

**Department for Business and Trade – Consultation on hiring  
agency staff to cover industrial action**

- 1.1 The NASUWT welcomes the opportunity to respond to the Department for Business and Trade consultation on hiring agency staff to cover industrial action.
- 1.2 The NASUWT – The Teachers' Union – represents teachers and headteachers across the United Kingdom.

**1. GENERAL COMMENTS**

- 1.3 The NASUWT recognises that the questions in the consultation are significant and wide-ranging and warrant further discussion. The Union submission seeks to address these questions.
- 1.4 The Conduct of Employment Agencies and Employment Businesses Regulations 2003 (the 'Conduct Regulations') provide a set of legal minimum standards that govern the conduct of employment businesses and protect agency workers, such as supply teachers.
- 1.5 Since 1976, it has been unlawful for an employment business knowingly to introduce or supply workers to an employer to carry out the work of employees who were taking part in official industrial action. Indeed, Regulation 7 of the Conduct Regulations (2003), made this a criminal offence.<sup>1</sup>

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<sup>1</sup> <https://www.judiciary.uk/wp-content/uploads/2023/07/ASLEF-v-Secretary-of-State-for-Business-and-Trade-judgment-130723.pdf>

- 1.6 Regulation 7 prohibits the use of agency workers to cover periods when trade unions are undertaking industrial action|:

***‘7.— Restriction on providing work-seekers in industrial disputes***

*(1) Subject to paragraph (2) an employment business shall not introduce or supply a work-seeker to a hirer to perform—*

*(a) the duties normally performed by a worker who is taking part in a strike or other industrial action (“the first worker”), or*

*(b) the duties normally performed by any other worker employed by the hirer and who is assigned by the hirer to perform the duties normally performed by the first worker, unless in either case the employment business does not know, and has no reasonable grounds for knowing, that the first worker is taking part in a strike or other industrial action.*

*‘(2) Paragraph (1) shall not apply if, in relation to the first worker, the strike or other industrial action in question is an unofficial strike or other unofficial industrial action for the purposes of section 237 of the Trade Union and Labour Relations (Consolidation) Act 1992.’<sup>2</sup>*

- 1.7 This is consistent with and reflects a range of international treaties and human rights standards which protect the fundamental human right to strike, including the United Nations *International Covenant on Economic, Social and Cultural Rights (ICESCR)*<sup>3</sup>, the *European Social Charter*<sup>4</sup> and the *European Convention on Human Rights (Article 11)*.<sup>5</sup>
- 1.8 In addition, the current prohibition on the use of agency workers to cover industrial action reflects the International Labour Organisations (ILO) Freedom of Association Committee which states that, ‘*The hiring of workers*

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<sup>2</sup> <https://www.legislation.gov.uk/ukxi/2003/3319/made>

<sup>3</sup> <https://www.ohchr.org/en/treaty-bodies/cescr/background-covenant>

<sup>4</sup> <https://www.coe.int/en/web/european-social-charter>

<sup>5</sup> <https://commonslibrary.parliament.uk/research-briefings/cbp-9751/#:~:text=A%20separate%20treaty%20of%20the,strike%20in%20their%20national%20constitutions.>

*to break a strike in a sector which cannot be regarded as an essential sector in the strict sense of the term [...] constitutes a serious violation of freedom of association.*<sup>6</sup>

- 1.9 As such, it has been the case that successive governments have recognised and understood the importance of *Regulation 7* for industrial relations and retained it.
- 1.10 In recognition of this, those representing the recruitment sector have promoted the view that it is not good practice to supply agency workers during industrial action.
- 1.11 For example, the Recruitment and Employment Confederation (REC), a body which represents 3,300 employment businesses and agencies in the UK,<sup>7</sup> is signed up to the World Employment Confederation (formerly CIETT) Code of Conduct which makes it clear that private employment agencies should show respect for workers' rights: *'In accordance with national law and practice, private employment agencies shall not make workers available to a user company to replace workers of that company who are legally on strike.'*<sup>8</sup>
- 1.12 In addition, the Memorandum of Understanding (MoU) between CIETT Corporate Members and Uni Global Union on Temporary Agency Work, which was signed by several UK recruitment businesses, prohibits *'the replacement of striking workers by temporary agency workers without prejudice to national legislation or practices.'*<sup>9</sup>
- 1.13 Furthermore, the MoU commits the employment businesses/agencies to promote *'respect for freedom of association and collective bargaining as guaranteed by ILO conventions.'*<sup>10</sup>

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<sup>6</sup> [https://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---normes/documents/publication/wcms\\_632659.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_632659.pdf)

<sup>7</sup> <https://www.rec.uk.com/>

<sup>8</sup> <https://wecglobal.org/world-employment-confederation-global/code-of-conduct-2/>

<sup>9</sup> [https://wecglobal.org/uploads/2019/10/2008\\_MoU-UNI-CiETT-CMC-Final-EN.pdf](https://wecglobal.org/uploads/2019/10/2008_MoU-UNI-CiETT-CMC-Final-EN.pdf)

<sup>10</sup> Ibid.

1.14 Whilst the issue was looked at again in June 2022 by the then Secretary of State, Kwasi Kwarteng, and Regulation 7 was repealed, in July 2023, the NASUWT, along with UNISON and a number of other TUC-affiliated unions, brought successful legal claims to the High Court on the following grounds:

- a) *that the Secretary of State failed to comply with his statutory obligation to **consult and to act fairly** by enacting the new law in 2022. With emphasis on the two limbs to this ground, namely: [1] the statutory obligation to consult, and [2] the common-law duty of fairness; and*
- b) *that by revoking Regulation 7 of the 2003 legislation, the Secretary of State unjustifiably interfered with the rights conferred by Article 11 of the European Convention on Human Rights (ECHR), i.e. **the right to strike**.*

1.15 On the first ground (i.e. the failure to consult and act fairly), the NASUWT et al had to establish that the then Secretary of State had failed to discharge his **statutory obligation** under Section 12(2) and (5) of the Employment Agencies Act 1973. Also, that the Secretary of State failed in his **common-law duty** of fairness.

1.16 The NASUWT further contended that the Government failed to strike a fair balance between our members' rights and the rights of the community.

1.17 The High Court upheld the challenge on the grounds of the failure to consult. The presiding judge noted that the purposes of the consultation duty under section 12(2) of the 1973 Act include enhancing the quality of the Secretary of State's decisions by requiring them to take into account the views and evidence of those who are likely to be well informed, and reassuring Parliament that the case for the measure has been tested with interested parties in the sector, whose views and interests have been taken into consideration in drafting.

- 1.18 In addition, in the Court's view, Parliament could not have intended that section 12(2) would be satisfied provided that there was consultation at some point before the making of any regulations, regardless of how long this was before decisions were made, or any other issues around the quality of the consultation relied on, or its relevance at the time of the decision.
- 1.19 Furthermore, the Court affirms that the quality of 'consultation' in this context must be guided by common law principles, and the Court had to ask whether the Secretary of State's approach to the consultation was so unfair as to be unlawful.
- 1.20 The Court concluded that the Secretary of State's judgement about whether Regulation 7 should be revoked was not informed by, or tested against, the views and the evidence of bodies which were representative of the interests concerned. As such, the aims and requirements of section 12(2) were not fulfilled.
- 1.21 Given this, the presiding judge concluded that the Secretary of State's approach was, *so unfair as to be unlawful and, indeed, irrational*.<sup>11</sup> The judge noted that it would have still have been the Court's conclusion even if the Secretary of State had conscientiously considered the responses to the 2015 Consultation, as it would still have been unfair and inconsistent with the aims of section 12(2). This was particularly to ensure informed decision making, if the Secretary of State failed at least to seek updated views and evidence, given: the lapse of time; the developments in the intervening period; the reasons why the proposal had not been implemented in 2016; and the professed reasons for wishing to implement it in 2022.<sup>12</sup>
- 1.22 It should be noted that the case was solely on the ground of consultation, as the Court preferred not to express a view on the second ground (i.e. Article 11 of the ECHR).

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<sup>11</sup> <https://www.judiciary.uk/wp-content/uploads/2023/07/ASLEF-v-Secretary-of-State-for-Business-and-Trade-judgment-130723.pdf>

<sup>12</sup> Ibid.

1.23 In light of the Court’s judgment, the NASUWT does not believe there is any justification for the Government to seek again to consult on the revocation of Regulation 7 of the Conduct Regulations. As a matter of fact, if the Secretary of State were to insist on continuing with the consultation, it proves that the whole process has been designed to restrict the circumstances in which trade unions can lawfully organise industrial action in schools.

## 2. SPECIFIC COMMENTS

### **Views and evidence on the effect that regulation 7 has on employment businesses, hirers, and agency workers.**

2.1 The NASUWT is profoundly concerned at the unsubstantiated assertion in the consultation that Regulation 7 represents a significant interference in the operation of employers.<sup>13</sup> This is particularly as neither the Trade Unions Congress (TUC)<sup>14</sup>, of which the Union is an affiliated member, nor the REC<sup>15</sup> has been seeking the repeal of Regulation 7.

2.2 Advice provided by Business, Energy and Industrial Strategy (BEIS) officials advised that the responses to the 2015 consultation had been ‘*generally opposed to the repeal*’.<sup>16</sup>

2.3 Neil Carberry, Chief Executive of the REC has called the announcement of the consultation by the Government, ‘*....a disappointment, given the scale of opposition from employers and workers to the previous proposal.....Neither agencies or trade unions think this change promotes effective strike resolution or protects agency workers.*’<sup>17</sup>

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<sup>13</sup> <https://www.gov.uk/government/consultations/hiring-agency-staff-to-cover-industrial-action/hiring-agency-staff-to-cover-industrial-action#questions>

<sup>14</sup> <https://www.tuc.org.uk/news/conservatives-set-overturn-ban-use-agency-workers-during-strikes-despite-humiliating-high>

<sup>15</sup> <https://www.rec.uk.com/our-view/news/press-releases/rec-comments-announcement-regulation-7-consultation-aimed-allowing-agency-staff-replace-striking-workers>

<sup>16</sup> Ibid.

<sup>17</sup> Ibid.

- 2.4 Furthermore, in June 2022, when the issue of the repeal of Regulation was being touted, the TUC and the REC issued a joint statement urging the Government to abandon the proposal to repeal it, asserting that the change in the law would not work.<sup>18</sup>
- 2.5 It should be noted that the House of Lords *Secondary Legislation Scrutiny Committee 9th Report of Session 2022–23* noted that the BEIS (now the Department for Business and Trade) impact assessment (IA) was, *‘unable to “robustly estimate the size” of the policy’s impact because of a lack of evidence raises questions as to the effectiveness of the change proposed by the draft Regulations.*<sup>19</sup>
- 2.6 Furthermore, the then Secretary of State stated (in response to the lack of an initial IA) that: *‘In order to estimate the impact of this measure, we would need to make a number of assumptions and do not have the evidence to do this.’*<sup>20</sup>
- 2.7 As such, it is not surprising that the aforementioned Committee referenced the findings of the Regulatory Policy Committee (RPC) which rated a draft IA published when the policy change was consulted on in 2015 as *‘not fit for purpose’* because it did *“not provide sufficient evidence of the likely impact of the proposals.”*<sup>21</sup>
- 2.8 The RPC went on to state that the case for the central assumption had not been made, and noted that the draft IA was not a robust basis for assessing the costs or, in particular, the benefits of the proposal.<sup>22</sup>
- 2.9 Furthermore, the TUC noted that the IA had *‘vastly reduced costs and benefits’* compared to the draft IA published in 2015.<sup>23</sup>

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<sup>18</sup> <https://www.rec.uk.com/our-view/news/press-releases/rec-and-tuc-urge-government-abandon-plan-allow-agency-staff-replace-striking-workers>

<sup>19</sup> <https://committees.parliament.uk/publications/23084/documents/169157/default/>

<sup>20</sup> Ibid.

<sup>21</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/454856/RPC15-BIS-2403\\_3009\\_-\\_Hiring\\_agency\\_staff\\_during\\_strike\\_action\\_-\\_IA\\_c\\_-\\_opinion.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/454856/RPC15-BIS-2403_3009_-_Hiring_agency_staff_during_strike_action_-_IA_c_-_opinion.pdf)

<sup>22</sup> <https://committees.parliament.uk/publications/23084/documents/169157/default/>

<sup>23</sup> Ibid.

- 2.10 It cannot go unnoticed that the IA, for this consultation, makes an almost identical remark in respect to the assessment of the impact of the proposal to repeal Regulation 7: *‘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.’*<sup>24</sup> The same IA then goes on to state that: *‘we are unable to robustly estimate the magnitude of that impact.’*<sup>25</sup>
- 2.11 The fact that the 2023 IA suggests a marginal overall direct benefit of £0.04 million annually (calculated on the basis of the difference between an annual gain in output of £1.7 million at an annual cost of £1.66 million in agency workers of £1.66 million)<sup>26</sup> hardly suggests that Regulation 7 is currently hindering employers and employment businesses in the way suggested in the consultation, or that it represents an interference in the operational freedom of employment businesses.<sup>27</sup>
- 2.12 In addition, such assumptions are based on hourly costs to employ agency workers, which seem woefully inaccurate. For example, the IA assumes that the cost to employ an agency worker in education, such as a supply teacher is £16 per hour,<sup>28</sup> when the average cost is conservatively estimated to be around £23 per hour.
- 2.13 Furthermore, the IA suggests that employment business margins are 17.3% which is not the case for employment businesses operating in education, where the average margins are estimated to be 38%.<sup>29</sup>
- 2.14 The repeated failure of the IA to evidence the non-monetised impacts of the repeal of Regulation 7, such as the impact on workers’ rights and the prospect of worsening industrial relations, means that a ‘simple modelling’ approach fails to capture and detail the complexity of the impact on the labour market and the economy that the proposal will have.

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<sup>24</sup> <https://assets.publishing.service.gov.uk/media/6555d62dd03a8d000d07fa0b/regulation-7-consultation-IA.pdf>

<sup>25</sup> Ibid.

<sup>26</sup> Ibid.

<sup>27</sup> Ibid.

<sup>28</sup> Ibid.

<sup>29</sup> <https://assets.crowncommercial.gov.uk/wp-content/uploads/What-is-mark-up-and-the-impact-on-worker-pay.pdf>



- 2.15 It is no surprise that the United Kingdom's has seen its rating drop in the International Trade Union Confederation 2023 Global Rights Index<sup>30</sup>, as well as being referenced by the ILO spotlight at the International Labour Conference on the Application of Standards (CAS) that reviews compliance with ILO Conventions.<sup>31</sup>
- 2.16 The NASUWT maintains that statements that the proposed reforms are '*unlikely to undermine union power substantially*'<sup>32</sup> appear vacuous and without any basis in fact.
- 2.17 For employment businesses, there are legitimate concerns that the repeal of *Regulation 7* will put them in difficult situations, such as placing them in the middle of disputes between employers and workers.
- 2.18 As such, employment businesses may be forced to become involved in industrial disputes that are not of their own making, and could be perceived as taking sides, thereby posing a significant reputational risk for employment businesses.
- 2.19 The repeal of Regulation 7 has the ability to damage constructive employment relationships by placing unnecessary tensions between employees and employers which will make it difficult to resolve disputes.
- 2.20 The majority of respondents to the 2015 consultation (40%) thought there would be a negative impact on employers or hirers, because of the detrimental effect on the employer's relationship with those in its workforce taking industrial action, and challenges for employers in obtaining suitably qualified agency staff.<sup>33</sup>
- 2.21 In addition, the employer or 'hirer' may risk reputational damage if the quality of service declines because the agency workers being supplied do not have

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<sup>30</sup> <https://www.ituc-csi.org/ituc-global-rights-index-2023>

<sup>31</sup> <https://www.ituc-csi.org/2023-international-labour-conference>

<sup>32</sup> Ibid.

<sup>33</sup> <https://www.judiciary.uk/wp-content/uploads/2023/07/ASLEF-v-Secretary-of-State-for-Business-and-Trade-judgment-130723.pdf>

the skills, training and knowledge to replace those taking industrial action, particularly in regards to potential health and safety issues.

- 2.22 Furthermore, should an employer ('hirer') decide to 'bus in' groups of agency workers, this will increase tensions between the employer, the trade union and its workforce, meaning that the dispute will be more difficult to resolve amicably.
- 2.23 Moving forwards, this is likely to damage employee good will and staff morale, and impact adversely on productivity.
- 2.24 Consideration also has to be given to the significant additional costs that are associated with the use of agency workers, including the commission fees charged by employment businesses which, as referenced previously, can be as much as 38% in education.
- 2.25 Agency workers, such as supply teachers, will be placed in an invidious position of choosing whether to turn down an assignment or risk not being offered work in the future by the employment business or school.
- 2.26 In England, well over three quarters of supply teachers (78%) reported that they are concerned about the UK Government's proposals to allow agency workers to be used in schools during industrial action,<sup>34</sup> with some supply teachers indicating that they would have no option but to provide cover during industrial action, although they are unhappy about that prospect:
- *'I do not want to go into schools to cover for striking teachers but this means no pay so it's a dilemma of conscience.'*
  - *'My conscience tells me I should support my colleagues but I also have to live and this will put an intolerable stress on supply teachers.'*
  - *'I am concerned that many supply teachers will be forced for financial reasons to cover in schools as they cannot afford a period of no pay.'*
  - *'This puts us in a difficult position, I don't want to turn down work and create a bad name with agencies. However, I also don't want to be unsupportive to aims of unions.'*

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<sup>34</sup> <https://www.nasuwt.org.uk/advice/supply-teacher/annual-supply-teacher-survey/annual-supply-teacher-survey-england.html>

2.27 In response to national industrial action in schools in England and Wales in 2023, the NASUWT asked supply teachers whether they had been put under pressure to cover for teachers taking industrial action and if they felt that by doing so it had impacted on the industrial action.

2.28 Supply teachers reported concerns that they were pressured to by schools and employment businesses with the prospect that future work could be jeopardised:

- *'I did not work on strike day. However, it does cause worry that potentially turning work down with agencies may mean they won't contact me again for other placements....'*
- *'Losing a day's work and turning down agencies has an effect on our day-to-day work and employability.'*
- *'I have been asked to work today and for the upcoming strike days, all of which I have declined. However, I felt that in declining these days I may be impacting the relationships I have built in the last year and a half.'*
- *'I have been pressured into working on this strike day and have refused. I have openly been asked to cover for absent colleagues striking, by a teaching agency, I feel this is wrong. After refusing....The agency have informed me that "strangely" the school is "likely" no longer renewing my contract. From speaking to others, I think this is widespread unfortunately.'*

2.29 The consultation advances these changes as a 'permissive measure; however, agency workers, such as supply teachers, are not free to turn down an assignment without consequence of future victimisation and blacklisting.<sup>35</sup>

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<sup>35</sup> <https://www.gov.uk/government/consultations/hiring-agency-staff-to-cover-industrial-action/hiring-agency-staff-to-cover-industrial-action>

2.30 It cannot go unnoticed that, under UK law, agency workers, such as supply teachers, are not protected from suffering a detriment if they refuse an assignment because they do not want to replace someone who is undertaking industrial action.

2.31 The repeal of Regulation 7 would be a retrograde step that would have serious detrimental impacts on employment business, hirers and agency workers.

### **The impact of the repeal of regulation 7 on workers and the wider economy and society**

2.32 The consultation suggests that removing Regulation 7 from the ‘Conduct Regulations’ will give the recruitment sector the opportunity to help employers limit the impact to the wider economy and society of strike action, by ensuring that businesses can continue to operate to some extent. This is an assertion that is not supported by evidence.

2.33 The House of Lords *Secondary Legislation Scrutiny Committee 9th Report of Session 2022–23* has previously noted that the BEIS’s IA was ‘unable to “robustly estimate the size” of the policy’s impact because of a lack of evidence [which] raises questions as to the effectiveness of the change proposed by the draft Regulations.’<sup>36</sup>

2.34 Furthermore, the then Secretary of State stated (in response to the lack of an initial IA) that: ‘In order to estimate the impact of this measure, we would need to make a number of assumptions and do not have the evidence to do this.’<sup>37</sup>

2.35 The Regulatory Policy Committee (RPC) has previously rated the 2015 IA on which the policy change was consulted on as being ‘not fit for purpose’

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<sup>36</sup> <https://committees.parliament.uk/publications/23084/documents/169157/default/>

<sup>37</sup> Ibid.

because it did *'not provide sufficient evidence of the likely impact of the proposals.*<sup>38</sup>

2.36 The RPC went on to state that the case for the central assumption had not been made, and noted that the draft IA was not a robust basis for assessing the costs or, in particular, the benefits of the proposal,<sup>39</sup> which can be presumed to include the wider economy and society. Nothing has changed since then.

2.37 It cannot go unnoticed that the IA for the current consultation makes an almost identical remark in respect to the assessment of the impact of the proposal to repeal Regulation 7: *'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.'*<sup>40</sup> This would imply that the 2023 IA has also failed to robustly assess the impact of the repeal on the wider economy and society.

2.38 As referenced earlier, the suggestion of a marginal overall direct benefit of £0.04 million annually (calculated on the basis of the difference between an annual gain in output of £1.7 million at an annual cost of £1.66 million in agency workers of £1.66 million)<sup>41</sup>, hardly suggests that the repeal of *Regulation 7* would have a profound impact on the wider economy and society.

2.39 The repeated failure of the IA to evidence the non-monetised impacts of the repeal of *Regulation 7*, such as the impact on trade unions' bargaining power and the worsening of industrial relations, means that a 'simple modelling' approach fails to capture and detail the complexity of the impact on the wider economy and society.

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<sup>38</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/454856/RPC15-BIS-2403\\_3009\\_-\\_Hiring\\_agency\\_staff\\_during\\_strike\\_action\\_-\\_IA\\_c\\_-\\_opinion.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/454856/RPC15-BIS-2403_3009_-_Hiring_agency_staff_during_strike_action_-_IA_c_-_opinion.pdf)

<sup>39</sup> <https://committees.parliament.uk/publications/23084/documents/169157/default/>

<sup>40</sup> <https://assets.publishing.service.gov.uk/media/6555d62dd03a8d000d07fa0b/regulation-7-consultation-IA.pdf>

<sup>41</sup> Ibid.

- 2.40 Using agency workers to undertake work normally performed by permanent staff will raise serious concerns about health and safety in the workplace and for the wider public, particularly in situations where agency workers, such as supply teachers, are recruited at short notice to cover for those participating in industrial action.
- 2.41 Whilst it can be argued that employment businesses still have to be satisfied that the agency worker has the necessary skills and competence for the assignment, the Union is aware of a number of situations in which supply teachers are routinely denied access to important information which would enable them to undertake an assignment.
- 2.42 For example, over one in ten supply teachers (13%) stated that they were given the school's overall risk assessment by the agency, compared to just over two fifths of supply teachers (41%) who stated that they were given the information by the school. Thirty-seven per cent stated that they were not given the information, and almost one in ten (9%) stated that they were not sure.<sup>42</sup>
- 2.43 Moreover, just under one in ten supply teachers (8%) stated that they were given the details of the procedures and arrangements to ensure there was adequate time for supply teachers to be made aware of, and understand, the systems in place in the school, including in respect of COVID-19 by the agency, and just 14% of supply teachers stated that they were provided with the details of any designated contact(s) for any questions, problems or emergencies (COVID-specific or otherwise) by the agency.<sup>43</sup>
- 2.44 Agency workers, such as supply teachers, may therefore be less likely to have received health and safety training necessary to do the job safely, which may then have a detrimental impact on the quality of services provided to the public.

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<sup>42</sup> Ibid.

<sup>43</sup> Ibid.

- 2.45 Expecting supply teachers to attend a school where they may have never worked before, with little or no support, and to replace all or a large number of teachers, has the potential to pose genuine risks to the education and care of children and young people.
- 2.46 The proposal in the consultation would have a negative impact on industrial relations in the workplace.
- 2.47 The NASUWT has significant experience of dealing with industrial disputes in schools and colleges where the employer has agreed to come to the negotiating table due to threat of the costs associated with a school being closed as a result of industrial action.
- 2.48 Where employers seek to use agency workers, they will be less committed to reaching a negotiated settlement. Disputes and industrial action will be prolonged, to the detriment of service users and the public.
- 2.49 The IA accompanying the consultation recognises that the proposal to repeal Regulation 7 risks a worsening of industrial relations, which could drag out and prolong industrial disputes.<sup>44</sup> We would be deeply concerned if the Government believes that this is a price worth paying.
- 2.50 The NASUWT is concerned that the proposals risk weakening the ability of workers to improve or just maintain their terms and conditions if employers can mitigate its costs through hiring agency workers to cover industrial action.
- 2.51 In addition, the NASUWT believes that the supply of agency workers, such as supply teachers, to break strikes is inconsistent with the requirements of ILO Convention 87, Article 3, the European Social Charter (1961), Article 6 (4) and Article 11 of the European Convention of Human Rights.<sup>45</sup>

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<sup>44</sup> <https://www.tuc.org.uk/news/conservatives-set-overtun-ban-use-agency-workers-during-strikes-despite-humiliating-high>

<sup>45</sup> <https://www.tuc.org.uk/sites/default/files/Using%20agency%20workers%20during%20strike%20action%20-%20TUC%20response.pdf>

- 2.52 Whilst the Government continues to assert the importance of an individual's right to strike and the ability of trade unions to advocate for their members' interests<sup>46</sup>, the decision to introduce minimum service levels in certain public services through the Strikes (Minimum Service Levels) Act 2023 is a further impediment to the ability of trade unions to advocate for their members.<sup>47</sup>
- 2.53 Taken together, these legislative measures would constitute the removal of the right to strike by neutering the impact of industrial action in practice.
- 2.54 The NASUWT therefore has serious and profound concerns about the impact of the proposal to repeal *Regulation 7* and is opposed to the measures set out in this consultation.

### **Sectors where repealing regulation 7 would be most applicable and sectors where it should not apply**

- 2.55 For all of the reasons detailed above, the NASUWT maintains that *Regulation 7* of the 'Conduct Regulations' should not be repealed, and, as such, there are no sectors where any such repeal would or would not be more applicable.

### **Views on the methodology used in the Impact Assessment (IA) provided alongside this consultation and whether it represents all the likely costs and benefits**

- 2.56 We refer to the arguments set out above.
- 2.57 As stated previously, the IA that has been produced for this consultation makes a number of similar remarks to that made in 2015 which the RPC deemed as '*not fit for purpose*' because it did '*not provide sufficient evidence of the likely impact of the proposals*'.<sup>48</sup>

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<sup>46</sup> <https://www.gov.uk/government/consultations/hiring-agency-staff-to-cover-industrial-action/hiring-agency-staff-to-cover-industrial-action#questions>

<sup>47</sup> <https://www.legislation.gov.uk/ukpga/2023/39/enacted>

<sup>48</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/454856/RPC15-BIS-2403\\_3009\\_-\\_Hiring\\_agency\\_staff\\_during\\_strike\\_action\\_-\\_IA\\_c\\_-\\_opinion.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/454856/RPC15-BIS-2403_3009_-_Hiring_agency_staff_during_strike_action_-_IA_c_-_opinion.pdf)



2.58 This led the RPC, back in 2015, to conclude that the case for the central assumption had not been made, and noted that the draft IA was not a robust basis for assessing the costs or, in particular, the benefits of the proposal.<sup>49</sup>

Dr Patrick Roach

**General Secretary**

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<sup>49</sup> <https://committees.parliament.uk/publications/23084/documents/169157/default/>