



STATUTORY INSTRUMENTS.

S.I. No. 374 of 2020



EUROPEAN UNION (POSTING OF WORKERS) (AMENDMENT)
REGULATIONS 2020

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I, HEATHER HUMPHREYS, Minister for Employment Affairs and Social Protection, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972), and for the purpose of giving further effect to Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996¹ concerning the posting of workers in the framework of the provision of services, as amended by Directive (EU) 2018/957 of the European Parliament and of the Council of 28 June 2018² amending Directive 96/71/EC concerning the posting of workers in the framework of the provision of services, hereby make the following regulations:

Citation and commencement

1. (1) These Regulations may be cited as the European Union (Posting of Workers) (Amendment) Regulations 2020.

(2) These Regulations shall come into operation on 1 October 2020.

Definition

2. In these Regulations, “Principal Regulations” means the European Union (Posting of Workers) Regulations 2016 (S.I. No. 412 of 2016).

Amendment of Regulation 2 of Principal Regulations

3. Regulation 2 of the Principal Regulations is amended –

(a) in paragraph (1), by the substitution of the following definition for the definition of “Framework Directive”:

“ ‘Framework Directive’ means Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 as amended by Directive (EU) 2018/957 of the European Parliament and of the Council of 28 June 2018;”

(b) by the insertion of the following paragraph after paragraph (1)

“(1A) For the purposes of the definition of ‘net remuneration’ -

(a) the concept of remuneration shall be determined by the law or practice or, if applicable, both, of the

¹ OJ No. L18, 21.1.97, p. 1

² OJ No. L173, 9.7.2018, p. 16

State and means all the constituent elements of remuneration rendered mandatory by law, regulation or administrative provision, or by collective agreements or arbitration awards which, in the State, have been declared universally applicable or otherwise apply in accordance with Article 3.8 of the Framework Directive, and

- (b) (i) allowances specific to the posting shall be considered to be part of remuneration, unless they are paid in reimbursement of expenditure actually incurred on account of the posting, such as expenditure on travel, board and lodging, and
- (ii) where the terms and conditions of employment applicable to the employment relationship do not determine whether and, if so, which elements of the allowance specific to the posting are paid in reimbursement of expenditure actually incurred on account of the posting or which are part of remuneration, then the entire allowance shall be considered to be paid in reimbursement of expenditure.”, and

- (c) by the insertion of the following paragraph after paragraph (2):

“(3) A word or expression used in paragraph (1A) or Regulation 4(1) (b) (v), (2), (3) or (4) that is also used in the Framework Directive has, unless the contrary intention appears, the same meaning in that paragraph or Regulation, as the case may be, that it has in that Directive.”.

Amendment of Regulation 4 of Principal Regulations

- 4. Regulation 4 of the Principal Regulations is amended -

- (a) in paragraph (1) (b) -
 - (i) in clause (iii), by the substitution of “time,” for “time, and”,
 - (ii) in clause (iv), by the substitution of “wages, and” for “wages, ”, and
 - (iii) by the insertion of the following clause after clause (iv):

“(v) subject to Regulation 2(1A)(b)(ii) and without prejudice to point (h) of the first subparagraph of paragraph 1 of Article 3 of the Framework Directive, proof that his or her expenditure referred to in Regulation

2(1A)(b)(i) has been reimbursed in accordance with the law or practice or, if applicable, both, of the State applicable to the employment relationship,” and

(b) by the insertion of the following paragraphs after paragraph (1):

“(2) (a) Subparagraphs (b) and (c) apply where -

- (i) a worker has been hired out by a relevant body to a user undertaking established or operating in the territory of the State,
- (ii) there is an employment relationship between the worker and the relevant body during the period of the worker being so hired out, and
- (iii) the worker has been so hired out to carry out work in the framework of the transnational provision of services by the user undertaking in the territory of the State and such territory is other than where the worker normally works for the relevant body or for the user undertaking.

(b) The worker shall be considered to be posted to the territory of the State by the relevant body.

(c) The relevant body shall, in relation to that worker, be considered to be an undertaking referred to in Article 1.1 of the Framework Directive.

(3) The user undertaking shall inform the relevant bodies concerned of the terms and conditions of employment that it applies regarding working conditions and remuneration to the extent covered by the first subparagraph of paragraph 1a of Article 3 of the Framework Directive.

(4) In this Regulation, ‘relevant body’ means -

- (a) a temporary employment undertaking, or
- (b) a placement agency.”



GIVEN under my Official Seal,
24 September, 2020.

HEATHER HUMPHREYS,
Minister for Employment Affairs and Social Protection.

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation)

The purpose of these Regulations is to transpose into Irish law Directive (EU) 2018/957, which amends Directive 96/71/EC concerning the posting of workers in the framework of the provision of services.

A posted worker is defined as a person who, for a limited period of time, carries out his or her work in the territory of an EU Member State other than the State in which he or she normally works.

Regulation 1 provides that these Regulations may be cited as the European Union (Posting of Workers) (Amendment) Regulations 2020 and will come into force on 1st October 2020.

Regulation 2 provides that “Principal Regulations” means the European Union (Posting of Workers) Regulations 2016 (S.I. No. 412 of 2016).

Regulation 3 provides for a number of amendments to Regulation 2 of the Principal Regulations, including the interpretation of ‘net remuneration’.

Regulation 4 provides for the amending of Regulation 4 of the Principal Regulations. It provides for the definition of ‘relevant body’ to include a temporary employment undertaking and a placement agency and specifies the provision of information requirements that a user undertaking in the State, as well as a service provider or relevant body in another Member State, must comply with in respect of posted workers.

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