

APSCo Update on Legal & Compliance Issues

NEW June 2022

Industrial Action and The Conduct Regulations

The Rail, Maritime, and Transport Workers' Union (the 'RMT Union') took strike action on 21, 23 and 25 June 2022 as a result of disagreements over salary and redundancies.

With the likelihood of more industrial action in the rail industry and across other public services, the Government's response has been to look to remove the legislative restrictions preventing agency workers covering work performed by striking staff. This entails repealing [Regulation 7](#) of [The Conduct of Employment Agencies and Employment Businesses Regulations 2003 \(SI 2003/3319\)](#).

Current Position

Regulation 7 of The Conduct of Employment Agencies and Employment Businesses Regulations 2003 (The Conduct Regulations) prohibits the provision of temporary workers to perform the duties normally performed by a worker who is taking part in a strike or other industrial action.

It also prevents them from providing agency staff to perform the roles of a non-striking worker who has been reassigned to cover for a striking worker. An employment business supplying workers in such circumstances will be committing a criminal offence.

Process to Repeal

The Government's position is not unexpected as the [Conservative Party Manifesto](#) (published 14 April 2015) stated that the Government will 'repeal nonsensical restrictions banning employers from hiring agency staff to provide essential cover during strikes'.

As Regulation 7 is contained in secondary legislation, the Government will be able to progress the change swiftly through a Statutory Instrument voted by the House of Commons.

Impact of the Government's Proposal in Practice

Should Regulation 7 of The Conduct Regulations be repealed, recruitment businesses will need to consider the following:

- Health and safety considerations for agency workers being provided into striking employee roles in order to comply with [Regulation 20](#) of The Conduct Regulations.
- Most of the roles are skilled and therefore agency workers may require upskilling, onboarding, and compliance checks in order to comply with Regulations 20 and [22](#) of The Conduct Regulations.

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- Be conscious of the fact that there may be a time lag before workers would be ready to fill resourcing needs.
- In a skills short market, skilled workers such as train drivers for example are unlikely to be "on the bench" and readily available.
- Workers, and indeed recruitment businesses may be reticent about replacing strikers.

APSCo has written to Kwasi Kwarteng, Secretary for State at BEIS, following a recent similar letter to Minister Paul Scully MP, Grant Shapps MP and DLME Margaret Beels, which can be accessed through our website [here](#).

We held a joint meeting with other trade bodies with Employment Agency Standards Inspectorate (EASI), who are now permitted to formally communicate news of this proposed legislation to us. We understand that the statutory instrument could be laid before Parliament very shortly and it will be debated. We expect there to be a government impact assessment, but we will continue to press for more urgent consultation with the sector. Government considers this legislation is required to protect major infrastructure from being shut down and to keep people on the move.

Our letters to government have been simultaneous to [press releases](#) in which we expressed members' reservations about the proposal. Given the significance of the proposed legislation and the fact that our members, and most sectors our members cover are not unionised, we have sought the views and input of our membership. Our public policy forums were united in concern over the Government's proposal to amend legislation to remove the prohibition on recruiters supplying agency workers to replace strikers.

We are concerned that strikes will spread to other sectors supported by APSCo such as education and we will of course continue to engage with government, the other industry trade bodies and our broader political contact base on this important issue and keep members updated.

If you have any queries, please contact the legal helpdesk at legalhelpdesk@apsco.org.