

## **Hiring agency staff during striker action: reforming regulation**

### **Department for Business, Innovation and Skills**

**RPC rating: not fit for purpose**

#### **Description of proposal**

The Government propose to revoke regulation 7 of the Conduct of Employment Agencies and Employment Businesses Regulations 2003, which prohibits employment businesses from providing temporary agency workers to employers facing industrial action. Agency workers would, therefore, supply the labour withheld by workers taking industrial action.

#### **Impacts of proposal**

The Department estimates that 22% of 650,000 working days lost due to industrial action would be covered by agency workers. The Department estimates that the benefit in terms of additional output, after deducting the wage costs of agency workers would be £12.5 million each year of which £2.9 million is a benefit to private sector businesses. In addition, the Department estimates that employment agencies receive fees totalling £2.6 million.

The Department assumes that businesses will also face familiarisation costs in becoming aware of the option of hiring agency workers as a result of revoking regulation 7. The Department has estimated a total cost of £1.2 million to human resource managers and directors of organisations affected by strike action, of which £0.1 million is a cost to private sector businesses.

#### **Quality of submission**

The RPC's view is that the IA is not fit for purpose as it does not provide sufficient evidence of the likely impact of the proposals to support the consultation. 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 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.

While the proposal is deregulatory, the size of the expected OUT would appear to depend very much upon businesses' judgment made in relation to paragraph 26 and this should be discussed in any final IA.

The RPC notes that the IA has already been published for use in a public consultation, without prior scrutiny by the RPC. The Department must, therefore, address all these issues within the final stage IA.

In addition to the above points, the IA would benefit from:

- clarifying how many businesses need to be aware of the proposals. The Department explains that, based on an annual average of 128 stoppages between 2010 and 2014, it expects only 128 employers will need to be familiar with the proposals (paragraph 32). However, it may be that all employers will need to be familiar with the changes and not just the 128 quoted as having experienced stoppages;
- providing further evidence to support the estimates of familiarisation costs. The IA states that it will take employers half an hour to become familiar with the requirement. This assumption appears unsupported by any evidence. The Department must seek evidence from the consultation to strengthen these assumptions; and
- strengthening the evidence on the impact of the proposal on productivity. Possible explanations are provided as to how agency workers may lower the usual productivity of the workplace due to their lesser attachment to the firm in paragraph 48, but they are currently discounted.

## Other comments

The Department has provided figures to show that around 67% of employment businesses are micro firms, with fewer than 10 employees. Small firms, with between 10 and 49 employees, comprise a further 19% of employment businesses (Table 1). As the proposal will allow employment businesses to provide temporary agency workers to employers facing industrial action, it is likely to be beneficial to employment businesses of all sizes by potentially providing additional opportunities to supply labour. The proposal will also be beneficial to employers, including micro and small businesses, by allowing business continuity during industrial action. The RPC, therefore, accepts that there appears no justification or requirement for

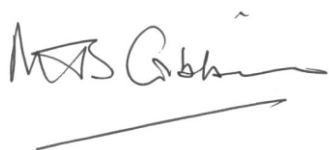
exemption, or other special treatment for small or micro businesses under the proposal. The SaMBA appears reasonable for this stage. At the final stage, the Department should provide further analysis of the impacts of the proposal on small and micro businesses, including both employment agencies and those businesses subject to strikes.

### Initial departmental assessment

Classification	In scope
Equivalent annual net cost to business (EANCB)	−£2.32 million
Business net present value	£27.07 million
Societal net present value	£106.12 million

### RPC assessment

Classification	In scope
Small and micro business assessment	Sufficient at this stage



**Michael Gibbons CBE**, Chairman