



Department  
for Business  
Innovation & Skills

**Hiring Agency Staff During Strike  
Action: reforming regulation**

**Impact Assessment**

JULY 2015

<b>Title: hiring agency staff during strike action: reforming regulation</b> <b>IA No:</b> BIS LM 004  <b>Lead department or agency:</b> BIS <b>Other departments or agencies:</b>	<b>Impact Assessment (IA)</b>
	<b>Date:</b> 14/07/2015
	<b>Stage:</b> Consultation
	<b>Source of intervention:</b> Domestic
	<b>Type of measure:</b> Secondary legislation
	<b>Contact for enquiries:</b> Ivan Bishop <a href="mailto:Ivan.bishop@bis.gsi.gov.uk">Ivan.bishop@bis.gsi.gov.uk</a> BIS, Abbey 3.1, 1 Victoria Street, London, SW1H 0ET
<b>Summary: Intervention and Options</b>	<b>RPC Opinion: Awaiting scrutiny</b>

Cost of Preferred (or more likely) Option					
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One in/two out?	Measure qualifies as	
£m 106.12	£m 27.07	£m -2.32	Yes	Out	
<b>What is the problem under consideration? Why is Government intervention necessary?</b> Industrial action causes negative externalities, as employers facing industrial action are unable to provide services (such as education or transport), negatively impacting on employers and individuals who are not involved in the industrial dispute. Employment businesses under regulation 7 of the Conduct Regulations are prohibited from providing temporary agency workers to employers facing industrial action, preventing a route by which these employers could obtain labour so that they could fulfil some of their key functions and reduce the negative externalities.					
<b>What are the policy objectives and the intended effects</b> The objective of the policy is to tackle the disproportionate impact of strikes, including those affecting important public services, and reduce the restriction on access to placements for temporary agency workers. Employers facing industrial action can directly hire workers to provide industrial action cover, or contract out the work to a service provider. The policy option will enable these employers to hire temporary agency workers from employment businesses, providing employers with a ready supply of labour available for temporary assignments, and removing the restriction on these workers' access to these placements. Therefore, agency workers will be able to perform some functions not being carried out due to the industrial action allowing employers in disputes to provide some key services which will reduce the impact of the dispute on the wider economy and society.					
<b>What policy options have been considered, including any alternatives to regulation? Only preferred options have been given (where one exists), see Evidence Base for full information</b> The policy option is to revoke regulation 7 of the Conduct Regulations and thereby allow employment businesses to provide temporary agency workers to employers facing industrial action to perform the work affected by workers taking industrial action.					
<b>Will the policy be reviewed? Yes, in 2021</b>					
Does implementation go beyond minimum EU requirements?			N/A		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.		<b>Micro Yes</b> <b>&lt; 20 Yes</b>	<b>Small Yes</b>	<b>Medium Yes</b>	<b>Large Yes</b>
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? N?A			<b>Traded:</b> -	<b>Non-traded:</b> -	

***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: 14/07/2015

## Summary: Analysis & Evidence

## Policy Option 2

Description: revocation of regulation 7 of the Conduct Regulations

Price Base Year 2014	PV Base Year 2016	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: 13.08	High: 199.16	Best Estimate: 106.12

COSTS (£m)	Total Transition (Constant Price) Year		Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	1.2	0	13.6	117.9
High	1.2		21.5	186.5
Best Estimate	1.2		17.5	152.2

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

Employers hiring temporary agency workers from employment businesses to perform work affected by industrial action face labour costs for these workers (between £11.5m to £18.3m a year, best estimate £14.9m at 2014 prices), and costs for employment business services (between £2.0 m and £3.2m a year, best estimate £2.6m). Employers facing industrial action will have familiarisation costs of £1.2m with the proposed change.

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

We are not expecting there to be any other costs for businesses, the Exchequer or individuals arising from the change to the regulatory framework.

BENEFITS (£m)	Total Transition (Constant Price) Year		Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	n/a		23.2	199.6
High	n/a		36.8	317.0
Best Estimate	n/a		30.0	258.3

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

Employers will benefit from the employers' share of the additional output generated by the use of temporary agency workers (between £9.6m and £15.3m a year, best estimate £12.5m, 2014 prices), employment businesses will benefit from revenue for services provided to employers (between £2.0m and £3.2m a year, best estimate £2.6m) and temporary agency workers and the Exchequer will benefit from additional wages social contributions and employment taxes less subsidies (£11.5m to 18.3m a year, best estimate £14.9m at 2014 prices).

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

There will be a wider benefit to employers and individuals not involved in the labour dispute who will benefit from some essential public services being provided during industrial action.

### Key assumptions/sensitivities/risks

Discount rate (%)

3.5

We have assumed 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 to availability of suitable temporary agency workers, and the fact that some stoppages involve a large number of workers on a particular day.

### BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OITO?	Measure qualifies as
Costs: 1.7	Benefits: 4.0	Net: 2.3	Yes	OUT

# References

Include the links to relevant legislation and publications, such as public impact assessments of earlier stages (e.g. Consultation, Final, Enactment) and those of the matching IN or OUTs measures.

## No. Legislation or publication

- 1 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)
- 2 The Conduct of Employment Agencies and Businesses Regulations 2003  
[http://www.legislation.gov.uk/uksi/2003/3319/pdfs/uksi\\_20033319\\_en.pdf](http://www.legislation.gov.uk/uksi/2003/3319/pdfs/uksi_20033319_en.pdf)
- 3 The Conduct of Employment Agencies and Employment Businesses (Amendment) Regulations 2010  
[http://www.legislation.gov.uk/ukdsi/2010/9780111497326/pdfs/ukdsi\\_9780111497326\\_en.pdf](http://www.legislation.gov.uk/ukdsi/2010/9780111497326/pdfs/ukdsi_9780111497326_en.pdf)
- 4 Terms and Conditions of Employment, the Agency Workers Regulations 2010  
[http://www.legislation.gov.uk/uksi/2010/93/pdfs/uksi\\_20100093\\_en.pdf](http://www.legislation.gov.uk/uksi/2010/93/pdfs/uksi_20100093_en.pdf)
- 5 Conduct of Employment Agencies and Employment Businesses (Amendment) Regs 2007/3575 [http://www.legislation.gov.uk/uksi/2007/3575/pdfs/uksi\\_20073575\\_en.pdf](http://www.legislation.gov.uk/uksi/2007/3575/pdfs/uksi_20073575_en.pdf)

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# Evidence Base

## Problem under consideration

- 1) The United Kingdom has one of the most lightly regulated labour markets in the developed world, fourth to New Zealand, the US and Canada for permanent employees and third to Canada and 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. 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 1.7 million people into work each year<sup>2</sup>. The recruitment sector is regulated by the Employment Agencies Act 1973<sup>3</sup> 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 tripartite 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.
- 3) 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.
- 4) However, industrial action will often cause negative externalities: costs on employers and individuals not involved in the dispute. For instance, strikes in essential public services such as education will mean that some parents of school age children will need to look after their children rather than go to work because some schools will not

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<sup>1</sup> OECD (2013) "Protecting jobs, enhancing flexibility: A new look at employment protection legislation" in OECD Employment Outlook 2013, OECD publishing [http://dx.doi.org/10.1787/emp\\_outlook-2013-6-en](http://dx.doi.org/10.1787/emp_outlook-2013-6-en)

<sup>2</sup> The Recruitment and Employment Confederation's Industry Trends Survey 2012/13

<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

[http://www.legislation.gov.uk/uksi/2003/3319/pdfs/uksi\\_20033319\\_en.pdf](http://www.legislation.gov.uk/uksi/2003/3319/pdfs/uksi_20033319_en.pdf)

<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 10 June 2015)

be able to fulfil their duty of care for their pupils during the strike. This will have a negative impact on some employers of the parents affected, who will face some disruption of their workforce. A public sector strike in November 2011 affected 76% of state-funded schools in England (with 62% closing), according to then Education Secretary Michael Gove<sup>6</sup>. Similarly, if postal workers were to strike, individuals and employers reliant on postal services would be placed at a disadvantage due to the resulting large backlog of deliveries<sup>7</sup>.

- 5) There were 155 stoppages involving 10 workers or more or lasting at least a day in 2014, accounting for 788,000 working days<sup>8</sup>. Currently, there are some ways that employers facing industrial action are able to obtain cover for the work affected by industrial action, either by directly employing new staff or by contracting the work out to a service provider. However, regulation 7 of the Conduct Regulations currently prohibits employment businesses from providing temporary agency workers to employers facing strikes. This denies employers facing industrial action access to a supply of labour available for temporary placements across a range of sectors and occupations. It also denies access to work opportunities to temporary agency workers, and opportunities to supply labour for employment businesses. By employing these agency workers, employers encountering industrial action could mitigate the impact from stoppages affecting employers and individuals not involved in the labour dispute.

## Background

### Recruitment sector

- 6) The recruitment sector is an important part of our economy, contributing over £25 billion in 2012<sup>9</sup>. In 2014, there were around 10,500 employment businesses<sup>10</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.

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<sup>6</sup> BBC News, Public Sector strikes disrupt services across England, 30 November 2011, <http://www.bbc.co.uk/news/uk-england-15954967> (Accessed 12 June 2015)

<sup>7</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>8</sup> ONS, Labour Market Statistics February 2015, table LABD03: Labour disputes stoppages in progress [http://www.ons.gov.uk/ons/publications/re-reference-tables.html?newquery=\\*&newoffset=50&pageSize=25&edition=tc%3A77-350752](http://www.ons.gov.uk/ons/publications/re-reference-tables.html?newquery=*&newoffset=50&pageSize=25&edition=tc%3A77-350752) (Accessed 12 June 2015)

<sup>9</sup> ONS Annual business Survey 2012. In comparison, according to the same source, the manufacture of transport equipment (including motor vehicles and aerospace manufacture) contributed around £20.5bn in 2012, while telecommunications contributed around £26 bn.

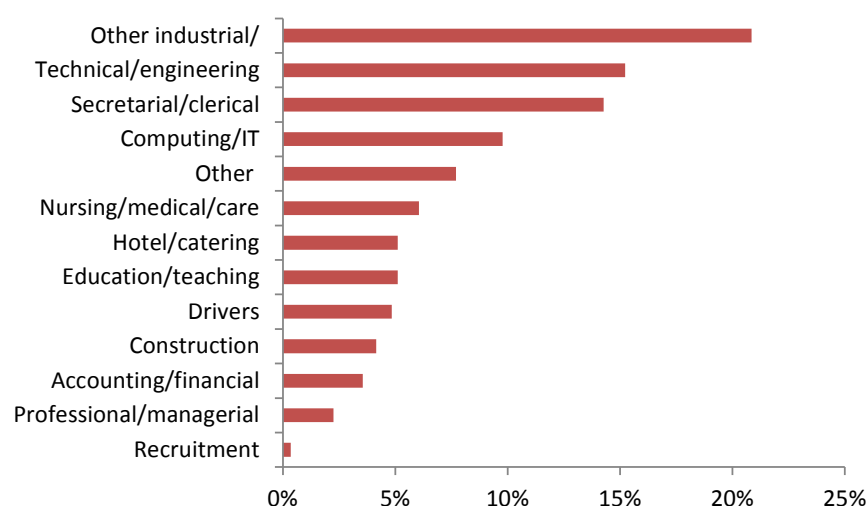
<sup>10</sup> ONS, UK Business: Activity, size and location 2014. The official Standard Industrial Classification places businesses within industries on the basis of their primary activity. These figures relate to the number of enterprises that are registered for VAT and/or PAYE, and rounded to the nearest 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.



**Table 1: Recruitment businesses by size, 2014 ONS data**

Type of business	Firm size (number of employees)				Total
	Micro (0-9)	Small (10-49)	Medium (50-249)	Large (250+)	
employment businesses	7,040	2,045	1,095	355	10,535
	67%	19%	10%	3%	100%
whole economy	1,998,850	218,060	37,655	9,080	2,263,645
	88%	10%	2%	0%	100%

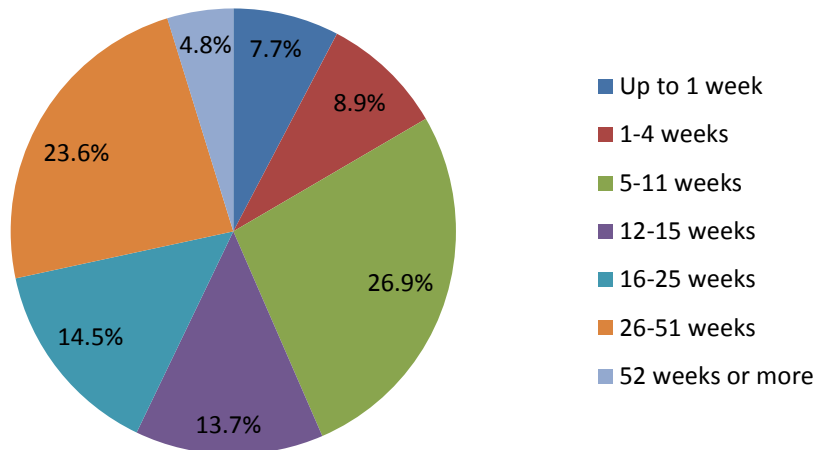
- 7) In 2013/14 employment businesses placed around 1,156,000 individuals in temporary agency assignments on any given day, up 2.4% on the year (Figure 1). These temporary placements represented 3.8% of total employment in the UK in 2013/14.
- 8) The sector supplies workers for a wide range of jobs, ranging from the highly skilled (e.g. IT) to the very low paid and low skilled. According to Recruitment and Employment Confederation (REC) Industry Trends, around a fifth of temporary or fixed contract placements made by employment businesses were for 'other industrial' occupations, followed by 'technical/engineering' occupations at 15% and 'secretarial/clerical' at 14%. This falls to lower proportions of 6% for 'nursing/medical/care' occupations and 5% for 'education/teaching' occupations<sup>11</sup>.

**Figure 1: Temporary/contract placements by occupation group, 2013/14**

<sup>11</sup> Recruitment and Employment Confederation, Recruitment Industry Trends 2013/14, October 2014, p20.

- 9) According to REC, over four-in-five temporary/contract placements last for at least 5 weeks, with 43% lasting for at least 16 weeks<sup>12</sup>.

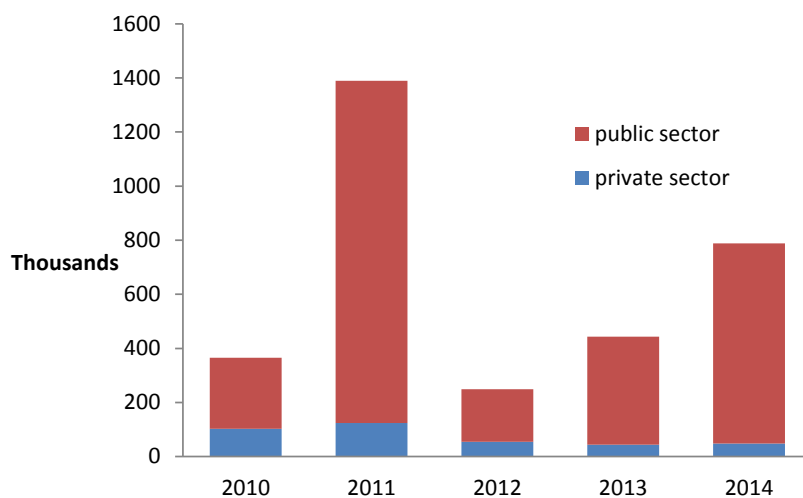
**Figure 2: Assignment length of temporary/contract placements, 2013/14**



### Labour dispute stoppages

- 10) Over the period 2010 to 2014, there has been an annual average of 128 stoppages, which accounted for 647,000 working days lost. Over the five years to 2014, the public sector (government, education, health and social care) accounted for nearly 90% of working days lost. On average, stoppages lasted for 1.1 days – though this average is partly driven by a few large scale one-day public sector strikes during this period<sup>13</sup>.

**Figure 3: Working days lost due to stoppages, by sector, 2010 to 2014**



<sup>12</sup> Recruitment and Employment Confederation, Recruitment Industry Trends 2013/14, October 2014, p16.

<sup>13</sup> BIS analysis of ONS Labour Dispute Survey tables.

## Existing options for employers facing industrial action

11) Currently employers facing industrial action could consider some of the following options to hire staff to carry out work normally performed by workers who are taking industrial action:

- ◆ **Direct hires by the employer, without using an employment business**
- ◆ **Direct hires by the employer, with the help of an employment agency in advertising, screening and selecting applicants** - an employer may lawfully engage an employment agency or other third party to advertise, screen or even select appropriate staff which the employer can then hire directly. This arrangement may offer somewhat less flexibility to the employer and impose extra costs and administrative burdens on them.
- ◆ **Direct hires by the employer, using training providers or others to train people before employment**
- ◆ **Sub-contracting a service to another employer**

12) These options largely involve the employer directly hiring temporary staff. This involves an administrative burden, in terms of handling payroll and pension issues, recruitment processes and contractual arrangements. Employers would also face the difficulty in finding a ready supply of labour 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. The Employment Agency Standards Inspectorate, which enforces the Conduct Regulations, receives very few complaints about potential infringement of regulation 7 (just 2 in 2012/13 and 5 in 2013/14, around 2% and 4% of stoppages respectively) which suggests that there may be a low level of usage of the current options.

## Rationale for intervention

13) 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 industrial action, or by those who have been allocated work normally carried out by the workers on industrial action.

14) This prevents employers facing industrial action from accessing a supply of available, reasonably cost efficient, labour to enable them to provide a service to customers during the industrial action. This can have an impact on businesses, employers and workers with which the striking workers do not have a dispute (negative externalities of industrial action). 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 effect of the negative externalities of industrial action. 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.

- 15) 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.

## Policy Objectives

- 16) The objective of the policy is to tackle the disproportionate impact of strikes, in both important public services and other industries, and reduce the restriction on access to placements for temporary agency workers. 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, such as education services for school pupils, which limits the impact of the dispute on the wider economy and society. The revocation of regulation 7 would also remove the restriction on temporary agency workers accessing placements providing cover for work affected by industrial action, and on employment businesses supplying agency workers to carry out this work.

## Description of Policy Option

- 17) Regulation 7 in the Conduct Regulations will be revoked, so that employment businesses will be able to provide temporary agency workers to employers facing industrial action so that they can 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.

## The main stakeholders

- 18) The main stakeholders affected by the proposed changes to the recruitment sector regulations are:
- Employment businesses
  - Employers facing industrial action
  - Temporary agency workers

# Policy option costs and benefits

- 19) 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 of the potential impacts.
- 20) **Option 1:** The ‘do nothing’ option, provides the baseline against which the other proposals are compared.
- 21) **Option 2:** The Government is proposing to revoke regulation 7 of the Conduct Regulations. We are consulting on the potential effect on different stakeholders of this proposal.

## Assumptions

### Estimated days covered by agency workers

- 22) Based on analysis of the Labour Disputes Survey tables published in the ONS Labour Market Statistics release, we estimate that over the five year’s between 2010 and 2014 the annual averages by broad industry group for stoppages, workers involved in stoppages and working days lost are as shown in Table 2<sup>14</sup>.
- 23) We assume that the pattern of industrial action that occurred in this period is likely to be representative of industrial action that will occur in the following 10 years. Trade union demographics are not likely to substantially alter, so the proportion of public sector workers (those in central and local government administration, education and health) who are in trade unions is likely to remain substantially higher than the proportion of private sector workers who are in unions.
- 24) The Government is planning other trade union reforms that are due to be introduced on a similar timeframe to the revocation of regulation 7. Some of these, such as the introduction of ballot thresholds, may potentially impact on the number of incidences of industrial action, but as these reforms have yet to proceed through Parliament we have not taken account of their potential impact in this IA.

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<sup>14</sup> The total number of stoppages is lower than the sum of the individual industry figures as some stoppages cover more than one industry group (though workers involved and working days lost figures have been calculated separately for each industry and therefore do not involve any double counting).

**Table 2: Labour disputes in the UK**

	Annual average 2010-2014		
	<u>stoppages</u>	<u>workers involved</u>	<u>working days lost<sup>15</sup></u>
Agriculture, forestry and fishing	0	0	0
Mining and quarrying	0	0	0
Manufacturing	15	3680	9200
Electricity, gas and air conditioning	Less than one strike a year	80	240
Water Supply, Sewerage , Waste Management and Remediation Activities	3	940	2080
Construction	4	2660	7760
Wholesale and retail trade; repairs	1	220	960
Transport and Storage	22	14140	30160
Accommodation and Food service	2	2880	2880
Information and Communication	7	2320	4120
Financial and Insurance	1	380	360
Real estate Activities;	1	480	600
Professional scientific and technical activities	2	2020	2000
Administrative and support services;	12	2960	5460
Public administration and defence	14	233460	273360
Education	36	273600	245400
Human Health and social work	9	57860	53260
Arts, entertainment and Recreation, Other			
Service and personal services	7	8060	9220
total	128	605720	647140

25) Table 2 shows that around 647,000 working days were lost each year on average between 2010 and 2014. The policy option would allow employers facing industrial action to contract employment businesses to provide temporary agency workers to provide cover for all of these days lost.

26) However, there are many reasons why employers might not get cover for all of the working days lost.

- ◆ **Availability of temporary agency workers** – as shown above, there are around 1,156,000 temporary agency placements each working day (3.8% of employment). However, 83% of these placements last for at least 5 weeks, so most temporary agency workers will not be available for short notice placements to perform work affected by industrial action. BIS analysis of the Labour Force Survey suggests that

<sup>15</sup> Working days lost can differ from the number of workers involved if the stoppage takes place over more than one day, or less than one day for some or all workers involved.

around a quarter of the potential pool of temporary agency workers would not be on a placement at a particular point in time<sup>16</sup>.

- ◆ **Skillsets of temporary agency workers** – there is also a limitation imposed by the particular skill-sets of agency workers (as set out in Figure 1). For instance, only around 59,000 temporary agency placements were in education/teaching occupations, with around 70,000 in ‘nursing/medical/care’, and there will be other skilled work where using other available agency workers would not be viable. For instance, in industries such as transport there are public safety issues making the use of untrained replacement staff very difficult<sup>17</sup>. Where large national cases of industrial action take place in health or education, it would only be possible for the available agency workers with the required skills (and DBS approvals) to cover for some of the total working days lost.
- ◆ **Usual work of employer** – the type of work carried out by the employer will determine whether using temporary agency workers for cover for absent workers on industrial action will be value for money. Where knowledge of the employer’s operations or of key ongoing projects is important, or where work is based upon established customer relations, then the use of temporary workers would be less likely to offer value for money, especially if the industrial action is for a short period, such as a single day.
- ◆ **Location of strike** – if a large number of temporary agency worker placements become available in a particular location due to industrial action, then it may not be possible to meet these placements from the available agency workers in the area, especially if skilled workers are required.
- ◆ **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, for the reasons set out in paragraph 12. 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.

27) It is difficult to estimate what proportion of working days lost by individuals may be covered by employers using temporary agency workers. Based on an estimate of temporary agency workers availability to cover working days lost through workers taking industrial action, we estimate that around 27% of working days lost could potentially be covered by agency workers. The estimation method is set out in Annex 1. However, as noted in paragraph 26, there are other factors, as well as availability of temporary workers, that might affect how many working days lost could be covered

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<sup>16</sup> BIS analysis of the Labour Force Survey for the four quarters of 2014 shows that around 25% of individuals identifying themselves as agency workers were unemployed, inactive or employed but away from their job or waiting to take up a new job.

<sup>17</sup> Melanie Simms, Rail workers union strikes a blow for collective bargaining, University of Leicester, June 2015 <https://www2.le.ac.uk/offices/press/think-leicester/business-and-economy/rail-workers-union-strikes-a-blow-for-collective-bargaining> (accessed 30th June 2015)

(primarily some use of existing options, and whether agency workers with particular skillsets will be available). The 27% proportion is therefore a maximum estimate.

28) There is a lack of information available that would enable us to quantify the extent to which existing options to obtain short-term staff are used, or the extent to which the skill-sets of workers taking industrial action rule out the use of available temporary agency workers to provide cover. Employers encountering industrial action will also only utilise agency workers to perform work affected by the industrial action if it meets their business needs at the time. Therefore, for our best estimate we assume that a further 5 percentage points of working days lost will not be covered by temporary agency workers made available to affected employers under policy option 2. This gives an estimate of 22% of working days lost being covered. There is some uncertainty around this assumption, so we will test its plausibility during the consultation. We also show calculations based on the high estimate of 27% of working days lost covered by temporary agency workers, and a low estimate of 17% working days covered to provide some indications of sensitivity of the assumptions made for the best estimate. We will use the consultation to test the plausibility of these estimates, and the assumptions underpinning them.

29) We therefore estimate the costs and benefits of the policy option based on the number of working days lost that temporary agency workers will provide cover for as set out in Table 3 below.

**Table 3: Estimated annual number of working days lost through industrial action that temporary agency workers would cover**

	<u>Best estimate</u>	<u>Low</u>	<u>high</u>
Percentage of working days lost	22%	17%	27%
Agriculture, forestry and fishing	0	0	0
Mining and quarrying	0	0	0
Manufacturing	2024	1564	2484
Electricity, gas and air conditioning	53	41	65
Water Supply, Sewerage, Waste Management and Remediation Activities	458	354	562
Construction	1707	1319	2095
Wholesale and retail trade; repairs	211	163	259
Transport and Storage	6635	5127	8143
Accommodation and Food service	634	490	778
Information and Communication	906	700	1112
Financial and Insurance	79	61	97
Real estate Activities;	132	102	162
Professional scientific and technical activities	440	340	540
Administrative and support services;	1201	928	1474
Public administration and defence	60139	46471	73807
Education	53988	41718	66258
Human Health and social work	11717	9054	14380
Arts, entertainment and Recreation, Other Service and personal services	2028	1567	2489



## Public sector/private sector split

30) The three key industry groups employing public sector workers are 'public administration and defence', education and 'human health and social work'. However, some parts of the education and health and social work industries are carried out by the private sector. To account for this in the estimated costs and benefits to business, we assume that the proportion of trade union membership that defines itself as private sector in education and health and social work will reflect the proportion of industrial action in those industries that is accounted for by the private sector. The Labour Force Survey for the fourth quarter of 2014 estimates that around 10% of union members in education, and 19% of union members in health and social work were in the private sector.

## Transition costs

- 31) We do not envisage that there are any transition costs to employment businesses. They should all be aware of the contents of the Conduct Regulations, and the policy option is deregulatory, straightforwardly removing one regulation from the Conduct Regulations. It therefore imposes no additional requirements on these groups that they need to familiarise themselves with.
- 32) Employers facing industrial action may have to familiarise themselves with the additional option that the policy proposal will make available to them to hire cover for workers taking industrial action. Between 2010 and 2014 there was an annual average of 128 stoppages, which could suggest that around 128 employers would need to familiarise themselves with the removal of regulation 7 (though some organisations may be subject to more than one strike each year). However, some stoppages include some cases of industrial action that affect multiple employers. These strikes are predominantly strikes in public administration, schools, the health sector and some passenger transport strikes (those involving passenger train services or buses). We therefore estimate the number of employers in specific industries shown in Table 4 will familiarise themselves with the change in regulation, along with the (up to) 128 employers who face industrial action each year.
- 33) For land passenger transport, we have excluded micro employers, as publicly available evidence suggests that industrial action in this industry tends to affect the large rail or bus companies. However, micro employers in public administration (some government agencies), education (small schools) and health (such as GP surgeries) could be subject to strike action.
- 34) The public private split for schools comes from the schools data from England, Wales and Scotland. We have assumed that 10% of health employers are private sector, in line with the King's Fund estimate that 10% of NHS funding goes to non-NHS bodies<sup>18</sup>, and we've estimated that around 5% of small, medium and large land passenger

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<sup>18</sup> The King's Fund, Is the NHS being privatised?, March 2015, <http://www.kingsfund.org.uk/projects/verdict/nhs-being-privatised>

employers are public sector (as a few, such as Transport for London's underground and overground services, have remained in the public sector).

**Table 4: Number of employers in specific industries familiarising themselves with regulatory change<sup>19</sup>**

	<u>Public sector</u>	<u>Private sector</u>	<u>total</u>
Central and local government	7,375	0	7,375
Schools	25,768	2,529	28,315
Human health	33,277	3,698	36,975
Land passenger transport	100	1,950	2,050
Plus:			
Employers facing disputes	52	77	128

35) As the policy proposal is relatively straightforward, in that it allows employment businesses to supply temporary agency workers to perform work affected by industrial action, we assume that it will take employers half an hour to familiarise themselves with this regulatory change (for instance by reading online guidance from government). We estimate the labour cost using the median hourly wages excluding overtime from the 2014 Annual Survey of Hours and Earnings (ASHE) for senior professionals of educational establishments (schools), health services and public health managers (Health) and human resource managers and directors (all other employers). These wage figures are converted to labour costs by applying the estimate of non-wage labour costs as a proportion of wages of 19.8% (based on Eurostat figures<sup>20</sup>) to the hourly wage figures.

**Table 5: Median hourly wage and labour costs for key hiring personnel, 2014 (£)**

	<u>estimated hourly earnings</u>	<u>estimated hourly labour cost</u>
Human resource managers and directors	23.65	28.32
Senior professionals of educational establishments	30.29	36.28
Health services and public health managers	23.19	27.77

<sup>19</sup> The number of employers for central and local government, human health and passenger transport come from BIS Business Population Estimates 2014, <https://www.gov.uk/government/statistics/business-population-estimates-2014>, the number of schools comes from the relevant government departments in England, Scotland and Wales: For England: Department for Education, Schools, pupils and their characteristics, January 2015 <https://www.gov.uk/government/statistics/schools-pupils-and-their-characteristics-january-2015>, For Scotland; The Scottish Government, Summary Statistics for Schools in Scotland No.5, 2014 <http://www.gov.scot/Publications/2014/12/7590/downloads> and Topics/education and training/schools/FAQ <http://www.gov.scot/Topics/Education/Schools/FAQs>, For Wales: Welsh Government, StatsWales, Schools Census <https://statswales.wales.gov.uk/Catalogue/Education-and-Skills/Schools-and-Teachers/Schools-Census>. The 128 figure is likely to be a maximum, as some of these disputes may be in the key industries identified, and some employers may be subject to more than one stoppage a year.

<sup>20</sup> Eurostat, Labour costs per hour in Euros, 2004-2014 whole economy excluding agriculture and public admin, [http://ec.europa.eu/eurostat/statistics-explained/index.php/File:Labour\\_costs\\_per\\_hour\\_in\\_EUR,\\_2004-2014\\_whole\\_economy\\_excluding\\_agriculture\\_and\\_public\\_administration.png](http://ec.europa.eu/eurostat/statistics-explained/index.php/File:Labour_costs_per_hour_in_EUR,_2004-2014_whole_economy_excluding_agriculture_and_public_administration.png) (Accessed 17<sup>th</sup> June 2015)

36) Multiplying the labour costs by the numbers of employers undergoing familiarisation with the removal of regulation 7 from the Conduct Regulations, we get the following one of estimate of familiarisation costs.

**Table 6: Estimated cost of employer familiarisation with the removal of regulation 7, 2014 prices (£)**

	<u>Public sector</u>	<u>Private sector</u>	<u>Total</u>
Familiarisation costs	£1,036,000	£126,000	£1,162,000

## Ongoing Costs and benefits

### Ongoing Costs: Employers facing strike action

#### Labour costs

37) Employers hiring temporary agency workers from employment businesses to provide cover for workers on industrial action would have to pay their labour costs. They would also have to pay employment businesses their fee for arranging the labour.

38) Based on the number of working days lost that are covered, as shown in Table 3, we assume that a working day covers eight hours. The estimated numbers of hours for which employers facing industrial action hire temporary agency workers to cover for striking workers are shown in Table 7.

**Table 7: Estimated hours per year temporary agency workers hired to provide cover for striking workers**

	<u>Best estimate</u>	<u>low</u>	<u>high</u>
Agriculture, forestry and fishing	0	0	0
Mining and quarrying	0	0	0
Manufacturing	16192	12512	19872
Electricity, gas and air conditioning	422	326	518
Water Supply, Sewerage , Waste			
Management and Remediation Activities	3661	2829	4493
Construction	13658	10554	16762
Wholesale and retail trade; repairs	1690	1306	2074
Transport and Storage	53082	41018	65146
Accommodation and Food service	5069	3917	6221
Information and Communication	7251	5603	8899
Financial and Insurance	634	490	778
Real estate Activities;	1056	816	1296
Professional scientific and technical activities	3520	2720	4320
Administrative and support services;	9610	7426	11794
Public administration and defence	481114	371770	590458
Education	431904	333744	530064
Human Health and social work	93738	72434	115042
Arts, entertainment and Recreation, Other			
Service and personal services	16227	12539	19915

39) The median hourly wages for temporary agency workers for 2014 for those industry groups in which stoppages occurred were calculated from the Labour Force Survey<sup>21</sup>. Hirers would also be expected to cover the non-wage labour costs of temporary agency workers, covering employer's social contributions and employment taxes less subsidies received by the employer. Based on data on 2014 labour costs from Eurostat<sup>22</sup>, we estimate that non-wage labour costs are the equivalent of 19.8% of wage costs. We applied this percentage to the median hourly wage figures to estimate the full labour cost of the temporary agency workers, as shown in Table 8.

**Table 8: Median hourly wage and total labour costs for temporary agency workers, 2014 (£)**

	estimated hourly earnings	estimated hourly labour cost
Manufacturing	8.00	9.58
utilities <sup>#</sup>	9.62	11.52
Construction	9.61	11.51
Wholesale and retail trade; repairs	7.29	8.73
Transport and Storage	7.33	8.78
Accommodation and Food service	7.00	8.39
Information and Communication	13.84	16.58
Financial and Insurance	19.51	23.37
Real estate and administrative and support industries <sup>#</sup>	7.22	8.65
Professional scientific and technical activities	13.74	16.46
Administrative and support services;	7.22	8.65
Public administration and defence	10.53	12.61
Education	12.63	15.13
Human Health and social work	8.82	10.57
Arts, entertainment and Recreation, Other Service and personal services	8.24	9.87

<sup>#</sup> due to small sample sizes, the median agency wage for a) water and electricity and gas industries were combined in utilities, and b) real estate and administrative and support services were combined

40) Applying the estimated labour costs to the estimated hours that temporary agency workers may be hired to perform work affected by workers taking industrial action, we estimate the annual labour costs from hiring temporary agency workers for employers facing industrial action. These costs are set out in Table 9. The costs for business are estimated as set out in paragraph 30.

<sup>21</sup> BIS estimates based on the average for the four quarterly Labour Force Survey datasets for 2014.

<sup>22</sup> Eurostat, Labour costs per hour in Euros, 2004-2014 whole economy excluding agriculture and public admin, [http://ec.europa.eu/eurostat/statistics-explained/index.php/File:Labour\\_costs\\_per\\_hour\\_in\\_EUR,\\_2004-2014\\_whole\\_economy\\_excluding\\_agriculture\\_and\\_public\\_administration.png](http://ec.europa.eu/eurostat/statistics-explained/index.php/File:Labour_costs_per_hour_in_EUR,_2004-2014_whole_economy_excluding_agriculture_and_public_administration.png) (Accessed 17<sup>th</sup> June 2015)

**Table 9: Annual labour costs for temporary agency workers hired to provide cover for workers on industrial action, by industry group, 2014 prices (£)**

	<u>Best estimate</u>	<u>low</u>	<u>high</u>
Manufacturing	155,000	120,000	190,000
Electricity, gas and air conditioning	5,000	4,000	6,000
Water Supply, Sewerage , Waste Management and Remediation Activities	42,000	33,000	52,000
Construction	157,000	121,000	193,000
Wholesale and retail trade; repairs	15,000	11,000	18,000
Transport and Storage	466,000	360,000	572,000
Accommodation and Food service	43,000	33,000	52,000
Information and Communication	120,000	93,000	148,000
Financial and Insurance	15,000	11,000	18,000
Real estate Activities;	9,000	7,000	11,000
Professional scientific and technical activities	58,000	45,000	71,000
Administrative and support services;	83,000	64,000	102,000
Public administration and defence	6,067,000	4,688,000	7,446,000
Education	6,535,000	5,050,000	8,020,000
Human Health and social work	991,000	766,000	1,216,000
Arts, entertainment and Recreation, Other Service and personal services	160,000	124,000	197,000
<b>total cost</b>	<b>14,920,000</b>	<b>11,529,000</b>	<b>18,311,000</b>
total cost to business	1,962,000	1,516,000	2,408,000

### Costs of employment business services

41) Employers facing industrial action who hire replacement labour from employment businesses will need to pay a fee for the cost of the employment business's service. The REC Recruitment Industry Trends 2013/14 report states that the median margin for employment businesses on temporary placements was 17.6% of labour costs<sup>23</sup>.

42) Taking this percentage, and applying this to the labour costs shown in Table 9 (to cover wages and national insurance), we estimate the costs to hirers of employment business services, which are set out in Table 10. The costs to business are estimated using the approach set out in paragraph 30.

<sup>23</sup> REC, Recruitment Industry Trends 2013/14, October 2014, Figure 22, p 37.

**Table 10: Estimated annual cost of employment businesses to employers hiring temporary agency workers to provide industrial action cover (£)**

	best <u>estimate</u>	<u>low</u>	<u>high</u>
Cost of employment business services	2,626,000	2,029,000	3,223,000
Cost of employment business services to business	345,000	267,000	424,000

### Other ongoing costs

43) There should be no costs to individuals, employment businesses or the Exchequer arising from policy option 2.

### Total ongoing costs

44) The total estimated ongoing annual costs that would result from the introduction of policy option 2 are set out in Table 11. The lower cost to business reflects the fact that most working days lost in labour dispute stoppages occur in the public sector.

**Table 11: Estimated annual costs to employers that would result from the introduction of policy option 2, 2014 prices (£)**

	best <u>estimate</u>	<u>low</u>	<u>high</u>
Total costs	17,546,000	13,558,000	21,534,000
Total cost to business	2,307,000	1,783,000	2,832,000

### Ongoing benefits: employers

45) Hiring employers will benefit from the additional output they will obtain from the work performed by the temporary agency workers. The benefit to employers will be net of the labour share of output, estimated as the labour costs of the agency workers.

46) ONS estimates productivity per hour worked<sup>24</sup>, which measures the amount of output produced from each hour of labour. Using the same methodology as the ONS, we have estimated productivity per hour worked levels by industry group using the four quarter average for 2014. These estimates are set out in Table 12. Following the ONS approach, and reflecting the data available from the ONS, a combined public services estimate covering public administration and defence, education and health and social work was produced.

<sup>24</sup> ONS, Labour Productivity, Q4 2014, <http://www.ons.gov.uk/ons/rel/productivity/labour-productivity/q4-2014/stbq414.html> (Accessed 16<sup>th</sup> June 2015)

**Table 12: Estimated output per hour worked, by industry group, 2014 (£)**

	<u>2014</u>
Agriculture, forestry and fishing	8.9
Mining and quarrying	186.4
Manufacturing	31.2
Electricity, gas and air conditioning	53.4
Water Supply, Sewerage , Waste Management and Remediation Activities	51.7
Construction	23.5
Wholesale and retail trade; repairs	24.2
Transport and Storage	24.4
Accommodation and Food service	15.2
Information and Communication	39.6
Financial and Insurance	58.8
Real estate Activities;	206.6
Professional scientific and technical activities	28.2
Administrative and support services;	20.5
Public services	23.5
Arts, entertainment and Recreation, Other Service and personal services	25.5

47) We estimate the annual additional output by multiplying the figures for productivity per hour worked by the additional hours worked estimates set out in Table 7. We then deduct the labour costs resulting from the hiring of the temporary agency workers, to provide an estimate of the benefit to employers from additional output. These estimated annual benefits to employers are set out in Table 13. The benefit to business was estimated using the approach set out in paragraph 30.

48) It could be argued that agency workers may lower the usual productivity of the workplace if they have less attachment to the firm, take time to learn firm specific skills or have lower job satisfaction<sup>25</sup>. However, there are arguments against this lower productivity viewpoint. For instance, some agency workers choose agency work over permanent employment as it enables them to work flexibly, and with more independence, and agency workers may be utilised in roles where firm specific skills are less important. Some agency workers may also be able to earn higher wages as an agency worker<sup>26</sup>. Analysis by Alex Bryson (NIESR) found that “the presence of temporary agency workers in the workplace is not significantly associated with labour

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Bryson, Alex (2013) *Do temporary agency workers affect workplace performance?* Journal of Productivity Analysis, 39 (2). pp. 131-138. ISSN 0895-562X

[http://eprints.lse.ac.uk/45610/1/\\_lse.ac.uk\\_storage\\_LIBRARY\\_Secondary\\_libfile\\_shared\\_repository\\_Content\\_Bryson,%20A\\_Temporary%20agency\\_Bryson\\_%20Temporary%20agency\\_2014.pdf](http://eprints.lse.ac.uk/45610/1/_lse.ac.uk_storage_LIBRARY_Secondary_libfile_shared_repository_Content_Bryson,%20A_Temporary%20agency_Bryson_%20Temporary%20agency_2014.pdf) (Accessed 22<sup>nd</sup>

June 2015)

<sup>26</sup> REC, Flex Appeal: Why freelancers, contractors and agency workers choose to work this way, 2014

productivity”<sup>27</sup> (in other words, use of agency workers doesn’t significantly impact on workplace productivity). Therefore we have used the industry labour productivity figures shown above.

**Table 13: estimated annual benefit to employers from additional output, 2014 prices (£)**

	best estimate	low	high
Manufacturing	350,000	271,000	430,000
Electricity, gas and air conditioning	18,000	14,000	22,000
Water Supply, Sewerage , Waste Management and Remediation Activities	147,000	114,000	181,000
Construction	163,000	126,000	200,000
Wholesale and retail trade; repairs	26,000	20,000	32,000
Transport and Storage	831,000	642,000	1,019,000
Accommodation and Food service	34,000	27,000	42,000
Information and Communication	167,000	129,000	205,000
Financial and Insurance	22,000	17,000	28,000
Real estate Activities;	209,000	162,000	257,000
Professional scientific and technical activities	41,000	32,000	51,000
Administrative and support services;	114,000	88,000	140,000
Public administration and defence	5,250,000	4,057,000	6,443,000
Education	3,625,000	2,801,000	4,448,000
Human Health and social work	1,214,000	938,000	1,490,000
Arts, entertainment and Recreation, Other Service and personal services	253,000	196,000	311,000
<b>total benefit</b>	<b>12,465,000</b>	<b>9,632,000</b>	<b>15,298,000</b>
<b>benefit to business</b>	<b>2,853,000</b>	<b>2,205,000</b>	<b>3,502,000</b>

### Ongoing benefits: employment businesses

49). Employment businesses will benefit from the additional revenue they generate from providing temporary agency workers to employers facing industrial action. This is equivalent to the cost of employment business services estimated in Table 10, based on the 17.6% marginal rate on labour costs. The estimated benefits from policy option 2 are set out in Table 14. All of these benefits are considered as benefits to private sector businesses.

<sup>27</sup> Bryson, Alex (2013) *Do temporary agency workers affect workplace performance?* – referenced above - p11 of LSE internet version.



**Table 14: benefits to employment businesses from fees for providing temporary agency workers, 2014 prices (£)**

	best <u>estimate</u>	<u>low</u>	<u>high</u>
revenue to employment businesses	2,626,000	2,029,000	3,223,000

**Ongoing benefits: temporary agency workers (and Exchequer)**

50) The revocation of regulation 7 of the Conduct Regulations will enable some temporary agency workers who are not on existing assignments to take up placements with employers who are facing industrial action. Those temporary agency workers will benefit from the additional wages paid for the additional work offered. The workers will also benefit from the social contributions paid by the employers as non-wage labour costs. There will be some benefit to the Exchequer from the proportion of non-wage labour costs that relates to employment taxes less subsidies. The total benefit to temporary agency workers, which we estimate as the total labour costs of agency workers, is set out in Table 15.

**Table 15: benefit to temporary agency workers and Exchequer from wages and other non-wage labour costs, 2014 prices (£)**

	Best <u>estimate</u>	<u>low</u>	<u>high</u>
benefit from wages	12,457,000	9,626,000	15,288,000
benefits from non-wage labour costs	2,463,000	1,903,000	3,023,000

**Wider Benefits**

51) There is limited evidence monetising the indirect impact of industrial action in the key public services on the output of other industries. Where attempts have been made, it is clear that the size, duration and industry where the strike takes place strongly influence the external impact of industrial action. This means that the impact varies widely depending on specific circumstances.

52) Since the nature of strike action tends to vary from year to year, with the ability of large strikes in certain years to cause a disproportionate impact, it is not readily possible to provide a total annual estimate of the knock-on impact of strike action in the key public services.

53) In turn, this means it is not currently possible to estimate in a sufficiently robust way the annual indirect benefit generated to other industries which may result from the revocation of regulation 7 of the Conduct Regulations, and the provision of some services due to the hiring of temporary agency workers.

54) We will consider some examples of analysis showing the impact of strikes, in particular in education and transport. This will provide context for this indirect benefit, however it will not form a monetised part of this Impact Assessment.

#### *Education strikes*

55) Education strikes can have a much wider-ranging impact than a reduction in the number of students at school on the day of action. A school strike may also mean that parents and guardians are unable to go to work, which can have an effect on every sector of the economy.

56) HM Treasury estimated<sup>28</sup> that a closure of two-thirds of state schools would lead to a 3-4% knock-on decrease in sectors not directly connected to education for the duration of the strike. This figure was calculated in the period leading up to the November 2011 public sector pension strikes.

57) This formed part of an overall estimate of a £480 million decrease in output as a result of the strike. Around one third of this was caused by the knock-on impact of school closures, leading to an estimate of £160 million in these indirect impacts. This figure represents the scale of knock-on impact to the wider economy of a national education strike.

#### *Transport strikes*

58) Transport strikes are another example where some analysis has attempted to quantify indirect, external impacts. Acas commissioned a report in 2007 examining the value for money delivered by the organisation<sup>29</sup>. Since part of Acas' role is to help conciliate collective disputes, this involved some estimation of the impact of strikes which Acas managed to help avert. The figures we quote have not been adjusted for inflation since 2007.

59) The report estimated that the knock-on impact of a 2 day transport strike affecting 3.4 million weekday passengers would lead to a £52 million cost to other businesses, since workers do not arrive at work and other events have to be cancelled.

60) An air travel related strike affecting 70,000 passengers is estimated to have cost businesses not directly party to the dispute around £38 million.

#### *Other wider impacts*

61) By maintaining some services through hiring temporary agency workers, public service providers will also benefit individuals. For instance, individuals travelling for work or

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<sup>28</sup> HM Treasury, Estimating the impact on GDP of a public sector strike, December 2011, [https://www.whatdotheyknow.com/request/breakdown\\_of\\_500\\_million\\_estimat](https://www.whatdotheyknow.com/request/breakdown_of_500_million_estimat) (accessed 18th June 2015)

<sup>29</sup> Pam Meadows, A review of the Economic Impact of Employment relations Services Delivered by Acas, NIESR, November 2007, Annex C. <http://www.acas.org.uk/index.aspx?articleid=1328>

personal reasons will be able to make their journeys and parents will not have to take time away from their planned activity to look after their children. We are not able to monetise these wider benefits.

## Total Benefits

62) The total benefits that we estimate would result from the introduction of policy option 2 are set out in Table 16.

**Table 16: Estimated annual benefits that would result from the introduction of policy option 2, 2014 prices (£)**

	best estimate	low	high
employer share of additional output of which to business.	12,465,000	9,632,000	15,298,000
	2,853,000	2,205,000	3,502,000
employment business revenues	2,626,000	2,029,000	3,223,000
benefits to temporary agency workers and Exchequer	14,920,000	11,529,000	18,311,000

## Sensitivities and Risks

63). We have provided a range (the low and high estimates) around our best estimate of the proportion of working days lost that temporary agency workers could cover. The high estimate (27%) is based on an analysis of the number of working days lost due to industrial action at broad industry level, and the number of these days that could be covered by the estimated number of available temporary agency workers by industry. However, it is likely that some of the working days lost will:

- ◆ Already be covered by temporary staff through the approaches currently available to employers facing industrial action. As noted in paragraph 12, anecdotal evidence suggests the level of usage of these existing options is low.
- ◆ Not be covered, because the skill-sets of available temporary workers, although relevant at the broad industry group, are not those needed to provide cover for the specific workers taking industrial action in some disputes (we are not able to provide an accurate assessment of how precisely the skill-sets required to provide cover for particular strikes will match the skill-sets of available temporary agency workers). However, there are well defined agency worker groups with relevant skills in particular industries, such as supply teachers and agency workers, as well as those with computing and engineering skills (see Figure 1), so we expect the mismatch due to skill imbalances between available agency workers and placements providing cover to be relatively small. Employers may also decide on the grounds of their specific business needs not to utilise temporary agency workers to perform work affected by industrial action.

- 64) As noted above, our high estimate of 27% assumes that employers will utilise temporary agency workers to cover all the working days lost that they are available to cover. Our best estimate of 22% suggests for close to a fifth of those potentially covered working days lost, employers won't use temporary agency workers to provide cover (for the factors identified above). Our low estimate (17%) suggests that for close to four in ten of potentially covered working days lost employers won't hire temporary agency workers due to these factors.
- 65) We have estimated the proportion of the pool of temporary agency workers that might be available to take up short-notice postings from the Labour Force Survey (LFS). Overall, the LFS provides a lower number for total temporary agency workers than obtained from Recruitment Industry Trends. However, both sources suggest that most agency workers are on placements lasting beyond the short-term of a few weeks. This supports the assumption that the proportion of the agency worker pool available for short-notice postings is relatively low.
- 66) We will test the assumptions made in this impact assessment with stakeholders during the consultation.
- 67) The analysis suggests that for public sector employers, the employer share of output gained is below the additional cost of labour and employment business services. This may suggest that public sector employers may wish not to take up the option provided by the revocation of regulation 7. This may be a measurement problem rather than a real problem, given it is not straightforward to accurately measure public sector outputs and inputs<sup>30</sup>. However, as noted above, there are wider benefits to individuals and employers not involved in the dispute if public service providers are able to maintain services to some extent.

## **Costs and benefits to business (£2 billion deregulatory target)**

- 68) The measures contained in this impact assessment are in scope of the £2 billion deregulatory target. The impact assessment has assumed that the private sector covers all industries excluding public administration and defence, education and health and social work. However, to take account of private sector activity within education and health and social care we have estimated that for the purposes of this IA the private sector shares of education and health and social care are 10% and 19% (as explained in paragraph 30).
- 69). The costs to business are:
- ◆ The estimated cost to businesses facing industrial action of familiarising themselves with the removal of regulation 7 is £0.1 million.
  - ◆ The labour cost of the temporary agency workers brought in (covering wages and non-wage labour costs) at between £1.5m and £2.4m a year, with a best estimate of £2.0m.

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<sup>30</sup> ONS, The ONS Productivity Handbook, Chapter 9: measuring public sector productivity, October 2008

- ◆ The cost of employment business services involved in providing the workers, at between £0.27m and £0.42m, best estimate £0.35m.

70) The benefits to business are:

- ◆ The employer share of increased output resulting from the work performed by the temporary agency workers, at between £2.2m and £3.5m, best estimate £2.9m.
- ◆ The employment businesses' revenue from services provided, at between £2.0m and £3.6m, with a best estimate of £2.6m.

71) The equivalent annual net cost to business is estimated at -£2.3 m, in other words a net benefit of £2.3m.

**Table 17: Monetised costs and benefits for Business included in £2 bn deregulatory target, 2014 prices (£ million)**

	<u>Best estimate</u>	<u>low</u>	<u>high</u>
Costs to business:			
Familiarisation costs	0.1	0.1	0.1
<i>Ongoing costs</i>			
temporary agency worker labour costs	2.0	1.5	2.4
costs for employment business services	0.3	0.3	0.4
<b>Total costs to business</b>	<b>2.4</b>	<b>1.9</b>	<b>2.9</b>
Benefits to business:			
Employer share of increased output	2.9	2.2	3.5
Employment business revenue	2.6	2.0	3.2
<b>Total benefits to business</b>	<b>5.5</b>	<b>4.2</b>	<b>6.7</b>
Equivalent annual net cost to business	-2.3		

## Summary

72) Overall, the best estimate suggests that the policy option 2 will provide an annual net benefit of £11.3m. The estimated total net present value for the 10 year period is estimated at £106.1 m (best estimate). These figures exclude the wider benefits that are expected to be realised for employers and individuals not directly involved in the industrial action.

**Table 18: Summary of costs and benefits for the revocation of regulation 7 of the Conduct regulations, 2014 prices (£ million)**

	<u>Best estimate</u>	<u>low</u>	<u>high</u>
Costs to employers:			
Familiarisation costs	1.2	1.2	1.2
<i>Ongoing costs</i>			
temporary agency worker labour costs	14.9	11.5	18.3
costs for employment business services	2.6	2.0	3.2
<b>Total costs to employers</b>	<b>18.7</b>	<b>14.7</b>	<b>22.7</b>
Benefits:			
Employer share of increased output	12.5	9.6	15.3
Employment business revenue	2.6	2.0	3.2
<b>Total benefits to employers</b>	<b>15.0</b>	<b>11.6</b>	<b>18.4</b>
benefits to temporary agency workers and Exchequer	14.9	11.5	18.3
<b>Total benefits</b>	<b>30.0</b>	<b>23.2</b>	<b>36.8</b>

# Annex 1

## Methodology for estimating the proportion of working days lost that temporary agency workers could fill

- 1) The ONS Labour Disputes Survey provides estimates of the number of days lost due to industrial action, and the number of workers involved, by industry group on a monthly basis. On average over the period 2010 to 2014, nearly 90% of working days lost occurred in the public sector industries: public administration and defence, education and health and social work. National one-day stoppages in these industries accounted for most of the working days lost.
- 2) We estimated from the Labour Force Survey that around 25% of temporary agency workers were not in a placement<sup>31</sup>. We apply this percentage to the number of temporary agency workers in the broad industry groups, using Recruitment Industry Trends figures of 59,000 in education, and 70,000 in health and social care<sup>32</sup>, and to the figures for the other industry groups based on estimates using the Labour Force Survey<sup>33</sup>. This provides the following estimates of agency workers available for a short notice placement for the industry groups set out in Table 1A.

**Table 1A: estimated number of temporary agency workers available for short-notice assignments**

<u>Industry</u>	temporary agency workers available (000s)
mining and quarrying, electricity and gas	3
water	4
manufacturing	52
construction	12
distribution, accommodation and food	40
transport, storage, communications	32
finance, real estate, business services	55
Public administration and defence	12
education	15
health and social work	18
other services	9

<sup>31</sup> BIS analysis of the Labour Force Survey for the four quarters of 2014 shows that around 25% of individuals identifying themselves as agency workers were unemployed, inactive or employed but away from their job or waiting to take up a new job.

<sup>32</sup> Recruitment and Employment Confederation, Recruitment Industry Trends 2013/14, October 2014, p20

<sup>33</sup> We applied the estimates from the LFS data of the proportions of agency workers that worked in each industry group to the total number of agency workers, 1,156,000, from Recruitment Industry Trends.

- 3) These amounts then formed the maximum number of agency workers that could be provided for any one day in these industries. We then consider the working days lost for each month in the period 2010 to 2014 for each of these industry groups. If the working days lost number is higher than the estimated temporary agency workers available, then the latter is used for our estimate of working days lost that are covered. However, if monthly working days lost are equal to or lower than the estimated agency workers available, we estimate that all working days lost are covered by agency workers. For most of these industries, the number of temporary agency workers available is well above the number of working days lost due to industrial action in each month<sup>34</sup>.
- 4) We then take the total estimated working days covered by agency workers and divide that by the total number of working days lost. Around 27% of working days lost are potentially covered by available temporary agency workers. In only a few stoppages, generally larger strikes, including a few national one day public sector strikes, are the numbers of available temporary agency workers at the broad industry level much smaller than the number of working days lost due to industrial action.

**Table 1B: estimated working days lost covered by temporary agency workers**

total working days lost 2010-2014	3,236
estimated days lost covered by temporary agency workers	866
percentage of working days lost covered	27%

- 5) This estimates the proportion of working days lost due to industrial action that could be covered by available temporary agency workers at the broad industry level. However, this estimate is a maximum, as it doesn't take account of the proportion of these working days lost where:
- ◆ Some temporary cover is already provided through the approaches already available to employers facing industrial action
  - ◆ The particular skill-sets required by employers are not present among those temporary agency workers who are available for short-notice assignments. This may particularly apply where the industrial action covers a short period, such as a day, and having good knowledge of the employer's operation is important (as it may not be possible to obtain enough of this knowledge to be productive in just one day). There may also be some jobs, such as some in government, where security clearance may be a barrier to employing temporary agency workers on short-term,

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1) <sup>34</sup> In most industry groups, we found that working days lost is similar to the numbers of workers involved in industrial action (indicating mainly short stoppages of around one –day), though in some cases the data suggests that the stoppages may last for a number of days (which will mean that fewer agency workers will be required to provide cover each day).



short-notice assignments. The data available do not enable an assessment at this detailed level.

# Annex 2

## Small and micro business assessment

1. Table 1 above shows that around 67% of employment businesses are micro firms, with less than 10 employees. Small firms, with between 10 and 49 employees, comprise a further 19% of employment businesses.
2. The policy proposal in Option 2 is deregulatory. It will allow employment businesses, to provide temporary agency workers to employers facing industrial action. It is therefore likely to be beneficial to employment businesses of all sizes by potentially providing additional opportunities to supply labour. It will also benefit some employers, including micro and small businesses, with business continuity during industrial action. As the policy will enable public service providers to provide some services at workplaces affected by industrial action, employers including small and micro businesses not facing industrial action will benefit from reduced disruption to their workforce or their business. For instance, if schools are enabled to stay open, working parents who otherwise may have had to take the day off for childcare purposes will be able work as normal.
3. There is therefore no justification or requirement for exemption or other special treatment for small or micro businesses.

## The Family Test

4. We do not expect a cost to families as a result of the implementation of this legislation.

# Equality Assessment

1. The Department for Business, Innovation and Skills (BIS) is subject to the public sector equality duties set out in the Equality Act 2010. An equality analysis is an important mechanism for ensuring that we gather data to enable us to identify the likely positive and negative impacts that policy proposals may have on certain groups and to estimate whether such impacts disproportionately affect such groups.
2. The policy proposal is to revoke regulation 7 of the Conduct Regulations, enabling additional placement opportunities for agency workers. Employment businesses will no longer be prohibited from providing labour to employers facing industrial action to carry out work affected by absence of workers on industrial action.
3. Currently, employers whose workers are taking industrial action are able to employ temporary workers directly to perform the work affected by the industrial out, or contract out the work to a service provider. However, the removal of regulation 7 will provide these employers with access to the supply of temporary labour available from employment businesses. By employing these agency workers, employers encountering industrial action could mitigate the impact from stoppages

affecting employers and individuals not involved in the labour dispute. This will be beneficial to all those individuals who rely on public services (which we assume will reflect the distribution of the UK population and therefore not have any disproportional impact on the protected groups). It will also be beneficial to the wider economy (and therefore all individuals benefitting from economic growth). Temporary agency workers will also benefit from access to additional work opportunities.

4. Existing data sources available do not enable the comprehensive measurement of temporary agency workers. The Labour Force Survey (LFS) enables the characteristics of this group to be measured, getting close to two-thirds of the temporary agency workers suggested by the Recruitment Industry Trends publication.
5. Looking at LFS four-quarter averages for 2014, there is some evidence that compared to those in employment who were not temporary agency workers, temporary agency workers were statistically more likely to be:
  - ◆ Men than women
  - ◆ Aged 16-24 or 25-34, and less likely to be older than 34.
  - ◆ Asian or black ethnic minority, and less likely to be white
  - ◆ Muslim, and less likely to be no religion,
  - ◆ And less likely to have a disability.
6. 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 this consultation closes.

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