

<b>Title:</b> Repeal of Regulation 7 of the Conduct Regulations  <b>IA No:</b> DBT-002-(IAC)-23-CMRR  <b>Lead department or agency:</b> The Department for Business and Trade	Impact Assessment (IA)
	<b>Date:</b> 01/11/2023
	<b>Stage:</b> Consultation
	<b>Source of intervention:</b> Domestic
	<b>Type of measure:</b> Secondary legislation
	<b>Contact for enquiries:</b> lm.correspondence@beis.gov.uk
<b>Summary: Intervention and Options</b>	<b>RPC Opinion:</b> Not required as De Minimis

**Cost of Preferred (or more likely) Option (in 2019 prices)**

Total Net Present Social Value	Business Net Present Value	Net cost to business per year	Business Impact Target Status Qualifying provision
£m 0.0*	£m 0.0*	£m 0.0*	

**What is the problem under consideration? Why is government action or intervention necessary?**

Employment businesses under Regulation 7 of the Conduct Regulations are prohibited from providing temporary agency workers to hirers to replace workers engaged in periods of official industrial action. Businesses can bring in staff to provide cover but only if they hire the workers directly. There may be some employers who want to maintain basic elements of their business during a strike but who lack the capacity or capability within the current legal framework to do so because they cannot use an employment business to hire temporary workers. The Government believes that business freedom to operate should only be restricted when it is necessary and proportionate to do so. It considers Regulation 7 as an unnecessary restriction of business freedom.

**What are the policy objectives of the action or intervention and the intended effects?**

The objective of the policy is to remove an unnecessary barrier to businesses' freedom to operate and thereby help to facilitate economic growth. The proposed policy will maximise the flexibility businesses have at their disposal to manage their workforces, including during periods of industrial action. The policy option will enable employers facing strike action to use employment business services to bring in suitably qualified temporary agency workers. It will also maximise the flexibility that agency workers offer by allowing employment businesses to provide opportunities to agency workers as cover for striking workers, and for agency workers to accept such roles if they choose. Therefore, agency workers will be able to perform some, or all functions not being carried out due to the industrial action allowing employers in to continue operating. This will reduce the impact of the dispute on the business and wider economy.

**What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)**

The policy option is to revoke Regulation 7 of the Conduct Regulations across all sectors and thereby allow employment businesses to provide temporary agency workers to employers facing industrial action to perform the work affected by workers taking part in industrial action. The consultation asks for evidence on whether there are sectors in which repealing Regulation 7 would be most effective.

<b>Will the policy be reviewed?</b> It will be reviewed (non-statutory) <b>If applicable, set review date: July 2027</b>				
Is this measure likely to impact on international trade and investment? No				
Are any of these organisations in scope?	<b>Micro</b> Yes	<b>Small</b> Yes	<b>Medium</b> Yes	<b>Large</b> Yes
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)	<b>Traded:</b> N/a		<b>Non-traded:</b> N/a	

*I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.*

Signed by the responsible Minister

Date:

# Summary: Analysis & Evidence

# Policy Option 1

**Description:** Repeal of Regulation 7 of the Conduct Regulations

## FULL ECONOMIC ASSESSMENT

Price Base Year 2019	PV Base Year 2024	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate: 0.0*

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	0.3	1.7	14.6

### Description and scale of key monetised costs by 'main affected groups'

There will be small familiarisation costs for employment businesses (£0.16m), unions (£0.002m) and annual familiarisation for employers in industrial disputes (£0.02m). There is no requirement for any of these organisations to act on this policy. We have undertaken break-even analysis, and if only 1.5% of working days lost through industrial action a year are covered by agency workers it is likely to deliver positive impacts on the economy. If we assume 1.5% of working hours lost are recovered through agency workers, the annual cost in hiring the agency workers is around £1.66m

### Other key non-monetised costs by 'main affected groups'

If temporary agency workers were used as cover during strikes, then it could lessen the impact of the strike and may weaken the power of affected workers (via their union) to negotiate the terms they were looking for.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	-	1.7	14.6

### Description and scale of key monetised benefits by 'main affected groups'

We have undertaken break-even analysis, and this suggests that only 1.5% of working days lost through industrial action a year would need to be covered by agency workers at 50% of the productivity for the policy to break even. If employers can utilise more agency workers, then the benefits of this policy are likely to be significantly higher. If we assume 2% of workers that are on strikes are replaced, the increased output for business is estimated to be £1.7 million. Most of the annual costs estimated above will transfer to agency workers as wages, with some going to employment businesses as fees for work-finding services.

### Other key non-monetised benefits by 'main affected groups'

There may be wider benefits to the wider economy if some employers facing strike action are able to maintain some activity.

<b>Key assumptions/sensitivities/risks</b>	<b>Discount rate</b>	3.5
There is uncertainty on which temporary agency workers would be able temporarily fill-in for regular workers on strike, for a range of reasons. We have therefore illustrated a scenario where the policy breaks even over 10 years. If employers can utilise more agency workers at the same level of productivity as used above, then the impacts of this policy would be higher. Different levels of relative productivity have different break-even levels of working hours recovered on this basis.		

## BUSINESS ASSESSMENT (Option 1)

<b>Direct impact on business (Equivalent Annual) £m:</b>			<b>Score for Business Impact Target (qualifying provisions only) £m:</b>
<b>Costs:</b> 1.7	<b>Benefits:</b> 1.7	<b>Net:</b> 0.0	
			0.0

\* \* Note that this is a permissive change and employers will only hire agency workers where the impact to them is positive. To estimate the exact impact of this measure, we would need to make several assumptions about variable factors and do not have the evidence to do this. Therefore, this Impact Assessment uses a

simple model that looks at the impacts from the perspective of hiring businesses and carries out “break even” analysis. This does not include non-monetized impacts, like possible wider benefits on the rest of the economy or the cost to workers of reduced power. As a result, this policy change is likely to be net beneficial, however, we are unable to robustly estimate the magnitude of that impact.

# Evidence Base

## Problem under consideration

- 1) The United Kingdom has one of the most flexible labour markets in the developed world according to the OECD: tenth for permanent employees (behind USA, Canada, Australia, Switzerland, Austria, Hungary, Costa Rica, Uruguay and Peru) and second to the US on temporary contracts<sup>1</sup>. The flexibility of the UK's labour market allows people to easily move between jobs and allows businesses to quickly respond to changing demands, which results in high participation, high employment, and low unemployment. The Government is committed to ensuring that employment law supports and maintains the UK's flexible labour market.
- 2) The recruitment sector plays an important role in ensuring the UK's labour market works effectively by improving the efficiency of matching demand for jobs to demand for workers. It places approximately 980,000 temporary agency workers into work on any given day<sup>2</sup>. The recruitment sector is regulated by the Employment Agencies Act 1973<sup>3</sup> ("the 1973 Act") and the Conduct of Employment Agencies and Employment Businesses Regulations 2003 ("the Conduct Regulations")<sup>4</sup>. The Act and the Conduct Regulations govern the three-way relationship between an employment agency/employment business, a hirer and a work-seeker. Regulation 7 of the Conduct Regulations prohibits employment businesses from providing temporary agency workers to employers to perform work a) normally carried out by a worker who is on strike or other industrial action, or b) normally carried out by a worker who is temporarily performing the work of a worker on industrial action. This restriction does not apply if the industrial action is unofficial (as defined in the Trade Union and Labour Relations (Consolidation) Act 1992 and neither does this restriction apply to employment agencies (as defined in section 13 of the 1973 Act).
- 3) This reflects the current situation. However, for a period from July 2022 to August 2023, Regulation 7 was repealed. In July 2023, the High Court ruled that the Secretary of State had not complied with his duty to consult and, accordingly, quashed the regulations. The prohibition in regulation 7 was reinstated from 10 August 2023.
- 4) Workers in the UK can take industrial action against their employer<sup>5</sup>. It is used as a last resort when workers have a grievance with their employer over aspects of their employment relationship. Industrial action is designed to impose an economic cost on the employer, in order to encourage the employer to resolve the grievance. Workers taking industrial action will also face a cost as they will lose their pay for the hours they don't work. To take official industrial action, the union must successfully ballot its members in the bargaining unit in dispute with their employer, and the ballot must pass the ballot thresholds introduced in the Trade Union Act 2016. When announcing industrial action dates following a successful ballot, the union must give the employer 2 weeks' notice before industrial action commences. Many successful ballots do not lead to industrial action, often because employers and unions are able to negotiate a solution to the dispute while industrial action is pending.
- 5) However, industrial action will often cause an employer to lose output, potentially with longer term business costs. Industrial action will also cause negative externalities: costs on employers and individuals not involved in the dispute. For instance, strikes in public services such as education can require parents to look after children rather than work or carry out other activities. Children affected will also suffer from not being in school and from missing some education. Businesses may suffer from missing workers or customers due to parenting requirements. Similarly, if postal workers were to strike, individuals and employers reliant on postal services would be placed at a disadvantage due

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<sup>1</sup> OECD Strictness of Employment Protection Legislation indicators – 2019 data for version 4 of these indicators (the latest most complete versions) – downloaded on 15<sup>th</sup> June 2022.

<sup>2</sup> The Recruitment and Employment Confederation's Industry Trends Survey 2020/21

<sup>3</sup> Employment Agencies Act 1973, [http://www.legislation.gov.uk/ukpga/1973/35/pdfs/ukpga\\_19730035\\_en.pdf](http://www.legislation.gov.uk/ukpga/1973/35/pdfs/ukpga_19730035_en.pdf)

<sup>4</sup> The Conduct of Employment Agencies and Businesses Regulations 2003 <https://www.legislation.gov.uk/uksi/2003/3319/contents>

<sup>5</sup> GOV.UK, Taking part in industrial action and strikes, <https://www.gov.uk/industrial-action-strikes/your-employment-rights-during-industrial-action> (accessed 21 June 2022)

to the resulting large backlog of deliveries<sup>6</sup>. There has been a recent increase in the level of industrial action in the UK, with working days lost by striking workers reaching 4 million in the year to June 2023. While there was a hiatus in the ONS Labour Disputes Survey in 2020 and 2021, in the 10 years prior to that (2010-2019) there were an annual average of 435,000 working days lost by striking workers<sup>7</sup>.

- 6) Currently, there are some ways that employers facing industrial action are able to obtain cover for the work affected by industrial action:
- ◆ directly employing new staff (this can be done with or without using an employment agency – a business that sources workers for direct hires by an employer). The employer could use a training provider to train these workers before utilising them.
  - ◆ contracting the work out to a service provider.
- 7) However, Regulation 7 of the Conduct Regulations currently prohibits employment businesses from providing temporary agency workers to employers facing strikes. This prevents hirers in this situation from using temporary agency workers and prevents these agency workers from accessing these work opportunities through an employment business. Employment businesses are denied the opportunity to supply workers in these situations.

## Consultation

- 8) In 2015, the government consulted on repealing Regulation 7 across all sectors. However, ministers decided not to go ahead at that time, in order to prioritise wider trade union reforms.
- 9) The Secretary of State then repealed Regulation 7 of the Conduct Regulations across all sectors in July 2022 through affirmative regulations. The Secretary of State was under a statutory duty to consult before repealing these regulations. The Secretary of State at the time, relied on the 2015 consultation to discharge this duty as he considered the fundamental issues were unchanged and that a further consultation was unlikely to produce any new information that he was not already aware of.
- 10) The legislation that implemented this repeal was successfully challenged through a judicial review that was heard in the High Court in May 2023. The High Court ruled that the Secretary of State had not complied with his duty to consult and, accordingly, quashed the regulations. The Court ordered that the prohibition in Regulation 7 was reinstated from 10 August 2023.
- 11) The government believes it should only restrict businesses' freedom to operate when this is both necessary and proportionate. As already mentioned, regulation 7 is an interference the operational freedom of employment businesses. In addition, the government remains committed to protecting individuals' ability to strike and of trade unions to advocate for their members' interests through calling industrial action. Making this change is about ensuring an appropriate balance between the ability of individuals to strike and the rights of employers' operational freedom (including during strikes) and of third parties not involved in the dispute. We are consulting to gather evidence about whether repealing Regulation 7 is needed and proportionate so that, before reaching a final decision on this, Ministers are aware of all relevant evidence.
- 12) The consultation will run for 8-weeks from 16 November. We are particularly interested in views from employment businesses and hirers, agency workers themselves, employees/workers who may be on strike and replaced by agency workers as well as business and worker representatives. We do, however, welcome views from all interested parties.
- 13) The consultation asks respondents to:

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<sup>6</sup> S. Treanor, Royal Mail Strike: What will the impact be?, BBC News, 16 October 2013 <http://www.bbc.co.uk/news/business-24551650> (Accessed 12 June 2015)

<sup>7</sup><https://www.ons.gov.uk/file?uri=/employmentandlabourmarket/peopleinwork/workplacedisputesandworkingconditions/datasets/labdlabourdisputesintheuk/august2023/labourdisputesaugust23.xlsx>

- ◆ Provide evidence of the potential impacts of the repeal of Regulation 7 on the wider economy or society.
- ◆ Provide evidence of the positive or negative effects that Regulation 7 has on employment businesses, hirers or agency workers.
- ◆ Say whether there are sectors where the repeal of Regulation 7 would be most helpful or sectors where it should not apply to
- ◆ Consider whether this impact assessment is an accurate assessment of the likely costs and benefits

## Previous Impact Assessments

- 14) The Government published an Impact Assessment (IA) on the revoking on Regulation 7 on 11<sup>th</sup> July 2022 to accompany the legislation noted in Paragraph 7. Our evidence base on businesses using agency workers during strikes is limited and included within the IA. We have not received any feedback on the analytical framework used in that IA.
- 15) As a result, this IA follows the same “break-even” methodology to assess the impacts of the revoking Regulation 7. We welcome views from stakeholders during the consultation on the assumptions and evidence used in this Impact Assessment. This will be used to inform a final-stage IA if required.

## Background

### Recruitment sector

- 16) Employment businesses play an important role in our economy, contributing £28 billion in Gross Value Added 2021<sup>8</sup>. In 2022, there were around 10,725 employment businesses<sup>9</sup> within the recruitment sector. Employment businesses supply hirers with workers on a temporary basis (Table 1). While most employment businesses are micro businesses, the proportion accounted for by micros is lower than in the economy as a whole.
- 17) In 2020/21 employment businesses placed around 980,000 individuals in temporary agency assignments on any given day. In 2021/22, according to the Recruitment and Employment Confederation (REC), there were over 22 million temporary placements made by employment businesses<sup>10</sup>. These temporary placements represented 3% of total employment in the UK. The sector supplies workers for a wide range of jobs, ranging from the highly skilled (e.g. IT) to the low paid and low skilled. According to BEIS analysis of the Labour Force Survey in 2022, agency workers are employed in occupations in all the major SOC20 occupation groups. Around 22% were in elementary occupations, while 20% were in professional occupations.
- 18) According to REC analysis for 2017/18, over four-in-five temporary/contract placements last for at least 5 weeks, with 36% lasting for at least 16 weeks<sup>11</sup>.

### Labour dispute stoppages

- 19) Over the period 2015 to 2019<sup>12</sup>, there were an annual average of 93 disputes involving strike action, which accounted an annual average of around 253,000 working days lost. Over the five years to

<sup>8</sup> ONS Non-Financial Business Economy 2023 release. In comparison, according to the same source, the manufacture of motor vehicles and trailers contributed around £10bn in 2021, while telecommunications contributed around £33 bn.

<sup>9</sup> ONS, UK Business Counts 2022. The official Standard Industrial Classification places businesses within industries on the basis of their primary activity. These figures relate to the number of enterprises that are registered for VAT and/or PAYE, and rounded to the nearest 5. There are two legally defined types of business models in the sector; *employment agencies* who introduce people to hirers for permanent employment; and *employment businesses* (also known as temping agencies) who introduce people to hirers for temporary work. Many recruitment businesses operate as both employment agencies and employment businesses.

<sup>10</sup> REC Recruitment Industry Status Reports 2020/21 and 2021/22.

<sup>11</sup> Recruitment and Employment Confederation, Recruitment Industry Trends 2017/18 – more recent versions do not contain this information.

<sup>12</sup> Note that the ONS did not collect data on working days lost between January 2020 and December 2021.

2019, public administration, education, health and social care accounted for nearly 56% of working days lost, with transport and storage accounting for 30%. Close to 40% of these disputes involving industrial action involved just 1 day of strike action, with a further fifth involving two days<sup>13</sup>.

20) In the 12 months to June 2023, industrial action increased significantly with 4 million working days lost by workers on strike, at an average monthly rate of 330,000 days lost, peaking at 829,000 working days lost in December 2022<sup>14</sup>. A major factor driving industrial action is inflation and fall in real wages. Inflation is expected to decrease significantly over the next 12 months: the Bank of England forecast that inflation will fall to 5% by the end of 2023 and return to the 2% target by early 2025<sup>15</sup>. Data for the most recent months show lower levels of strike action (131,000 days lost in May 2023 and 160,000 in June 2023), albeit still higher than before the Covid-19 pandemic.

### **Evidence of use of agency workers to cover striking workers**

21) There is no comprehensive data source that would enable a quantitative assessment of the extent of use of agency workers to provide cover during strikes during the period in which Regulation 7 has been repealed. We have been able to find a few examples being reported online.

- ◆ Unite the union report that Harrods used agency workers to cover for striking security guards and CCTV operators in November and December 2022. They say that it is one of the first times that agency workers have been brought in since the repeal of Regulation 7.<sup>16</sup>
- ◆ Novara Media report that St Mungo's homeless charity made 'extensive use of agency workers' to provide cover while workers were on strike<sup>17, 18</sup>.
- ◆ The Guardian reports that agency workers may have been brought in to cover for security guards at UCL in November 2022<sup>19</sup>.
- ◆ The Guardian reports that the first employer to use the repeal of Regulation 7 was Draper's Prygo primary school in Romford, which brought in agency workers to temporarily replace 10 striking support staff<sup>20</sup>.

### Existing options for employers facing industrial action

22) As noted above employers facing strike action have some options to use alternative labour to replace their workers on strike. These options largely involve the employer directly hiring temporary staff. This may involve a significant administrative burden, in terms of handling payroll and pension issues, recruitment processes and contractual arrangements to resolve industrial action that typically last 1 or 2 days. Employers would also face the difficulty in finding a ready supply of workers available for direct hire at short notice for a short-term post. Sub-contracting services at short-notice on a temporary basis is also likely to prove relatively expensive. As above for use of agency workers, there is no comprehensive data source on the extent to which alternative labour is used during strikes. The Employment Agency Standards Inspectorate, which enforces the Conduct Regulations, receives very few complaints about potential infringement of Regulation 7 (just 2 in 2018/19 and 2020/21 and 3 in 2021/22)<sup>21</sup> which suggests that there may be limited usage of the current options.

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<sup>13</sup> BEIS analysis of the Labour Disputes Survey.

<sup>14</sup> ONS Labour Disputes Survey

<sup>15</sup> Monetary Policy Report, August 2023, The Bank of England

<sup>16</sup> [Harrods' strike breaking agency employed under new anti-union law named and shamed \(unitetheunion.org\)](https://www.unitetheunion.org)

<sup>17</sup> [Housing Charity Accused of Trying to 'Get Around Law' to Break Strike | Novara Media](https://www.novaramedia.com)

<sup>18</sup> [St Mungo's: Charity staff end strike after 10.7% pay deal - BBC News](https://www.bbc.com/news/health-63444444)

<sup>19</sup> [UCL academics criticise use of agency workers to replace striking security staff | UCL \(University College London\) | The Guardian](https://www.theguardian.com/education/2022/nov/22/ucl-academics-criticise-use-of-agency-workers-to-replace-striking-security-staff)

<sup>20</sup> [London school uses law change to replace striking staff with agency workers | Schools | The Guardian](https://www.theguardian.com/schools/2023/jun/01/london-school-uses-law-change-to-replace-striking-staff-with-agency-workers)

<sup>21</sup> Employment Agency Standards Inspectorate internal management information

## Rationale for intervention

- 23) Regulation 7 of the Conduct Regulations currently prohibits employment businesses from providing temporary agency workers to perform the work normally carried out by workers who are taking part in industrial action, or by those who have been allocated work normally carried out by the workers on industrial action.
- 24) This prevents employers facing industrial action from accessing a potential supply of available labour to enable them to provide a service to customers during the industrial action. Industrial action is designed to have a negative impact on the employer with which the striking workforce is in dispute. However, it can also have an impact on businesses, employers and workers with which the striking workers do not have a dispute (the negative externalities associated with industrial action). These would include preventing workers and other individuals from carrying out other activities, including accessing other services provided by other businesses, thereby affecting these businesses' turnover on strike days. The removal of Regulation 7 from the Conduct Regulations would enable some employers facing strike action to provide some services/output by employing temporary agency workers as cover, thus minimising the effects of the industrial action, including negative externalities. The use of agency workers by employers in this situation will be determined by their assessment of business need and will differ depending on the type of work done by the employer and the particular circumstances facing the employer.
- 25) The removal of Regulation 7 would also remove the restriction on temporary agency workers accessing placements which provide cover for work affecting industrial action, giving them the same opportunities to access work as other work seekers. It would also provide employment businesses with additional opportunities to supply labour.
- 26) This government has introduced other recent reforms affecting industrial action. The Trade Union Act 2016<sup>22</sup> introduced ballot thresholds to ensure industrial action had broad support of union members within a bargaining unit in dispute. The primary source of evidence of the impact of the introduction of thresholds comes from the trade union annual returns provided to the Certification Officer (CO)<sup>23</sup>. The CO has not collated this evidence, but DBT analysis of the data provided in the annual returns for 2018, 2019 and 2020 indicates that there were 3,399 industrial action ballots over the three year period of which over 94% were successful (more than 50% of the vote in favour). Of the successful ballots, slightly over 67% passed the relevant thresholds (around 80.5% in 'important public services' and slightly under 62% in other industries – the latter pushed lower by ballots in many individual higher and further education establishments failing to reach the thresholds). It should be noted that ballot questions asking about strike action and action short of a strike are treated in these data as separate ballots. It is difficult due to a lack of direct links between ballot and industrial action in the data to precisely estimate how many ballots that were successful and passed the thresholds actually led to industrial action.
- 27) The Government is also introducing minimum service levels in some public services to ensure that when strikes take place in these services a minimum level of service will still be provided by the usual workforce in employers facing action. The Strikes (Minimum Service Levels) Act 2023 became law in July<sup>24</sup>. The Act specifies that minimum service levels during strikes (only) can be set in health, services, education services, transport services, fire and rescue services, border security and decommissioning of nuclear power stations and management of radioactive waste and spent fuel<sup>25</sup>. The actual details of the minimum service levels have been consulted on for some services, such as rail, ambulances and fire and rescue services. Government will set the minimum service levels through secondary legislation in the coming months.

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<sup>22</sup> [Trade Union Act 2016 \(legislation.gov.uk\)](https://legislation.gov.uk)

<sup>23</sup> [Trade unions: current list - GOV.UK \(www.gov.uk\)](https://www.gov.uk)

<sup>24</sup> [Strikes \(Minimum Service Levels\) Act 2023 - Parliamentary Bills - UK Parliament](https://www.parliament.uk)

<sup>25</sup> [Strikes \(Minimum Service Levels\) Act 2023 \(legislation.gov.uk\)](https://legislation.gov.uk)



## International comparisons

28) Ireland and Switzerland<sup>26</sup> allow businesses to use agency workers to cover workers engaged in strikes. However, there is limited evidence<sup>27</sup> about the extent of use of agency workers to cover striking workers in these countries.

## Policy Objectives

29) The objective of the policy is to enable employers to have freedom of operation when facing strike action by repealing Regulation 7. This repeal would improve the options available to businesses for managing their workforce during a period of industrial action and ensure agency workers are able to access suitable roles that involve covering a strike, if they wish to take them. By enabling employers facing industrial action to use temporary agency workers from employment businesses, where employers determine that using agency workers will be beneficial to their organisation, agency workers will be able to perform some of the functions not being carried out due to the industrial action. This will allow some functionality for employers when industrial action takes place, which will enable them to carry out some key services. This may help to reduce the negative externalities of strike action.

## Description of Policy Option

30) Regulation 7 in the Conduct Regulations will be revoked. Employment businesses will be permitted to supply temporary agency workers to hirers in any sector facing industrial action. These agency workers will be able to carry out work normally performed by a) workers who are taking industrial action, or b) workers who have been allocated work normally performed by workers taking industrial action provided they are suitably qualified. This will be a permissive measure. Employment businesses would be permitted, but not required by the potential repeal, to supply agency workers to their hirers to cover strikes. Similarly, agency workers would be free as they are now to turn down any assignment they are offered.

31) Alternative to regulations were not considered because without repealing Regulation 7, agency workers would not have access to the potential for extra placements from this work and similarly, businesses would not be able to access to these workers when their regular workers were on strike. Therefore, the choice for this proposed reform is either the status quo or removing Regulation 7. However, we are also seeking views through the consultation on what the potential impact would be of limiting the sectors into which employment businesses could supply agency workers to cover strikes.

## The main stakeholders

32) The main stakeholders affected by the proposed changes to the recruitment sector regulations are:

- Employment businesses
- Employers facing industrial action
- Temporary agency workers
- Union workers and unions
- Third parties - businesses, customers and individuals negatively impacted by the strikes - but not involved in the dispute.

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<sup>26</sup> A 2020 document by Eversheds-Sutherland on the law and practice of industrial action in 15 European Countries [https://www.eversheds-sutherland.com/documents/services/employment/Industrial\\_action%20guide\\_v3.pdf](https://www.eversheds-sutherland.com/documents/services/employment/Industrial_action%20guide_v3.pdf)

<sup>27</sup> Based on internet searches on 19<sup>th</sup> September 2023

## Policy option costs and benefits

33) This Impact Assessment identifies both monetised and non-monetised impacts on employers, employment businesses and work-seekers with the aim of understanding what the overall impact to society might be from implementing these options. The costs and benefits of the proposed option are compared to the no change option. Where possible, the estimated costs and benefits have been monetised, but it is not possible to monetise all the potential impacts.

- **Option 0:** The ‘do nothing’ option, provides the baseline against which the other proposals are compared.
- **Option 1:** The Government is proposing to revoke Regulation 7 of the Conduct Regulations across all sectors. We consider within that the impacts of restricting the revocation to specific industries or services.

34) Option 1 is the preferred option as without the repeal of Regulation 7 in some form then the permissive change that allows employers to use agency workers to provide cover for workers on strike would not happen.

35) Option 1 will allow employers to use agency workers to cover for striking workers. Therefore, we are looking at the difference that this option will make to the employers facing strikes – they can increase output, but face costs of hiring agency workers relative to the counterfactual of not having extra output (in addition to that they are able to achieve during strike action) and not having to pay agency worker hiring costs.

## Summary of costs and benefits

36) We estimate that there are familiarisation costs of around:

- ◆ £155,000 one-off costs for employment businesses
- ◆ £19,000 each year for employers facing industrial action ballots (totalling £191,000 over 10 years)
- ◆ £2,000 one-off costs for trade unions

37) We have not monetised the benefits of the additional output from hiring agency workers to cover striking workers or the costs of hiring these workers. We have not monetised the costs to workers or unions of loss of bargaining power and potential social impacts resulting from this, or the benefits to employment businesses or agency workers. Some of these elements have been considered in the break even analysis described below. Impacts on wider society have also not been monetised.

38) This is an enabling reform and employers will only hire agency workers when the net benefit to them is positive. To estimate the impact of this measure, we would need to make several assumptions and do not have the evidence to do this. Therefore, we have developed a simple model that looks at the impacts from hiring businesses perspective and carried out “break-even” analysis. This shows that if agency workers were able to reduce annual average working days lost by 1.5%, with around half the productivity of regular workers, then the impact of this policy would be neutral (break-even). This does not include non-monetized impacts, such as the wider benefits on the rest of the economy if some employers facing strike action can maintain some activity. Therefore, we are confident that this policy change is likely to be net beneficial, but we are unable to robustly estimate the size of this impact.

39) Using our illustrative assumptions there would be an annual benefit to employers of £1.7 million from increased output during strike action. Employers would incur an annual cost of £1.6 million to pay agency workers and employment businesses; a net benefit to employers of £38,000. For this estimate, also taking into account familiarisation costs, the Equivalent Annual Net Cost to Business

would be £0 million, and the ten-year Net Present Value would be £0.0 million, at 2019 prices and 2020 Net Present Value.

40) Given the low estimates, and the fact that it is difficult to precisely affect whether employers facing strike action are in the public or private sector, the EANDCB figure is based on estimates for all strike action.

### Summary table

Familiarisation costs	£ million
One-off costs to employment businesses	0.155
One-off costs to unions	0.002
Annual costs to employers facing strikes	0.019
Break even analysis (1.5% hours lost recovered at 50% productivity)	
Annual output recovered by employers facing strikes	1.7
Annual cost of hiring agency workers	1.66

41) To estimate our costs and benefits we need to make a number of assumptions, which are summarised in the table below. One of the key assumptions is on the level of industrial action covered in this analysis. Recent industrial action levels have been much higher than in recent decades. However, if the factors driving recent industrial action become less significant going forward previous levels of industrial action may be a better predictor of future action.

42) We make an assumption that the historic pattern of industrial action in recent years for which we have data (both including and excluding the past year) is likely to be representative of industrial action that will occur in the following 10 years. Our main assumption is that strike action is unlikely to remain at the current elevated level once inflation falls to more moderate levels. The Bank of England currently forecast that inflation will fall to 5% by the end of 2023 and return to the 2% target by early 2025.

### Assumptions log

Assumption 1	Familiarisation - time	We assume an HR director or union general secretary would take an average of 30 minutes to familiarise: the policy relates to periods of strikes only, Regulation 7 was repealed for a period recently, it is a straightforward change to familiarise with
Assumption 2	Familiarisation - coverage	We assume all non-federated unions that can legally strike would familiarise themselves with the change, and the annual average of employers facing a ballot in 2018 or 2019 or facing a strike in the year to June 2023 – these are likely to be high estimates
Assumption 3	Working hours lost	We assume an average based on the years 2015 to 2019 (reflecting the level of strike action in the 2000s) and January 2022 to June 2023 – taking account of the recent high level of strike action – to strike a

		balance between the two as it is expected that strike action would moderate from the recent high levels
Assumption 4	Proportionate use of agency workers	Given the lack of quantitative information on occupations taking strike action we assume a fixed percentage of working hours lost are regained by using agency workers, and this percentage is applied to the differing levels of average annual working hours lost by broad industry (to allow for different industry agency costs and outputs to be used)
Assumption 5	Relative productivity	For our main break even analysis we assume that agency worker productivity is 50% of that for usual workers. We provide sensitivity analysis looking at higher relative productivity (80%)

## Transition costs

### Familiarisation

- 43) Three main groups may familiarise themselves with the repeal of Regulation 7 of the Conduct Regulations: employment businesses (who provide work finding services for temporary agency workers), unions, and employers who might face strike action.
- 44) As noted above, there are around 10,725 employment businesses in Great Britain. They should already be familiar with the Conduct Regulations, and therefore we estimate that it would take an average of half an hour of an HR directors<sup>28</sup> time to take account of this legislative change, given how straightforward it is. This is in line with the estimated familiarisation time for the reform of Section 9 of the Employment Agencies Act, which similarly did not place any burden on employment businesses but potentially affected how any enforcement inspection might be conducted<sup>29</sup>. No requirement is being placed on employment businesses by this proposed change. The businesses would already have familiarised themselves with the change last year so further familiarisation should not be burdensome. Employment businesses should already be familiar with aspects of health and safety and aware of requirements for qualifications or other documentation for certain roles. Hirers should also specify the skills, health and experience (and any other) requirements for agency workers they want to take on when arranging with the agency to obtain workers. This would not be an additional activity required by the repeal of Regulation 7. According to the ONS 2022 business counts, around 68% of employment businesses are micro businesses, primarily with 0 to 4 employees. According to the Annual Survey of Hours and Earnings (ASHE) 2022<sup>30</sup> the median salary for an HR Manager or Director is £24.59. The latest estimate from the ONS Index of Labour Costs per Hour<sup>31</sup> is that non-wage labour costs are 17.9% of wages. We therefore estimate that the hourly labour cost for this occupation are £28.99. We estimate that the familiarisation cost for employment businesses =  $10,725 \times 0.5 \times 28.99 = £155,000$ .
- 45) It is difficult to precisely estimate the number of employers who might face strike action. Evidence from 2018 and 2019 trade union annual returns suggest that only a minority of trade unions have balloted for industrial action. There are also relatively few disputes each year, and even fewer that result in industrial action. Therefore, it isn't sensible to expect all employers with a recognised trade union would familiarise themselves with this change, as many would have no reason to. Our approach is therefore to estimate that employers will familiarise themselves with this change when

<sup>28</sup> While not everyone in employment businesses and employers who familiarises themselves with the change would be an HR Manager or Director this provides a good general proxy for a high paid role specialising in people management.

<sup>29</sup> It is also in line with the estimated familiarisation time for extending the right to a written statement to dependent contractors <https://www.legislation.gov.uk/uksi/2019/731/impacts>.

<sup>30</sup> [Earnings and hours worked, occupation by four-digit SOC: ASHE Table 14 - Office for National Statistics \(ons.gov.uk\)](https://www.ons.gov.uk/employment-and-hours-worked-occupation-by-four-digit-soc)

<sup>31</sup> [Index of Labour Costs per Hour, UK - Office for National Statistics \(ons.gov.uk\)](https://www.ons.gov.uk/employment-and-hours-worked-occupation-by-four-digit-soc)

they are subject to an industrial action ballot. This would probably give the employer warning of around 2 months before industrial action could feasibly take place (and the employer would know prior to that that they were in a difficult dispute). The trade union annual returns for 2018 and 2019 report that there were around 1,014 ballots in 2018 and 1,346 in 2019<sup>32</sup>. This is likely to be an overcount of employers who potentially face industrial action: ballot numbers are much higher than reported levels of industrial action; there may be some double-counting, if employers face multiple action within this timeframe; some ballots will not pass the legal requirements for action; and unions do not necessarily need to proceed with action when the ballot has been successful. We do not currently have comprehensive data on ballots for more recent years. However, The ONS's recently re-activated Labour Disputes Survey estimates that in the year to 2023 there were 1,588 stoppages<sup>33</sup>. A stoppage is defined as "a dispute between a single trade union and a single employer. Where a union co-ordinates disputes with several employers, or several unions co-ordinate action with a single employer, this would be counted as multiple stoppages". This definition has changed from that used prior to the hiatus in the survey in 2020 and 2021. This estimate is also likely to be slightly on the high side as there will be more 'stoppages' than employers affected. The average of the three numbers, 1,014, 1,346 and 1,588 gives us an estimated annual number of employers affected of 1,314.

- 46) As the change will not require the employer to do anything, and is a straightforward change to the legislation, we estimate familiarisation time of around half an hour for an HR director. We would expect that an HR director would set the rules for employment for their employer reflecting the current regulations and the specific employer's requirements within that context. We would expect them to know the specific requirements for employing different staff within the organisation, and whether agency workers are currently used as part of the workforce. As Regulation 7 has recently been repealed for a period prior to the Judicial Review, we would expect that in many cases further familiarisation requirements would be low. It is likely that an employer's response to industrial action would involve high level decision making about the options. The employer is one side of the industrial relations process and therefore must take a high level decision whether to give workers an improved offer or not when there is a risk of industrial action. We would expect the HR director to be responsible for options on providing alternative workers. As pointed out above, this is in some aspects a high estimate, and is also likely to be high as it is an annual figure, when some employers are more likely to have disputes in multiple years with their unionised workforces than other employers, but would only need to familiarise once.
- 47) This gives an estimated annual familiarisation cost for employers of  $1,314 \times 0.5 \times 28.99 = \text{£}19,000$  to the nearest 1,000.
- 48) Unions may familiarise themselves to be aware of the legislative change. There are around 127 trade unions listed by the Certification officer in Great Britain. Of these, 3 are federated unions like the TUC (whose membership is trade unions rather than workers) and the Prison Officers Association and the Prison Governors Association are not allowed to go on strike. There are other listed unions that do not offer the sort of collective representation that would enable them to ballot a bargaining unit for industrial action, and others (such as the Professional Footballers Association, which is unlikely to be concerned by the possibility of agency workers being brought in if their members voted for strike action). However, we assume that 122 unions will familiarise themselves with the proposed change. Again, we estimate around half an hour of familiarisation time with the proposed change, and we assume that a senior union official would (represented by the General Secretary) would familiarise themselves (the hourly labour cost of a union General Secretary being £36.35). This gives a one-off familiarisation cost to unions of  $122 \times 0.5 \times 36.35 = \text{£}2,300$ .
- 49) Unions may then consider how they react to the proposed change, what action they may take and how it may affect their industrial relations procedures, though this would not be part of the familiarisation.

<sup>32</sup> It should be noted that some of these ballots will be where unions are asking about strike action and action short of a strike in the same dispute, so some disputes will be counted twice. Some employers will also face multiple disputes in a year.

<sup>33</sup> LABD: Labour disputes in the UK - Office for National Statistics (ons.gov.uk)

50) This gives a one-off familiarisation cost of £159,000, and an annual familiarisation cost of £19,000. Over the 10-year period this comes to around £349,000.

51) As indicated above, there is some uncertainty around the familiarisation estimates, reflecting both the high estimates of the number of organisations that would familiarise themselves, and the time taken by organisation to familiarise. We would expect these uncertainties to balance out to an extent.

## Ongoing impacts:

52) The policy option would allow employers facing industrial action to contract employment businesses to provide temporary agency workers to provide cover for working days lost by striking workers. It is difficult to estimate what proportion of these working days lost may be covered by employers using temporary agency workers. The information on working days lost is available at a broad sector level, and data from the LFS suggests that temporary agency workers have assignments in all broad sectors.

53) However, there are a number of reasons why employers might not get cover from agency workers for all of the working days lost.

- ◆ **Availability, skillset and location of temporary agency workers** –the vast majority of temporary agency workers are on assignment at any one time, so only a low proportion would be available at any one time to provide replacement labour for workers who are on strike<sup>34</sup>. Agency workers would also have to have the right skills, experience and training to be able to replace workers on strike. Most union members work in occupations that require some skills or training to be considered competent to do their job. If it would take an agency worker some time to get up to speed with an employer's work processes, then only agency workers with some existing familiarity with these processes would be suitable as most strikes are short (though employers may be able to train agency workers in advance, at additional cost). Agency workers available, able and willing to take on the work of those on strike would need to be able to get to the workplace.
- ◆ **Temporary agency workers and employment businesses not interested in providing cover** –some responses to the 2015 consultation indicated that some temporary agency workers would not want to take assignments that involved providing cover during industrial disputes. This may be because they are trade union members themselves and would not want to work in place of workers on strike, or it may be that they would not want to be placed into an environment where industrial relations are strained. It may be that the nature of the assignment, which could be short and uncertain would put off some agency workers. Evidence from the consultation suggested that some employment businesses would not want to provide services to employers involved in industrial action, as they feared potential reputational damage from being seen to have become involved in the dispute.
- ◆ **Employers using currently allowed options** – in most cases employers may not want to use the current options for recruiting temporary labour to provide cover during industrial action, due to the administrative and logistical costs. However, in some cases, such as where employers have a statutory requirement to provide services, for instance the clearing of refuse from residential properties, employers may currently have no option but to use one of the options currently allowed to get replacement workers to provide industrial action cover.

54) It would be for employers involved in an industrial dispute to assess the costs and benefits and decide whether it was in their interests to use temporary agency workers to provide cover for striking workers. They would need to consider some of the factors mentioned above, the length of the strike and the potential impact on their own financial and business performance, customers, suppliers and the wider economy (which might be particularly relevant for employers providing public services like education, health or transport – the wider impact of industrial action in public services may provide an incentive to employers to obtain cover for striking workers even for one day strikes. Any direct

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<sup>34</sup> BEIS analysis of the Labour Force Survey for the four quarters of 2021 shows that around 18% of individuals identifying themselves as agency workers were unemployed or inactive.

impacts would be at the discretion of the employer facing strike action. They are not required to use agency workers to temporarily replace striking workers, so would only do so if it was net beneficial for the business.

55) Overall, there is a lack of quantitative information available that would enable the quantifying of the extent to which temporary agency workers would be used to provide cover for striking workers by employers experiencing industrial action. Businesses were not required to notify government when they supplied or hired agency workers to cover strikes and therefore there is no centralised record of use during the period that Regulation 7 was repealed between July 2022 and August 2023. During this period, we have found evidence of four instances where employers may have used agency workers as cover for striking workers. These appear to have mainly affected striking workers in 'lower skilled' work, in a number of different industries, and where strike action was more prolonged than on average.

## Impacts:

56) Any direct impacts would be at the discretion of the employer facing strike action. They are not required to use agency workers to temporarily replace striking workers, so would only do so if it was net beneficial for the business.

57) As noted above, it is very difficult to estimate exactly where agency workers would be available, suitable and willing to temporarily replace workers who are on strike. However, given the information available, including that from employment businesses, we expect that the numbers would be relatively low. We will seek views on this through the consultation process.

58) To estimate potential impacts, we have calculated the average annual hours lost through strike action<sup>35</sup>, the estimated output per hour by broad industry (using ONS GVA estimates for 2022, and ONS productivity hours data for the same period) and the costs to hirers of agency worker labour. The latter is based on median hourly wages (using data from Quarter 1 to Quarter 4 2022 LFS datasets) uprated to take account of non-wage labour costs, which is then increased by 17.3% to take account of employment business margins<sup>36</sup>. The industry groupings used reflect the published data on working days lost by striking workers for January 2022 to June 2023.

59) **Table 1: Estimated annual working hours lost by striking workers, output per hour and cost of agency workers.**

Industry Group	Annual average working hours lost	Average hourly output (£)	Hourly cost to employers of hiring an agency worker (£)
Agriculture, forestry and fishing	0	22	12
Mining, quarrying, electricity, gas, Steam and Air conditioning	11,938	145	40
Manufacturing	125,415	45	15
Water Supply, Sewerage, Waste Management and Remediation Activities	63,754	78	14
Construction	29,662	32	20

<sup>35</sup> This was based on the average annual days lost in 2015 to 2019 and January 2022 to June 2023 by broad industry, converted into hours using median daily hours worked – estimated from the Annual Population Survey for 2022).

<sup>36</sup> REC industry trends 2018/19 – the latest figure available for the average employment business margin per agency worker.

Wholesale and retail trade; repairs; Accommodation and Food Service	6,346	23	15
Transport, storage, information and communication	3,195,815	37	17
Finance, real estate, Professional, Scientific, technical, and Administrative and Support Services	172,923	56	16
Public administration and defence	463,132	38	20
Education	1,656,800	31	16
Health and social work	757,428	21	16
Arts, entertainment and Recreation, Other Service and personal services	34,609	23	24

- 60) For this approach, we use a simple model to estimate the net benefit from hiring an agency worker (the difference between the average output for hiring an agency worker minus the average cost for hiring an agency worker) and multiply this by take up rate to ensure that these impacts offset the other monetised costs from this policy. Essentially this looks at the extra output agency workers might provide – we do not take any account of the fact that some employers will be able to produce some output during some strikes without using agency workers in the model.
- 61) We do not know precisely which workers (specific jobs and specific industries or employers) took strike action in 2015 to 2019 or from January 2022 to June 2023, or which will be taking action in the future. We also do not know precisely what occupations or skills agency workers have, what their availability will be or their willingness to undertake work replacing those on strike. Therefore, we take a simple modelling approach: this assumes that a certain proportion of working hours lost will be recovered, with the same proportion applied across each industry group. Then the related costs and outputs for these estimated recovered hours are calculated. We recognise that this is a simplifying assumption as it's likely that it will be more feasible for some employers to utilise agency workers to replace those striking in some industries and occupations than others. Generally, at the broad industry level the estimated hourly output is higher than the estimated hourly cost for an agency worker, so that indicates that if an employer is able to generate more output than costs through using agency workers to temporarily replace striking workers there might be a benefit in using agency workers.
- 62) However, this would depend on how productive agency workers were relative to the workers who are taking strike action. Where an occupation requires some skills and/or training to achieve competency, it is likely that employers would only use agency workers where there was an existing pool of agency workers with the basic level of competency required to perform the task adequately on day one. In such cases, there may be minimal loss of productivity, though potentially there will be a lack of familiarity with the specifics of the work carried out. Where agency workers with no experience of the type of work could be used, there may be a dual effect of a lack of familiarity with the type of work, and a lack of knowledge of the particular approach of the employer. The evidence we have been able to identify indicates that employers primarily brought in agency staff in strikes during the period Regulation 7 was repealed to replace workers who didn't require a high skill level (and where agency workers may not have been a regular part of the workforce). So, there might be productivity impacts though these may reduce over time if the strike becomes prolonged.



- 63) In order to estimate the impact of this measure, we would need to make several assumptions (on productivity of agency workers, on suitability of agency workers to replace striking workers, etc) but there is insufficient evidence to do this. Therefore, we have developed a simple model that looks at the impacts from the businesses perspective and carried out “break-even” analysis. This shows that under what assumptions the benefits of increased output for businesses when employing agency workers outweighs the administrative burdens of revoking the legislation.
- 64) Since revoking Regulation 7 will give the option for employers to hire agency workers, they will only do so when the net benefit to their revenue (or profits) is positive. The estimated break even point for the policy over 10 years, and a description of the estimation approach, is set out in box 1 below.

#### **Box 1: Break even calculation**

Taking the data shown in Table 1 above, a percentage of working hours lost in strikes that are covered by agency workers is applied across all industry groups, along with an estimated relative productivity level. Then, based on these estimated recovered hours, the estimated recovered output and cost of hiring the agency worker hours are calculated. A break even point over a 10 year period – taking in familiarisation costs as well as additional output and agency worker costs – is estimated for employers. No impacts of potential benefits ensuing to employers outside the strike period due to maintaining some activity during strikes have been considered.

On the basis of these data – if 1.5% of working hours lost by industrial action are covered by agency workers of working hours lost at 50% productivity levels would produce an annual gain in output of £1.7 million at an annual cost in agency workers of £1.66 million – producing a marginal overall direct benefit over a 10 year period (that the impact assessment considers impacts) to those employers facing strike action.

- 65) If agency workers are more than 50% as productive then the break-even point on this basis requires fewer working hours to be recovered by agency worker replacement, and more hours to be recovered if less than 50% as productive<sup>37</sup>. This is illustrated in Box 2 below. Note that our break-even analysis does not include non-monetised impacts, most notably the (significant) wider benefits on the rest of the economy if employers facing strike action can maintain some activity. Therefore, we are confident that this policy change is likely to be net beneficial. However, given the evidence base available we are unable to robustly estimate the size of this impact.

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<sup>37</sup> The calculation involves using the hourly cost to hirers of agency workers and the output per hour by broad industry and the working hours lost by broad industry in table 1. The 10-year break even figures shown in this document are based on assuming a 50% productivity level for each broad industry, and finding that the breakeven level for working hours recovered was 2% of work hours lost applied across each broad industry’s working hours lost). Different break-even points for working hours recovered can be calculated based on different proportions of regular productivity being estimated for agency workers. In some broad industries agency workers having low percentages of regular productivity may mean that costs would be above output recovered, but employers may still choose to go ahead with employing agency workers where possible if it enables them to meet contractual obligations (and possibly avoid penalties for failure to meet obligations).

**Box 2: Business impacts from different take up rates and relative productivity of agency workers replacing workers on strike:**

As pointed out, it is difficult to estimate what the potential impacts of revoking Regulation 7 would be. This is because the available data does not allow us to make a robust assessment of whether there would be agency workers available, in the right location, with the right skills and training and willingness to replace striking workers. The simple model we have developed provides illustrations of possible impacts on business with some assumed inputs, though the real impact on the labour market and economy will be more complex.

We set out further illustrated impacts, based on the model developed, to exemplify the point that direct impacts will depend on the number of strike hours recovered by agency workers, and the relative productivity of those agency workers compared to the regular workers. We make no assessment of the likelihood of these scenarios.

Firstly, by continuing with the assumption that agency workers in these situations provide 50% of the productivity of regular workers, we get the following annual net benefit to employers of output minus agency worker costs during strikes:

<b>Working hours recovered</b>	<b>Annual net benefit (£)</b>	<b>10 year NPV</b>
2%	£51,000	£0.1m
3%	£76,000	£0.3m
5%	£127,000	£0.6m

If we assume a higher relative productivity of 80%, then we get the following annual net benefits to employers replacing striking workers:

<b>Working hours recovered</b>	<b>Annual net benefit (£)</b>	<b>10 year NPV</b>
2%	£1.4 million	£9.2m
3%	£2.1 million	£14.0m
5%	£3.5 million	£23.5m

**Non-monetised impacts**

66) If employers can use agency workers to temporarily replace regular workers who are taking strike action, it could impact bargaining power for unions compared to the counterfactual. This potential reduction in workers' power might adversely affect these workers' ability to successfully negotiate terms and conditions though it would not diminish their ability to strike. This would be a transfer from affected workers to business, and could materialise as several different costs to employees, namely:

- ◆ A worsening in the relationship between employers and workers – which could lead to more prolonged strike action in the short-term (the current dispute).
- ◆ A weakening of the workers' ability to improve or maintain terms and conditions if the effectiveness of the strike is reduced through allowing business another means of mitigating its economic cost to them. However, even if the effectiveness of strike action is diminished the ability to strike would remain unaffected by the repeal of Regulation 7. It is difficult to precisely estimate the benefit to workers of the potential to carry out effective industrial action. Although is difficult to precisely estimate the benefit to workers of the potential to carry out effective industrial action,

previous research does show that union workers benefit from a 'wage premium' compared to non-unionised workers<sup>38</sup>.

- 67) As noted above, there are several factors that will impact on the ability of an employer facing strike action to utilise agency workers to maintain at least some activity during a strike and the size of this impact will depend on take up rate, which we are not able to robustly estimate. However, we know this impact will be larger in sectors where workers can be replaced (i.e., sectors that have low barriers and readily available agency workers). We also know that employers can already directly employ temporary workers to carry out the activities of striking workers, and we have found little evidence that agency workers were hired (except in a few specific cases) to replace striking workers between July 2022 and August 2023. Therefore, whilst we cannot monetise this impact, we expect that it would be low. This reform seems unlikely to undermine union power substantially.
- 68) Given that existing evidence that primarily the unionised workers at risk are lower skilled and likely in the lower half of the wage distribution, there are potential negative social impacts. Wages may be more constrained where worker power is weakened, reducing the spending power of lower earners whose marginal utility from increases in spending power are considered higher. All available evidence suggests the impact will be low (given the low level of use of agency workers to provide cover for strikes) and may be mitigated by other effects such as the rising national minimum wage.
- 69) Employers will only use temporary agency workers to replace their regular workforce if the latter is striking if they deem the benefits to be greater than the costs. Therefore, we know the impact of revoking Regulation 7 should be positive for affected businesses.
- 70) There may also be wider benefits to the wider economy if some employers facing strike action are able to maintain some activity, especially those affecting important public services. However, with the introduction of Minimum Service Levels (MSLs)<sup>39</sup>, most of the wider benefits from this change are likely to be in industries not covered by MSLs.

### **Regional or local impacts**

- 71) There is limited evidence of employers using agency workers to cover for striking workers. The four cases we have identified happened in London and Essex. Any such use of agency workers is more likely to occur where there is an existing source of agency workers available to take on work as cover for striking workers. Urban areas, with large, concentrated populations, are therefore the prime locations where the repeal of Regulation 7 is likely to have an impact. This is reflected by analysis of the LFS Q1 to Q4 2022 which shows that agency workers make up a higher proportion of the labour force in urban areas in England and Wales and Scotland. From a regional perspective agency workers comprise a higher proportion of the workforce in London, followed by the Midlands and the North West and North East, potentially reflecting the extent of urban concentration.

## **Risks and Proportionality**

- 72) The analysis reflects the potential impacts of this policy change. The repeal of Regulation 7 is an enabling reform that does not impose significant burden on employers, employment businesses or agency workers. It gives employers an additional choice to employ an alternative source of labour temporarily when its usual workforce is on strike. The employer is only likely to do this where the benefits outweigh the cost.
- 73) Evidence from the 2015 consultation responses suggested that the potential for the supply of temporary agency workers to employers facing strike action would depend on a number of factors: agency workers might not want to cross the picket line, employment businesses may not want the potential reputational damage from supplying workers to replace striking workers, suitable agency

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<sup>38</sup> For example, [Trade Union Membership Statistics, UK, 2022](#). Note that although that analysis does not control for the other factors other than trade union membership that would explain the wage premium, other studies such as '[Union wage effects, A. Bryson \(2014\)](#)' find a similar result once these controls are included.

<sup>39</sup> [Strikes \(Minimum Service Levels\) Act 2023 \(legislation.gov.uk\)](#)

workers may not be available due to already being on a placement and there may not be agency workers available with the required skills to be able to do the work of those on strike.

- 74) The expectation is that generally it would be difficult for agency workers without the requisite skills or experience to fill-in temporarily in many of the occupations that union members occupy. The policy is more likely to have a potential impact on strikes by those in elementary occupations, or where there is an existing pool of agency labour. However, in the latter situation, agency workers working in a sector might also benefit from union action if they improve or sustain terms and conditions. This may limit the potential labour supply among agency workers to temporarily replace striking workers, along with other factors like remaining on good terms with potential colleagues.
- 75) As noted above, employers can already directly employ temporary replacements for striking workers. It may be that where the repeal of Regulation 7 allows employers to use employment businesses to source these workers it would be a more cost-effective option for the employer.
- 76) The risks are that the break-even point for employers would not be reached (i.e., agency workers 50% less productive than normal workforce and working days lost reduced by 1.5%). However, if that is the case, the (net) costs for employers would be very low.
- 77) There is little risk that the proposed policy would lead to workers giving up permanent direct employment to become agency workers. Agency workers do not have the same employment rights as employees, and permanent directly employed workers are likely to have built up additional benefits as their tenure with their employer increases. Predominantly, permanent directly employed workers get a stable regular income and regular guaranteed work. Agency work may result in lower take home pay and is likely to result in more variable work hours and wages. Also, strike action generally is rare, relatively short-term, and tends to be dispersed across periods of work even in a prolonged dispute. It is highly unlikely that workers would choose to give up permanent direct employment to become an agency worker because they were engaged in industrial action with their employer and the employer was aiming to bring in agency workers: a worker is not required to take strike action, if they are unwilling or unable to, so could just turn up for work without losing the benefits of a permanent contract. In nearly all cases, the work available from covering striking workers is likely at most to be short-term and intermittent or once only.

## **Impact on Small and Micro Businesses**

- 78) There is likely to be direct benefits to small and micro businesses. Most employment businesses are small and micro firms, and some would have the potential to supply temporary labour to employers facing strike action, if they chose to do so.
- 79) While smaller businesses are much less likely to have unionised workforces than larger employers, some industrial action may affect smaller workplaces. The repeal of Regulation 7 may therefore enable some smaller businesses to utilise temporary agency workers to fill-in for striking workers if they thought it would be beneficial.
- 80) Where there are wider benefits to the economy not directly involved in the strike resulting from the use of agency workers, this will potentially benefit all sizes of business, including small businesses and micros.
- 81) Some unions are small or micro businesses, including some of those that have balloted their members to consider taking part in industrial action. As indicated above, it is considered likely that the repeal of Regulation 7 would have a limited impact. However, workers in certain occupations and locations may be more likely to be impacted and unions may be less well able to collectively represent these workers if the threat of industrial action is weakened. This may result in a weakening of unions, especially those that specialise in the occupations likely to be most affected.

## **Trade implications**

82) There are not likely to be any trade implications from this policy.

## Monitoring and Evaluation

83) There are no regular sources of information on the use of temporary labour during industrial action. Given the relative difficulty in surveying industrial action, it would not be easy to collect regular data. Monitoring and evaluation would largely be through regular discussions with stakeholders.

84) We will continue to monitor the level of industrial action, union membership and collective agreement coverage, to see if there has been any possible impact on any occupations or industries, and any indication of an impact on bargaining power.

85) We will explore the possibility of collecting data on use of agency workers on the Labour Disputes Survey, and other mechanisms for collecting information on industrial action. However, these surveys are owned by other organisations, and they may want to limit the burden placed on respondents.

## Equalities Analysis

86) Under the Equality Act 2010 the Secretary of State as the decision maker in the Department for Business and Trade (DBT, the public authority in this case) must have due regard to the Public Sector Equality Duty (PSED) when making policy decisions, and in this case when reaching the decision whether to repeal Regulation 7. Specifically, the PSED sets out that the Department must have due regard to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act;
- Advance equality of opportunity between people who share a protected characteristic and those who do not; and
- Foster good relations between people who share a protected characteristic and those who do not.

87) The protected characteristics consist of nine groups: age, race, sex disability, religion or belief, sexual orientation, gender reassignment, pregnancy and maternity, marriage and civil partnership. This Equality Analysis considers the potential equality impacts of Repealing Regulation 7 of the Conduct Regulations.

88) The proposed reform is not specifically designed to advance equality of opportunity between people who share a protected characteristic and others, or tackling any discrimination being experienced by individuals who share a protected characteristic. However, it is possible that individuals with certain protected characteristics, identified below, are more likely to be affected by the proposed reforms than other individuals.

89) We consider the demographics of agency workers and union members in general. This is because there is not sufficient evidence (for instance from the period of repeal of Regulation 7) to clearly identify sub-groups within these populations who would be affected, and who wouldn't, over the 10 year period covered by the impact assessment.

90) Employees who are union members are more likely than non-union member employees to be women (56.5% compared to 47.2%), white (90% compared to 85%), aged 35 to 64 (72% compared to 58%), to have a disability (20% to 15%) and to be Christian (44.6% compared to 40.3%).

91) Temporary agency workers are more likely than non-agency workers to be men (56% compared to 52%), aged 16 to 24 (15% compared to 11%), be of non-white ethnicity (significant for Mixed, Asian, Other and Black) (31% compared to 14%) and follow a non-Christian religion (16% compared to 9%).

92) Looking at the overall characteristics of agency workers and union members the former are younger and more likely to follow a non-Christian religion, while the latter are more likely to be older and female. Individuals in both groups are likely to have a disability and be from an ethnic minority.

- 93) It is very difficult to focus more specifically which groups of union members and agency workers would be affected. There is a lack of precise information about where agency workers would be able and willing to temporarily fill-in the roles of striking workers to precisely assess which individuals would be affected.
- 94) The policy is likely to be marginally beneficial to agency workers who are able and willing to temporarily do the work of striking workers, as they will have an additional route to obtain placements.
- 95) The policy could reduce the bargaining power of trade unions, though this may be limited to where they represent workers in occupations more likely to be at risk from agency worker cover being used during strikes. Judging by the evidence we have been able to find of agency workers covering striking workers during the period of repeal of Regulation 7, the impact is likely to be low. There is no evidence that this potential impact would put workers with certain protected characteristics at a particular disadvantage, for example by affecting their terms and conditions, when compared to those workers who do not share these characteristics.
- 96) There are potential benefits to those individuals not involved in the strikes from a reduction in negative externalities from strike action, and Government considers that these indirect benefits will balance any specific detriment to unionised labour.
- 97) As part of the consultation, we welcome any comments and evidence that may develop or further inform our assessment. This equality analysis will be reviewed once the consultation has closed.