



## **“Hiring agency staff during strike action: reforming regulation” ASLEF’s response - September 2015**

### **Introduction**

The Associated Society of Locomotive Engineers and Firemen (ASLEF) is the UK’s largest train driver’s union representing approximately 20,000 members in train operating companies and freight companies as well as London Underground and light rail systems.

ASLEF fundamentally opposes the Trade Union Bill. British labour law is already the most restrictive on trade unions in the western world. Workers in the United Kingdom have fewer rights in relation to industrial action than elsewhere in Europe. In fact current regulations already contravene international laws and guidance from the ILO or the United Nations.

The proposals to allow agency workers to break strikes are designed to undermine the right to strike. Not only will they create even more imbalance in industrial relations by weakening the power of the workforce, they will additionally have major implications for health and safety, state security and quality of services.

Replacing striking workers with agency workers will breach international law. The ILO Freedom of Association Committee has confirmed that, “the hiring of workers 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’. The UK already fails to comply with ILO standards to which the UK is a signatory. This would add another one to the list.

*Question 1a How do you think the removal of Regulation 7 would affect employment businesses?*

Negatively

Using employment businesses to break strikes will imply that that business is taking part in a dispute.

Firstly it will put the businesses in an awkward position. Many have signed agreements to say they will not supply labour to cover striking workers. The International Confederation of Private Employment Agencies has a code of conduct that specifically bans such activities. It has created a Memorandum of Understanding alongside Uni Global Union, which was signed by several UK firms to prohibit “the replacement of striking workers by temporary agency workers without prejudice to national legislation or practices.” The memorandum even states that it should promote, “respect for freedom of association and collective bargaining as guaranteed by ILO conventions.”

Employment businesses are clearly employers in their own right. They will often recognise trade unions themselves. This could create additional difficulties for them and their own industrial relations.

Another major problem would be for the agency workers themselves. Many could find themselves being placed in the middle of a very awkward and difficult workplace and in a position they are not comfortable with. Whilst some people find agency work suits them, often workers join agencies because they struggle to find full time employment. To put them in a situation where they may have personal objections to crossing picket lines but feel compelled to, or the environment they are working in is hostile due to them being perceived as taking

sides, is unfair. Yet they could feel that if they choose to turn down such work, they will not be offered work in the future.

*b) How do you think the removal of Regulation 7 would affect work-seekers?*

Negatively

As mentioned above, this change would put many agency workers in a very awkward position.

UK law fails to protect agency workers from suffering any detriment for refusing certain work. There will be additional difficulties for agency workers who are signed up to agencies but are members of a trade union involved in the dispute that is being covered.

There could also be a health and safety risk to these workers who could be forced to work in areas where they don't feel fully trained or knowledgeable. This will be discussed later in the response.

*c) How do you think the removal of Regulation 7 would affect hirers?*

Negatively

These regulations have the potential to seriously damage industrial relations. If companies bus workers in to break strikes, the ill feeling between workers and employers will be far more deep seeded and will last far longer than it would have under normal strike conditions.

Using agency workers to curtail the effect of a strike may mean that issues remain unresolved in workplaces. It may also mean that strike action needs to

take place for a longer period of time to have the effect a shorter strike would have, without the use of agency workers.

It is highly likely to finish any goodwill from employees and could in fact lead to staff being locked-out.

*d) How do you think the removal of Regulation 7 would affect employees taking part in industrial action?*

Negatively

This would clearly have a negative effect on workers forced to take action by bad employers. It would undermine the effectiveness of action, undermine their relationship with their employer and could cause problems when they return to work if those who have covered them have not done their job to the correct standard.

There is already a major imbalance in UK industrial relations in favour of the employer. Removing the potency of strike action further undermines working people. Working conditions as well as pay and T&Cs will therefore suffer.

*e) How do you think the removal of Regulation 7 would affect the wider economy and society?*

Negatively

Apart from a deterioration of industrial relations, the biggest concern is over safety. ASLEF is shocked and surprised that safety is not specifically asked about or mentioned in the consultation. There will be circumstances where by the letter of the law, agency workers are technically permitted to fulfil certain tasks. That does not mean that they have the experience or ability of the staff they are replacing, or are able to fulfil the role as safely.

We have seen certain open access operators and heritage operators using casually employed drivers to run services. Whilst they may technically have credentials to do this, they may not have the usual route knowledge of directly employed drivers and this would lead to serious safety concerns.

ASLEF would also have major concerns over the use of temporarily agency staff being used for any role on the railway. Firstly due because we would clearly oppose any attempt by an employer to break a strike, but also because of the health and safety implications.

The railway is a safety critical industry. Everyone who works on the railway has roles that depend on each other and every job has safety implications. If guards are replaced with temporary staff, they will simply not have the experience needed, leaving the driver as the only experienced staff member on the train. This could be a serious issue if there is an operational incident. The safety implications of less experienced workers on infrastructure and operational roles such as signalling speak for themselves.

If there was to be agency cover that ASLEF feels would undermine the safety of our members and the traveling public, this would lead to further difficulties in running services. ASLEF would remind the government the legislation is in place to protect workers who refuse to work due to concerns over their own safety or indeed the public's.

Additionally, the idea that someone can cover a job to the same standard and ability of a permanent staff member and upon returning from action, the employee can then pick up that work seamlessly is nonsensical. There will be no opportunity for any "handover period". This could lead to mistakes that have to be undone and less efficiency that the initial absence will have created.

*2) The impact assessment for this consultation assumes that, between 17% and 27% of working days lost due to industrial action will potentially be covered by temporary agency workers, based on the limit of availability of suitable temporary agency workers, and the fact that some stoppages involve a large number of workers on a particular day. Do you think this assumption, as set out in the impact assessment, is reasonable?*

No

The Regulatory Policy Committee sums this issue up by stating:

‘The IA lacks evidence to support many of the quoted figures. In particular, the IA provides a central, critical assumption that 22% of the working days lost due to strike action will be covered by temporary workers (paragraph 64). This is essentially based on the maximum potential numbers of temporary workers available (27%), with an arbitrary reduction (para 28). The IA provides an extensive list of why employers might not get cover for all of the working days lost due to strike action (paragraph 26). These range from availability of temporary workers through skillsets to location of the strike. The paragraph appears to undermine the central assumption, as it provides reasons why it might be more beneficial to the employer to take the short term costs associated with a strike instead of seeking temporary workers.’

‘The RPC considers that the case for the central assumption has not been made and that it is not a robust basis for assessing the costs, and, in particular, the benefits of this proposal. The IA notes that the consultation will be used to test the plausibility of these estimates, and the underpinning assumptions. The RPC view is that these estimates are an unsatisfactory basis for the consultation.’

Additionally, as mentioned above, the impact assessment fails to acknowledge that agency workers will simply not be as efficient at full time, experienced

workers. Also it fails to recognise that many agency workers with the necessary skills are likely to be deployed elsewhere during disputes.

*3) The impact assessment assumes that the current options for recruiting temporary labour to provide cover during industrial action are used infrequently, due to the additional costs and administrative burden of hiring staff directly, or contracting service providers at short-notice. Do you think this assumption is reasonable?*

No

Most employers recognise that industrial action in the UK tends to be short, and that the lasting damage to industrial relations that could be created by allowing strike breaking agency workers to be brought in, could be far worse than the loss of a day or two's labour. Employers also recognise the difficulty of temporary workers picking up short term work efficiently and more importantly, safely.

*4) The impact assessment estimates that a quarter of the pool of temporary agency workers would be available for a placement at short-notice to provide cover for workers taking industrial action. Do you think this estimate is reasonable?*

No.

As stated above, this figure seems entirely speculative.

ASLEF believes that the effect of allowing agency workers to cover striking employees will be to worsen industrial relations, and in turn, lead to a reduction in

productivity. It will also lead to deterioration of health and safety standards in many industries such as the railway.

Whilst short term pressures to provide services may lead the use of temporary workers, as demonstrated above, ASLEF believes that doing so will be bad for employers in the long term, as well as the obvious negative effect it will have on the workforce. It is also unlikely to relieve the temporary disruption to the public that is an unfortunate consequence of strike action for which blame must be attributed to employers for poor industrial relations.

In short, this is a sticking plaster solution which will in fact make the wound worse.

Mick Whelan  
General Secretary  
ASLEF  
77 St John Street  
London  
EC1M 4NN