

Government consultation - Repealing the ban on hiring agency staff to cover industrial action

Introduction

This response is from the Universities and Colleges Employers Association (UCEA).

UCEA represents the views of higher education institutions (HEIs) across the UK in their capacity as employers. UCEA is a membership body funded by subscriptions from 172 HEIs in the UK. UCEA is the leading voice on employment and reward matters in the UK Higher Education (HE) sector. We support our members to be employers of choice through collaboration, advocacy and expert advice.

HEIs are independent employers and determine their own employment policies, often in consultation with recognised trade unions; therefore, there are a variety of HR practices in place in the sector.

Our response is based on views provided by 33 of our members.

Question 1 of 5

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

HEIs who responded expressed a range of views about the effect of regulation 7 on HE employers and more widely on other sectors of the economy. HEI respondents generally consider that regulation 7 has had a limited effect in the HE sector in terms of mitigating industrial action. This is in part because it is unlikely that the removal or modification of regulation 7 would have significant impact where there is a need for highly trained, highly skilled and specialist staff such as the academic and technical staff employed by our members. It is unlikely that agency workers would have the appropriate skills and competencies needed to cover academic work, as an example, although marking and assessment may be an exception.

However, for some professional services roles, such as security, catering and cleaning staff, the repeal of regulation 7 would provide a broader range of options for mitigating the impact of industrial action. Several members commented that being able to hire agency staff for short term cover could provide a simpler and more flexible solution to minimise the impact of strike action rather than employing such staff directly on temporary contracts. Hiring agency staff also provides the flexibility to mitigate the impact of industrial action at short notice.

Member HEIs who supported the repeal of regulation 7 stated that it could help mitigate the impact of industrial action. Industrial action can impact on students in several ways, for example:

- *disrupting access to education provision.*
- *limiting or preventing access to pastoral support and careers advice and support.*
- *disrupting day-to-day HEI operations, for example, to student services, student residences, catering, campus cleaning and security.*

- *reducing health and safety provision.*

Examples of mitigating actions taken by responding HEIs to cover industrial action in facilities management/services areas included relying on existing staff taking on additional work and/or undertaking voluntary overtime and this was unsustainable in the long term. It also put non-striking staff under increased pressure to maintain services. However, several responding HEIs noted that agency staff would require training in local practices.

Responding HEIs caveated their support for the possible repeal of regulation 7 by stating that it should be viewed in the context of the complexity of industrial relations and the impact of industrial action in the HE and other sectors. Several respondent HEIs stated that bringing in agency workers to cover the posts of striking workers could be seen as inflammatory by trade unions and staff, albeit whilst providing an opportunity to mitigate against the impact of industrial action. Responding HEIs noted that the impact of hiring agency staff on local employee relations and industrial relations could be negative and long lasting. In addition, the use of agency workers to cover academic staff teaching, marking and/or assessment would likely be contentious and concerning to both student and academic communities.

Whilst some responding members broadly welcomed the permissive flexibility offered to employers by repealing regulation 7, several commented that HEIs would need to consider using the right with caution. Repealing regulation 7 may be helpful in theory, but implementation may be more challenging. Other responding members reiterated the limited impact of regulation 7.

HEI respondents expressed a concern that because this issue has received so much attention, third parties, clients and customers may expect that alternative plans are put in place to cover striking workers to prevent disruption from strike action.

A further comment was that hiring agency staff might put employers in a difficult position between staff who are taking industrial action and those who are not. Agency staff may also feel uncomfortable in providing cover for staff taking industrial action.

Question 2 of 5

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

Responding HEIs expressed a range of views on the potential impact of the repeal of regulation 7 on workers and the wider economy. Overall, responding members said repealing regulation 7 could benefit HEIs and the economy as it would enable key services to continue to operate. The care sector and public transport were cited in particular as benefitting from the option of hiring agency staff to cover industrial action. HEI respondents commented that the impact of the repeal would be sector-specific and driven by the nature of the work and how straightforward it would be to replace/cover the skills of striking workers.

However, several responding HEIs noted that a repeal would undermine the right to strike and that workers represented by trade unions could be concerned that the repeal of regulation 7 could weaken their influence in negotiations. There were concerns that the ability to bring in agency workers could pose a significant risk to industrial/employee relations and might increase the likelihood of industrial disputes between employers and trade unions, potentially leading to a more confrontational industrial relations climate. Several responding HEIs noted they had been working to develop partnership working

with their local trade unions and were concerned this could be undermined by the repeal of regulation 7.

It is possible that some agency workers would not want to accept placements that put them in conflict with trade unions and striking workers. There was concern from those member HEIs where there has been little or no industrial action about using agency staff to cover industrial action and potentially jeopardising good industrial relations.

Further comments on question 2 included:

- *Industrial action, although disruptive, has a legitimate role in society. Individuals participating in industrial action should expect that organisations will mitigate against that disruption.*
- *An increased demand for agency workers during strikes could lead to growth in the temporary staffing market, with employment businesses benefiting from the expanded scope of their services.*
- *For people who rely on work through agencies, the repeal of regulation 7 would potentially provide more work opportunities.*

Question 3 of 5

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

Responding HEIs commented that the impact of strike action in specific sectors is a cause of dissent and concern in the wider economy, for example, people unable to travel and the cancellation of routine operations are adding to a general sense of frustration. Taking this into consideration, there may be a general acceptance of repealing regulation 7, other than by trade unions who would see it as limiting their impact and therefore their ability to be heard and represent their workers.

Members considered that repealing regulation 7 would be most applicable to sectors where the workers who are striking do not have highly specialised roles and/or specific skills sets. Any sectors which provide infrastructure transport, essential public services, such as emergency services, or key care/support staff, for example, would have the most benefit. In those sectors the ability to positively impact the effect on the economy of industrial action would be beneficial. However, members noted that health services, fire and rescue services, transport and other sectors are now covered by the Strikes (Minimum Services Levels) (MSLs) Act 2023 and questioned whether it was necessary to repeal regulation 7 considering the MSL legislation.

There was no consensus from responding members as to whether the repeal of regulation 7 should apply to all sectors. Some felt it should apply to all sectors to avoid any grey areas or lack of clarity that might cause confusion and/or disagreement. Others felt it should be limited and noted that with the introduction of MSLs a repeal would most likely affect those sectors not covered by MSLs.

Question 4 of 5

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

Only a small number of HEI respondents expressed a view on the methodology used in the impact assessment. Of those who responded, several stated there was little significant evidence to demonstrate either the impact of regulation 7 or the impact that

repealing regulation 7 would have and therefore it was difficult to comment on whether the impact assessment represents all likely costs versus benefits. Given the lack of evidence in the HE sector, responding members felt it was difficult to say whether all likely costs and benefits had been represented in the impact assessment. It was also noted that the impact assessment states that there is limited evidence on the use of agency workers where similar legislation exists in Ireland and Switzerland.

Other comments included:

- The impact assessment is comprehensive, covering a considerable amount of data and the benefits are clear and noted in the methodology.*
- The impact assessment is a reasonable assessment of the impact of the change by using assumptions; it outlines where assumptions have been made and where there are limitations in terms of available data.*
- The impact assessment represents the likely costs and benefits in a balanced way.*

Question 5 of 5

Please provide any other comments not covered by or evidence not provided in your response to the questions above that the government should consider.

Comments/further questions from responding HEIs included:

- It would be helpful to understand/clarify whether repeal of regulation 7 would apply to all forms of industrial action, for instance, to overtime bans or to a marking and assessment boycott, or would it only cover strikes?*
- Following from the point above there was concern that repealing regulation 7 might encourage other, potentially more disruptive forms of industrial action such as action short of strike e.g. a marking and assessment boycott, if strike action was no longer an effective form of industrial action.*
- How would any MSLs adopted within the HE sector impact upon the repeal of regulation 7, if agreed?*

**UCEA
18 January 2024**