

Department for Business & Trade

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Dear Sir or Madam

Re: Chartered Society of Physiotherapy response to ‘Hiring agency staff to cover industrial action’ consultation

The Chartered Society of Physiotherapy (‘CSP’) is the professional, educational and trade union body for the UK’s 60,000 chartered physiotherapists, physiotherapy students and support workers.

We fundamentally disagree with the government’s proposal to repeal Regulation 7 of the Conduct of Employment Agencies and Employment Businesses Regulations 2003. At its heart, despite the wording of the consultation, this is a further attempt to undermine the ability of trade union members to take effective industrial action to defend their pay and conditions.

Of considerable relevance, in our view, this is not a proposal that is called for or welcomed by employment agency employers. Commenting on this consultation, the chief executive of the Recruitment and Employment Confederation Neil Carberry, said: “The announcement of a consultation on whether to remove the prohibition on use of agency workers in strikes is a disappointment, given the scale of opposition from employers and workers to the previous proposal”.

In his judicial review judgment in 2023 on the previous Regulation 7 repeal Mr Justice Linden said: “the case for the measure was on any view less than overwhelming”. We agree with Mr Justice Linden.

Our response to the specific questions in the consultation are below.

1. Can you provide views and evidence on the effect that regulation 7 has on employment businesses, hirers, and agency workers? If so, please elaborate.

We believe that employers engaging agency workers during industrial action will be counterproductive and create a potentially divided workplace, increasing tension between employers and employees. The use of agency workers during industrial action means both are likely to become more entrenched in any dispute making it harder to resolve. This is a view shared by the REC, with Mr Carberry saying: “Strikes are industrial disputes within a single industry or firm. Inserting a third party like this into an industrial dispute may end up extending the dispute, not least by inflaming tensions”.

Agency workers employed during industrial action would be required to cross a picket line or turn down an assignment and risk not being offered future employment.

Agency workers are not protected from suffering a detriment if they refuse an assignment because they do not wish to replace striking workers. Many of our NHS members work as bank staff or with employment agencies to supplement

their earnings. This is often within their Trust, or a nearby Trust. These members would not be protected from victimisation for exercising their basic trade union rights. The alternative of agreeing to break the strike could leave them in a stressful environment at work.

2. What impact do you think the repeal of regulation 7 would have on workers and the wider economy and society?

The repeal of Regulation 7 will undermine workers' ability to organise collectively to protect their jobs, livelihoods and quality of their working lives.

The UK already has one of the most highly regulated systems of industrial action in the world. The proposal to repeal Regulation 7 is a continuation of existing changes already in place designed to make it harder for union members to organise collectively including:

- the Trade Union Act 2016 which brought in thresholds for industrial action ballots, an extended notice period before industrial action takes place, and restrictions on the ability of unions and their members to picket; and
- the Strikes (Minimum Service Levels) Act which allows employers to issue work notices in certain services requiring workers to work during periods of strike action.

The right to strike is a fundamental human right which is protected by an array of international treaties and human rights standards, including ILO Conventions, the UN Covenant on Social and Economic Rights, the European Social Charter (1961) and the European Convention on Human Rights.

The ILO Freedom of Association Committee has stated 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".

3. What are the sectors where repealing regulation 7 would be most applicable and do you think there are sectors it should not apply to? Please give reasons for your views.

As explained above Regulation 7 should not be repealed at all.

4. Do you have any views on the methodology used in the Impact Assessment provided alongside this consultation and does it represent all the likely costs and benefits?

The Impact Assessment contains little evidence, citing some news articles but with little attempt to understand the effect on those particular employers and workers. The Assessment notes that the government is unable to robustly estimate the impact on business.

It is surprising that the government did not attempt to measure the use of Regulation 7 when it had been repealed previously.

5. Do you have any other comments not covered by or evidence not provided in your response to the questions above that we should consider?

No.

– Ends –

Yours faithfully



Jim Fahie

