectors is also not available at present.

12. While cost estimates are crude, nonetheless the issue of funding for the additional costs is likely to arise and methods of funding should be agreed before any measures are announced. Recruitment agencies are likely to be best placed to pay any enhanced terms to agency workers and then recoup from the relevant hirer – this would reduce any administrative burden on the agency worker or the benefits system. The hirer themselves may however seek government funding to recoup their outlay. A decision is also required around the effective date for any enhanced terms, since it is almost certain some agency workers will already have been self-isolating and in receipt of SSP or taken annual leave to cover absences. The commencement date for the payment of SSP from day one was 13 March 2020, which appears to be a reasonable starting point for any additional terms.

## **Conclusion**

13. The Minister is asked consider and endorse the proposed approach to agency workers in the NICS i.e. -
  - the extension of full pay for two weeks if ill or self-isolating;
  - SSP for any further periods of sickness or self-isolation;
  - the facility to access up to one weeks' special leave in order to make alternative childcare arrangements;
  - the facility, where possible and in line with business need, to work from alternative locations or work from home
  - the payment of two weeks' full pay if a building is closed and alternative working arrangements cannot be found by either the hirer or the recruitment agency;
  - the effective date for these measures to be in line with the change to SSP entitlement from day one (13 March 2020)
  - consideration that the measures extend to all agency workers, regardless of which sector they work in;
  - a method to recoup the costs of enhanced payments to be considered;
  - measures to remain under review as the position with Covid-19 develops
14. This will have implications for other public sector employers and CPD will be advising the relevant Departments of our approach.

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