



Department
for Business
Innovation & Skills

Recruitment Sector

Hiring agency staff during strike
action: reforming regulation

JULY 2015

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Hiring agency staff during strike action: reforming regulation

The recruitment sector is regulated by the Employment Agencies Act 1973 and the Conduct of Employment Agencies and Employment Businesses Regulations 2003 (the 'Conduct Regulations'). Currently Regulation 7 of the Conduct Regulations prohibits employment businesses from providing agency workers to cover the duties normally performed by an employee of an organisation who is taking part in a strike or other industrial action, or to cover the work of an employee covering the duties of an employee taking part in a strike or other industrial action.

The Government wants to ensure that strikes should only ever be the result of a clear, democratic decision and commits to tackling the disproportionate impact of strikes in important public services. Removing this regulation from the Conduct Regulations would allow employers facing industrial action to hire temporary agency workers from employment businesses who would then be able to perform some of the functions not being carried out due to the industrial action.

This consultation seeks views on the impact of removing this regulation.

Issued: 15 July 2015

Respond by: 9 September 2015

Enquiries to:

Paula Lovitt
Labour Market Directorate
Department for Business, Innovation and Skills
1 Victoria Street
London
SW1H 0ET

recruitment.sector@bis.gsi.gov.uk

Tel: 0207 215 5000

1. Executive Summary

1. The Conservative Party manifesto (published 14 April 2015) specifically states that the Government will 'repeal nonsensical restrictions banning employers from hiring agency staff to provide essential cover during strikes'. This consultation aims to seek views on the impact that this commitment would have on a wide range of stakeholders.
2. The Government wants to ensure that strikes should only ever be the result of a clear, democratic decision and commits to tackling the disproportionate impact of strikes in important public services. The Government intend to remove Regulation 7 from the Conduct Regulations and allow employers to hire agency workers to cover the duties of striking workers.
3. We are seeking views from a wide range of stakeholders, including employment agencies and employment businesses, employers, labour providers, trade bodies, employees, individuals who use the recruitment sector to find work and the public who are affected by industrial action. All consultation responses will be considered in the context of wider industrial relations legislation and interests.
4. The closing date for this consultation is 9 September 2015. Within 6 weeks of this date the Government will publish a summary of the responses to the consultation and the next steps to be taken.

2. How to respond

5. Consultation issued: 15 July 2015. Please respond by: 9 September 2015.
6. Enquiries to: recruitment.sector@bis.gsi.gov.uk.
7. You can reply to this consultation through an online survey available at <https://bisgovuk.citizenspace.com/lm/regulation7>
8. Alternatively, a consultation response form is available electronically here: <https://www.gov.uk/government/consultations/hiring-agency-staff-during-strike-action-reforming-regulation> (until the consultation closes). That form can be submitted by email or by letter to:

Paula Lovitt
Labour Market Directorate
Department for Business, Innovation and Skills
1 Victoria Street
London
SW1H 0ET

Email: recruitment.sector@bis.gsi.gov.uk

9. When responding please state whether you are responding as an individual or representing the views of an organisation. If you are responding on behalf of an organisation, please make it clear who the organisation represents by selecting the appropriate interest group on the consultation form and, where applicable, how the views of members were assembled.
10. You may make printed copies of this document without seeking permission. Other versions of the document in Braille, other languages or audio-cassette are available on request.
11. The Consultation principles can be found in Annex B.

3. Confidentiality & Data Protection

12. Information provided in response to this consultation, including personal information, may be subject to publication or release to other parties or to disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004). If you want information, including personal data that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.
13. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

4. Help with queries

14. Questions about the policy issues raised in the document can be addressed to:

Paula Lovitt
Labour Market Directorate
Department for Business, Innovation and Skills
1 Victoria Street
London
SW1H 0ET

Email: recruitment.sector@bis.gsi.gov.uk

Tel: 0207 215 5000

5. The proposal

Background

15. The recruitment sector is regulated by the Employment Agencies Act 1973 and the Conduct of Employment Agencies and Employment Businesses Regulations 2003 (the 'Conduct Regulations'). The sector has two legally defined types of service: employment agencies which introduce people to be employed by the hirer directly; and employment businesses which employ or engage people to work under the supervision of another person.
16. The legislation covers all employment agencies and employment businesses in England, Scotland and Wales and provides a framework for contracts between employment agencies/employment businesses, hirers and work-seekers. It also covers principles such as restrictions on fee-charging and ensuring that temporary workers are paid for the work they have done.
17. Regulation 7 of the Conduct Regulations prohibits employment businesses (who technically remain the employer of the staff they supply) from supplying temporary staff during industrial action to perform duties normally performed by workers taking part in industrial action or other workers covering for their colleagues taking part.

Detail

18. The Government is committed to ensuring that strikes only ever happen as the result of a clear, democratic decision and commits to tackling the disproportionate impact of strikes in important public services. The Government thinks that removing Regulation 7 from the Conduct Regulations will give the recruitment sector the opportunity to help employers to limit the impact to the wider economy and society of strike action, by ensuring that businesses can continue to operate to some extent.
19. There are sectors in which industrial action has a wider impact on members of the public that is disproportionate and unfair. Strikes can prevent people from getting to work and earning a living and prevent businesses from managing their workforces effectively.
20. For instance, strikes in important public services such as education will mean that some parents of school age children will need to look after their children rather than go to work because some schools would not be able to fulfil their duty of care for their pupils during the strike. This would also have a negative impact on some employers of the parents affected, whose workforce and productivity would be affected. Similarly, if postal workers were to strike, individuals and employers reliant on postal services would be placed at a disadvantage due to the resulting large backlog of deliveries.
21. A draft copy of the affirmative statutory instrument which revokes Regulation 7 can be found at Annex A of the consultation.

6. Consultation questions

A definition of each of the stakeholder groups included in the following questions is included at Annex C.

Question 1)

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

Positively	No impact	Negatively

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

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

Positively	No impact	Negatively

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

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

Positively	No impact	Negatively

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

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

Positively	No impact	Negatively

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

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

Positively	No impact	Negatively

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

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?

Yes/no

b) Please give your reasons

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?

Yes/No

b) Please give your reasons

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?

Yes/No

b) Please give your reasons

7. What happens next?

22. We will publish a Government response to the consultation within 6 weeks of the closing date. The timetable for any reforms to the Conduct Regulations will be outlined within that response.

Annex A: Draft Affirmative Statutory Instrument

Draft Regulations laid before Parliament under section 12(5) of the Employment Agencies Act 1973, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2015 No. 0000

EMPLOYMENT AGENCIES, ETC.

The Conduct of Employment Agencies and Employment Businesses (Amendment) Regulations 2015

Made - - - - - *******

Coming into force in accordance with regulation 1

The Secretary of State, having consulted such bodies as appear to the Secretary of State representative of the interests concerned⁽¹⁾, makes the following Regulations, in exercise of powers conferred by sections 5(1) and 12(3) of the Employment Agencies Act 1973⁽²⁾.

A draft of these Regulations was laid before Parliament in accordance with section 12(5) of the Employment Agencies Act 1973⁽³⁾ and approved by a resolution of each House of Parliament.

Citation and commencement

1.—(1) These Regulations may be cited as the Conduct of Employment Agencies and Employment Businesses (Amendment) Regulations 2015.

(2) These Regulations come into force at the end of the period of 21 days beginning with the day on which they are made.

Amendment to the Conduct of Employment Agencies and Employment Businesses Regulations 2003

2. Omit regulation 7 of the Conduct of Employment Agencies and Employment Businesses Regulations 2003⁽⁴⁾ (restriction on providing work-seekers in industrial disputes).

Date

Name
Minister of State for Skills
Department for Business, Innovation and Skills

(1) Section 12(2) of the Employment Agencies Act 1973 requires the Secretary of State to consult with representative bodies before making Regulations under that Act.
(2) 1973 c.35; section 5(1) was amended by the Employment Relations Act 1999 (c.26), section 31 and Schedule 7, paragraphs 1 and 2.
(3) Section 12(5) was amended by the Employment Relations Act 1999, section 31 and Schedule 7, paragraphs 1 and 6.
(4) S.I. 2003/3319, to which there are amendments not relevant to these Regulations.

Annex B: Consultation principles

1. The principles that Government departments and other public bodies should adopt for engaging stakeholders when developing policy and legislation are set out in the consultation principles.

<http://www.cabinetoffice.gov.uk/sites/default/files/resources/Consultation-Principles.pdf>

Comments or complaints on the conduct of this consultation

2. If you wish to comment on the conduct of this consultation or make a complaint about the way this consultation has been conducted, please write to:

Angela Rabess
BIS Consultation Co-ordinator,
1 Victoria Street,
London
SW1H 0ET

e-mail to: angela.rabess@bis.gsi.gov.uk

3. However if you wish to comment on the specific policy proposals you should contact the policy lead (see section 4).

Annex C: Definition of Stakeholder Groups

Through this consultation the Government want to gather insight on what impact the removal of regulation 7 would have on a variety of stakeholders. The definition of those stakeholder groups is included below.

Employment Businesses - engage work-seekers under contract who then work under the supervision of another organisation. This is normally called 'temporary agency work' or 'temping'. Workers under these arrangements are paid through the employment business rather than directly by the organisation they are supplied to.

Work-seekers – are the individuals who are contracted by the employment business and are placed with a third party to carry out 'temporary agency work'.

Hirers – are the organisations that contract with employment businesses to supply individuals to carry out work on their behalf.

Employees taking part in industrial action – are the direct employees of the hirers, who may be involved in industrial disputes.

The wider economy and society – this is a broad term to try and understand the impact on the wider community who may be affected when industrial action takes place. This group would include businesses, individuals, unions, other employees etc.

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