



Association of Revenue and Customs

## ARC Response To BIS Consultation - Using Agency Workers During Strike Action

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### Introduction

The Association of Revenue and Customs (ARC) is both an independent trade union and the HMRC section of the FDA, the trade union for senior managers and professionals in public service.

- ARC represents around 2400 members in HMRC, at grade 7 and above, as well as trainees in grade 7 entry schemes.
- Our members are senior officials, lawyers and tax professionals, collectively taking responsibility for the collection of UK taxes, and tackling tax evasion and avoidance, at the highest and most complex level.
- We articulate the views of the professional staff working in HMRC to collect taxes from individuals and businesses operating in the UK.
- We are partners with HMRC in Consultation and Negotiation. HMRC also recognises ARC as a stakeholder on professional matters within HMRC.

- ARC is firmly committed to the principles of equality and diversity in both employment and the delivery of services.

ARC is deeply concerned at the scope and scale of measures set out in the Trade Union Bill. ARC members only embark on industrial action as a last resort. As a union with an almost 100 year history we have engaged in national industrial action only very rarely. Nevertheless it is a fundamental right for all working people to have the option to take industrial action. The current proposals will unjustifiably restrict the right of trade unions to organise in the UK by placing them under financial, operational and legal burdens which go far beyond those placed on other British campaigning organisations. By introducing yet more unwarranted legal obstacles in the way of unions organising strike action the Trade Union Bill will undermine workers' ability to organise collectively to protect their jobs, their livelihoods and the quality of their working lives.

Among the proposals set out in the Trade Union Bill, the government intends to remove the statutory ban on the supply of agency workers to replace striking workers at regulation 7 of the Conduct of Employment Agencies and Employment Businesses Regulations 2003. The government has failed to demonstrate why the removal of the ban on the use of agency workers is necessary or justified. The ban on the supply of agency workers has been in place in UK since 1973. A succession of previous administrations, including Conservative, has recognised that the regulation forms an important part of the industrial relations landscape and therefore should be retained.

ARC is firmly opposed to measures which are designed to enable employers to use agency workers to undermine the effectiveness of industrial action or to break strikes. Like many Public servants, all ARC members are security checked, thoroughly trained professionals, it is not tenable for agency workers to simply be drafted in overnight to fill in these roles. The removal on restrictions on agency workers being employed to cover striking workers, should that eventuality arise, poses very real risks to the competent delivery of public services. Furthermore we are firmly of the view that this proposal will breach international law. The ILO Freedom of Association Committee has confirmed that; 'the hiring of workers to break a strike in a sector which cannot be regarded as an essential sector in the strict sense of the term...constitutes a serious violation of freedom of association'.<sup>1</sup>

ARC are concerned that any threat to use agency workers during industrial action will only serve to damage constructive employment relations and undermine workplace productivity. It will create unnecessary tensions between employers and their employees, making it more difficult to resolve disputes. Agency workers

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<sup>1</sup> ILO (2006) Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO, paragraph 632.

would also face an invidious choice between crossing the picket line or turning down an assignment and risking not being offered future employment.

## The Consultation Process

The government's approach to this consultation raises some real concerns and has been roundly criticised by the Regulatory Policy Committee (RPC) which found that the BIS impact assessment was 'not fit for purpose as it does not provide sufficient evidence of the likely impact of the proposals to support the consultation'. The RPC continued that it 'considers that the case for the central assumption has not been made and that it is not a robust basis for assessing the costs, and in particular, the benefit of the proposal...The RPC view is that these estimates are an unsatisfactory basis for the consultation.'<sup>2</sup>

It is also worrying that the government has curtailed responses to this consultation. The consultation document published on the BIS website states that responses to the various sections of Question 1 should be limited to 500 characters maximum.<sup>3</sup> In other words, no answer should be longer than three tweets. On this basis ARC anticipates it will be difficult for the Department to convince the RPC that is serious about this consultation or about evidence-based policy making.

## Consultation Questions

### Question 1

a):

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

Negatively

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

This proposal will have significant detrimental effects for employment businesses. The removal of the ban on the supply of agency workers will mean that employment businesses are forced to become involved in

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<sup>2</sup> Regulatory Policy Committee: *Hiring agency staff during striker action: reforming regulation*. Date of issue: 18 August 2015. Available at: <https://www.gov.uk/government/collections/red-rated-impact-assessment-opinions-since-may-2015>

<sup>3</sup> <https://www.gov.uk/government/consultations/hiring-agency-staff-during-strike-action-reforming-regulation>

industrial disputes which are not of their making. For many years, the agency industry has promoted the view that it is not good practice to supply agency workers during industrial action for good reason.

b):

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

Negatively

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

This proposal will have a detrimental impact on work-seekers. Agency workers could face an invidious choice between crossing a picket line and turning down an assignment with the prospect that they will be denied future work by the agency. Under UK law, agency workers are not protected from any detriment if they refuse an assignment because they do not wish to replace striking workers.

c):

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*)

ARC is concerned that the government's proposal will seriously harm employment relations within the hirer's organisation. If employers decide to use groups of agency workers to break strikes, this will increase tensions between the union and the employer and between the employer and their workforce. It will mean that the dispute will be more difficult to resolve amicably.

The use of agency workers in these circumstances will seriously damage employee goodwill. Staff will feel less committed to the organisation and may decide to look for new employment. The loss of experienced staff will undermine organisational effectiveness and increase recruitment and training costs for employers. Where disputes remain unresolved, tensions between management and the workforce are likely to grow and fester. Overall the proposals will reduce productivity and good employee relations.

The use of agency workers during strikes will create reputational risks for organisations. Agency workers lack the relevant skills and training required of the professional staff that ARC represents, they are no substitute for permanent staff. The quality of service provided cannot but decline and given the makeup of our membership their use would represent a fundamental risk to the security of the employers business and HMRC's customers.

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*)**

Permitting employers to use agency workers to replace those on strike will have a severe impact on employees taking part in industrial action. The government's proposal is clearly designed to undermine the effectiveness of industrial action and to break strikes. This will contribute to a major imbalance of power in the workplace, with employers being able to impose changes to terms and conditions, without agreement or of taking the views of their workforce into account.

The use of agency workers to replace striking workers will violate trade union members' right to strike which is safeguarded by ILO Convention 87 Article 3, the European Social Charter 1961 (Article 6(4)) and Article 11 of the European Convention of the European Convention of Human Rights.

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*)**

Encouraging employers to use agency workers to replace workers participating in lawful industrial action is likely to have wide ranging implications for service users, for the economy and for wider society. Using

agency workers to undertake work normally performed by permanent staff will raise serious concerns about safety in the workplace and for the wider public. Agency workers, recruited at short notice to cover for those participating in industrial action, are less likely to have training required to do the job safely. The use of temporary staff will reduce the quality of services provided to the public.

Agency workers lack the relevant skills and training required of the professional staff that ARC represents, they are no substitute for permanent staff. The quality of service provided cannot but decline and, given the makeup of our membership, their use would represent a fundamental risk to the security of the employers business and HMRC's customers.

## 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**

ARC agrees with the RPC's appraisal of the assumptions set out in the department's impact assessment (IA). The Committee report<sup>4</sup> concluded that:

'The IA lacks evidence to support many of the quoted figures. In particular, the IA provides a central, critical assumption that 22% of the working days lost due to strike action will be covered by temporary workers (paragraph 64). This is essentially based on the maximum potential numbers of temporary workers available (27%), with an arbitrary reduction (para 28). The IA provides an extensive list of why employers might not get cover for all of the working days lost due to strike action (paragraph 26). These range from availability of temporary workers through skillsets to location of the strike. The paragraph appears to undermine the central assumption, as it provides reasons why it might be more beneficial to the employer to take

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<sup>4</sup> Regulatory Policy Committee: *Hiring agency staff during striker action: reforming regulation*. Date of issue: 18 August 2015. Available at: <https://www.gov.uk/government/collections/red-rated-impact-assessment-opinions-since-may-2015>

the short term costs associated with a strike instead of seeking temporary workers.’

‘The RPC considers that the case for the central assumption has not been made and that it is not a robust basis for assessing the costs, and, in particular, the benefits of this proposal. The IA notes that the consultation will be used to test the plausibility of these estimates, and the underpinning assumptions. The RPC view is that these estimates are an unsatisfactory basis for the consultation.’

The government’s assessment also fails to consider the impact of a future recovery on the supply of agency workers. As the labour market tightens, the pool of available agency workers is likely to reduce. As a result, employers are likely to face increased difficulties in hiring workers with the requisite skills and experience.

### 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**

ARC believes that this assumption is only partially correct. In the UK, most industrial action is time-limited. In 2014, two-thirds of all stoppages lasted for only one or two days and accounted for 633,000 days lost (80%) and 93% of workers taking part in industrial action.<sup>5</sup>

As a result, many employers recognise that it is preferable to accept the limited disruption caused by industrial action rather than taking the risks associated with the use of temporary staff or of the outsourcing of work. These risks include:

- The reduced quality of service provided or work performed
- Increased health and safety risks
- The negative impact on-going employment relations

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<sup>5</sup> ONS Data on days lost to industrial action.

If employers decide to hire staff on fixed term contracts to replace striking workers this effectively amounts to a lock-out of staff. This will vastly prolong the disputes and make them more difficult to resolve.

#### 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

**a) Please give your reasons**

ARC questions the accuracy of the data used in the impact assessment. It is widely recognised that the Labour Force Survey (LFS) seriously under-estimates the level of agency working in the UK, whereas the data published in the Recruitment Industry Trends 2013/14 refers to the number of placements of agency workers, as opposed to the numbers of workers engaged in agency work. Many agency workers are likely to have more than one placement per year. The Recruitment and Employment Confederation (REC) data may therefore over-estimate the number of agency workers in the UK.

The government's assessment of the numbers of agency workers who may be available for assignments at short notice is based on individuals who identify themselves as agency workers who are unemployed, inactive or employed but away from their job or waiting to take up a new job in the LFS survey.<sup>6</sup> The BIS analysis therefore includes individuals who have been required by the DWP to register with an employment agency as a condition for receiving on-going benefits. It is unclear whether this pool of workers will provide employers with the requisite skills and experience needed to cover for permanent staff. As noted above the use of inexperienced workers during industrial disputes raises serious concerns over health and safety in the workplace and for the general public. It is also likely to reduce the quality of services which are provided.

ARC believes that it would be deeply unfair if unemployed workers were pressurised into accepting an agency assignment which may undermine industrial action, for fear they otherwise they will lose out on benefits or face sanctions.

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<sup>6</sup> BIS (2015) *Hiring Agency Staff During Strike Action: Impact Assessment* p31 f/n 31.