

Agency cover and strike action

22 November 2023  Sarah Hooton

Between July 2022 and August 2023, employers had the option of using agency workers to cover for those taking part in official industrial action. However, following a successful judicial review challenge brought by thirteen trade unions, the prohibition set out in regulation 7 of the Conduct of Employment Agencies and Employment Businesses Regulations 2003 was, in effect, reinstated as a result of a decision of the High Court. The High Court's decision was based on the lack of consultation undertaken by the Secretary of State before revoking regulation 7 (read our article on [agency worker cover during strikes](#) for more information on this decision).

The Government has now decided to launch a new consultation on this issue. This consultation is very brief – consisting of only 5 questions. It seeks views on the current impact of regulation 7, and the impact of any repeal. As well as considering a total repeal, it seeks views on whether a more limited repeal for only certain sectors would be more appropriate. The consultation gives the example of limiting the repeal for those sectors listed in the Strikes (Minimum Service Levels) Act 2023; however, the impact assessment which accompanies this consultation does point out that the wider benefits from the proposed repeal are likely to be in industries not covered by any minimum service levels.

Whilst both the consultation and the impact assessment stress the permissive nature of the repeal – employers would still be able to choose not to make use of agency workers if they so wished, and agency workers would be free to turn down assignments – the proposals are still likely to be controversial. The impact assessment highlights that whilst the repeal would not prevent industrial action from being taken, it could affect the impact of the action and the bargaining power of the unions. As a result, the action could worsen relationships between employers and workers, leading to more prolonged action and a weakening of workers' ability to maintain or improve terms and conditions.

The [hiring agency staff to cover industrial action consultation](#) closes at 6pm on 16 January 2024.

[Respond to the consultation](#) →

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