

AN IER RESPONSE

Hiring agency staff during strike action: reforming regulation

**Submission to the Department for Business,
Innovation and Skills**

Published September 2015

**THE
INSTITUTE
OF
EMPLOYMENT
RIGHTS**

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The Institute of Employment Rights is an independent charity. We exist to inform the debate around trade union rights and labour law by providing information, critical analysis, and policy ideas through our network of academics, researchers and lawyers.

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09 September 2015
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Question 1

a) i) How do you think the removal of the *Regulation 7* would affect employment businesses?

No Impact.

ii) Please explain briefly what you think the impact will be on employment businesses? (max 500 characters)

A strike is a weapon of last resort for employees and a sign that attempts at dispute resolution have failed. If a strike supported by a democratic mandate is undermined by the use of agency workers, it is likely to entrench attitudes more and intensify the conflict rather than driving the parties to a long-term compromise. The government should be focussing on the causes of strikes or on encouraging other means of resolving strikes by conciliation or agreement.

i) How do you think the removal of *Regulation 7* would affect work-seekers?

No Impact

ii) Please explain briefly what you think the impact will be on work-seekers? (max 500 characters)

We have no sufficient evidence on this, and none is set out in the Impact Assessment. The assessment of the wage benefits to worker in the Impact Assessment is based ultimately on a crude guesstimate of the number of working days lost to strikes which will be covered by agency workers (22%). Even accepting the government's aims, it is unacceptable that legislation and consultation should be based on such thin empirical data.

i) How do you think the removal of *Regulation 7* would affect hirers?

Negatively

ii) Please explain briefly what you think the impact will be on hirers? (max 500 characters)

A strike is a weapon of last resort for employees and a sign that attempts at dispute resolution have failed. If a strike supported by a democratic mandate is undermined by the use of agency workers, it is likely to entrench attitudes more and intensify the conflict rather than driving the parties to a long-term compromise. The government should be focussing on the causes of strikes or on encouraging other means of resolving strikes by conciliation or agreement.

d) i) How do you think the removal of *Regulation 7* would affect employees taking part in industrial action?

Negatively

ii) Please explain briefly what you think the impact will be on employees taking part in industrial action? (max 500 characters)

It is pretty obvious that the requisitioning of agency workers may undermine a strike. It weakens the one weapon workers have to counteract the inequality of bargaining power in the employment relationship. It is why the requisitioning of workers to cover strikes in non-essential services is, according to the ILO Freedom of Association Committee, a serious

violation of freedom of association and of the right to strike: Freedom of Association Digest of Decisions (2006) paras 632-3.

e) i) How do you think the removal of *Regulation 7* would affect the wider economy and society?

Negatively

ii) Please explain briefly what you think the impact will be on the wider economy and society? (max 500 characters)

The right to strike is fundamental in ensuring that the labour relationship is not dominated by the party with superior bargaining power - the employer. It is central to citizenship and dignity at work. The growth of inequality with the decline of collective bargaining, of which the right to strike is a necessary element, is well-documented. The government appears to wish simply to strengthen the hand of the stronger party. Equality, fairness, dignity and citizenship count for nothing.

Question 2

a) The impact assessment for this consultation assumes that, between 17% and 27% of working days lost due to industrial action will potentially be covered by temporary agency workers, based on the limit of availability of suitable temporary agency workers, and the fact that some stoppages involve a large number of workers on a particular day. Do you think this assumption, as set out in the impact assessment, is reasonable?

No

b) Please give your reasons

No. It is a guess based on no reliable empirical information, as the Regulatory Policy Committee has noted. There has been no proper empirical research to justify it. It also ignores the other restrictions introduced in the Bill which are likely to make it much more difficult to strike.

Question 3

a) The impact assessment assumes that the current options for recruiting temporary labour to provide cover during industrial action are used infrequently, due to the additional costs and administrative burden of hiring staff directly, or contracting service providers at short-notice. Do you think this assumption is reasonable?

No

b) Please give your reasons

No. It is based on no evidence – none. There does not appear to have been even the most cursory survey of some employers to support the assumption. It also makes it impossible to respond sensibly to a consultation.

Question 4

a) The impact assessment estimates that a quarter of the pool of temporary agency workers would be available for a placement at

short-notice to provide cover for workers taking industrial action. Do you think this estimate is reasonable?

No

b) Please give your reasons

No. It too is based on inadequate evidence. Many agency workers who are not in a placement are not available for work (e.g. students in term-time). Strikes are often by skilled workers, performing jobs which agency workers may not be able to do (fire-fighters, bus drivers, train drivers, safety critical workers, public servants).

Please use this space for any general comments that you may have, comments on the layout.

The IER objects to the narrow focus of this consultation, the inadequate evidence upon which is supposed to respond, and what appears to be a disregard of the importance of striking (as a necessary element to fair collective bargaining) to workers and their families. It notes that in none of the policy documents is there any suggestion that employers, employment businesses or anyone else objects to regulation 7 of the Conduct Regulations or has asked for its repeal. The only justification in the consultation for the repeal of regulation 7 is the effect of strikes in public services (giving the examples of education and postal services). If that is the justification, the proposals go much wider than is necessary, since they apply to any strikes anywhere, and are disproportionate to the aim. Yet the weaker are individual workers, the more they need a right to strike, and the more the amendments are likely to make this right illusory in practice. Especially when viewed together with the other changes in the Bill and the existing restrictions on strikes in UK law, the IER considers that the proposals are contrary to the principles on freedom of association in the ILO Conventions and, equally, an unjustified infringement of the right to freedom of association in Article 11 of the European Convention on Human Rights (see e.g. the Grand Chamber in *Demir* [2009] IRLR 766 which interpreted Article 11 in the light of the ILO Conventions). It is regrettable that none of these international human rights instruments, to which the UK is a signatory, are referred to in the proposals to repeal regulation 7 – neither in the Consultation, the Impact Assessment or the European Convention on Human Rights Memorandum – and the IER awaits the response of BIS on this matter.