

Department for Business and Trade consultation on hiring agency staff to cover industrial action

Response of the Association of School and College Leaders

A. Introduction

1. The Association of School and College Leaders (ASCL) is a trade union and professional association representing over 25,000 education system leaders, heads, principals, deputies, vice-principals, assistant heads, business leaders and other senior staff of state-funded and independent schools and colleges throughout the UK. ASCL members are responsible for the education of more than four million children and young people across primary, secondary, post-16 and specialist education. This places the association in a strong position to consider this issue from the viewpoint of the leaders of schools and colleges of all types.
2. ASCL welcomes the opportunity to contribute to this consultation.
3. When considering the impact of any proposals on different groups, it is ASCL's policy to consider not only the nine protected characteristics included in the Equality Act 2010, but also other groups which might be disproportionately affected, particularly those who are socio-economically disadvantaged. We have answered any equality impact questions on this basis.

B. Key points

4. Repealing regulation 7 of the Conduct of Employment Agencies and Employment Businesses Regulations 2003 ("the Conduct Regulations") is an unnecessary provocation to UK trade unions that will bring no economic or societal benefit.
5. In its impact assessment of the regulations, the Department for Business and Trade provides a whole economy range of net financial gain from £51k to £3.5m (<https://assets.publishing.service.gov.uk/media/6555d62dd03a8d000d07fa0b/regulation-7-consultation-IA.pdf>). Taking the maximum of this range (which represents an unrealistically high productivity of agency workers and a relatively high level of the use of agency workers during strikes) the total effect on the UK economy with a GDP of £2.2tn is an increase of 0.00015%. This infinitesimally small increase is before any of the negative non-monetised impacts are taken into account.
6. We agree with the analysis in the impact assessment that the use of agency workers during strike action has the potential to worsen the relationship between employers and workers, which could lead to more prolonged strike action. We also agree that weakening the right of workers to collectively bargain on wages will reduce the money flowing to often low paid workers, thus lowering their spending power with inevitable societal impact.

7. ASCL does not believe that repealing Regulation 7 will work in an education setting, nor will it benefit children and young people. The use of agency workers will damage industrial relations at every level from individual schools to multi-academy trusts to local authorities, and at the national level with the English, Welsh and Scottish governments.
8. The best way to protect the education of children and young people in circumstances where strike action may happen is for constructive dialogue and negotiation to take place within the framework of an adequately funded education system.
9. Schools are complex ecosystems where trust and good will are a key part of their operation. This is even more the case in the current climate of acute recruitment and retention difficulties, with teachers, leaders and support staff all going far beyond their contractual obligations to ensure schools function effectively. The government must not underestimate the damage that could be caused by the loss of this good will.
10. The use of agency workers could result in our most vulnerable students being educated and cared for by staff who have not undergone appropriate training. It undervalues the expertise, care and consistency required in order to meet the needs of our most vulnerable students, and places them at unnecessary risk.
11. Parents may feel pressurised to send their children into a situation that would not be safe for their children; leaders might feel pressurised to bring people in who they would not normally have working with their most vulnerable students; and there is a real risk of escalation of vulnerabilities that can often take a few moments to unravel but many days, weeks or even years of work to address. This is without even considering implications for children with complex medical needs.
12. These proposals appear to actively encourage leaders to make decisions which could have significant negative implications for pupils' health and safety. This is a wholly unacceptable action for a government to encourage or require a public servant to take.
13. Feedback from ASCL members is that there are already issues with being able to source suitable supply teachers to cover for normal times. This is exacerbated by the need to use supply teachers for permanent vacancies that remained unfilled due to teacher shortages. School leaders are already having to deploy non-specialist teachers to cover specialist subjects. The ability of schools to draft in suitably qualified and experienced supply teachers to cover industrial action simply does not exist.
14. Even if it were possible to draft in a number of supply teachers in a strike situation, they would still need to have their work allocated and managed. It is difficult to envisage how this would take place should the leadership team themselves be taking part in the strike action, or if school leaders took the view that it would be inappropriate for them to do so and thus undermine the industrial action being taken by their colleagues.
15. There are significant safeguarding concerns over the use of agency workers away from supply teachers. Schools are protected environments where the safety and wellbeing of children is paramount. Bringing in unknown and untrained agency workers to cover for support staff (in any of their roles including teaching assistants, lunchtime organisers, technicians, etc.) carries significant risk. Finding DBS-checked agency workers will also prove problematic.

C. Answers to specific questions

Question 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.

16. Our view is that Regulation 7 helps ensure that the concerns above do not materialise.

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

17. As above. The repeal of Regulation 7 will bring no tangible economic benefit. Instead it will cause significant harm to industrial relations in a variety of settings and will harm the livelihoods of low-paid workers.

18. For the reasons outlined above, in an education setting the repeal of Regulation 7 has the capacity to cause immeasurable harm to the quality of education, the protection and safeguarding of all children (especially the most vulnerable) and to significantly damage industrial relations.

Question 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.

19. There are no sectors where we believe that repealing Regulation 7 would be beneficial.

20. We believe that Regulation 7 should remain in force without exception. There are, however, substantive arguments as to why education should be excluded from any future repeal – see above.

Question 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?

21. The methodology lacks data and instead is based on guesses and conjecture. No substantive evidence of the benefit to the economy or society is presented.

22. No attempt is made to calculate the harm caused by the use of agency workers prolonging strike action and/or harming industrial relations.

23. Similarly, no attempt is made to analyse the cost of the harm caused by temporary workers stepping in to cover for established permanent workers. In schools, for example, this could be the harm caused to a child in a SEND setting whose progress is set back by weeks or months by inexperienced staff.

24. In an education setting, the figures used in Table 1 show an average hourly output of £31 and an average cost of agency labour of £16. Setting aside the accuracy of these figures (the true cost of supply teachers is many times this amount), at the 50% productivity rate for agency staff referred to in the impact assessment, the use of agency staff is not, on average, cost effective.

Question 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?

25. No.

D. Conclusion

26. ASCL believes that the proposal to repeal Regulation 7 is misguided and unnecessary. It will bring no tangible economic benefit yet carries significant risk in terms damaging industrial relations and potentially prolonging strike action.
27. It carries specific risks in education in relation to education standards, the protection and safeguarding of all children, and the wellbeing of our most vulnerable children.
28. For these reasons, ASCL is fundamentally opposed to this proposal.

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