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Welsh Government Consultation The use of agency workers during strike action

WRITTEN SUBMISSION BY THE ASSOCIATION OF LABOUR PROVIDERS

Sent by email to: recruitment.sector@bis.gsi.gov.uk

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The Association of Labour Providers (ALP)

The Association of Labour Providers (ALP) is a trade association supporting and representing those organisations that supply seasonal, agency and contingent labour into the UK food production, horticultural and agricultural sectors. The ALP has approximately 310 organisations, including those based in Wales and supplying workers into Wales that voluntarily choose to be members of the Association on payment of an annual subscription and commitment to abide by the ALP Constitution. ALP member organisations supply approximately 70% of the temporary workers into these sectors. All organisations that supply labour into these sectors are required to be licensed by the Gangmasters Licensing Authority (GLA). The ALP provides a range of services to help labour providers achieve labour standards compliance and good practice in the supply of workers.

Summary

Regulation 7 of the Conduct of Employment Agencies and Employment Businesses Regulations 2003 (the 'Conduct Regulations') prohibits employment businesses from supplying temporary staff during industrial action to perform duties normally performed by workers taking part in industrial action or other workers covering for their colleagues taking part.

The Government thinks that removing Regulation 7 from the Conduct Regulations will give the recruitment sector the opportunity to help employers to limit the impact to the wider economy and society of strike action, by ensuring that businesses can continue to operate to some extent.

The Association of Labour Providers (ALP) notes that this consultation seeks only to amend the legislative position for those outside of the sector regulated within the terms of the Gangmasters (Licensing) Act 2004.

There are a proportion of ALP members that believe it should be a matter of choice on the part of an employment business as to whether it wishes to supply temporary staff during industrial action. On balance however, the ALP holds the view that the potential for negative impacts outweighs any potential benefit in the proposal to remove Regulation 7 from the Conduct Regulations.

ALP Response

The following responses to the UK Government consultation are relevant to this consultation.

The UK Government proposed to remove Regulation 7 from the Conduct Regulations. For those employment businesses subject to the Gangmasters (Licensing) Act 2004 i.e. those that supply labour to food processing, agriculture, horticulture and shellfish gathering, the Conduct Regulations are disapplied. Similar provisions, having the same effect as Regulation 7 are contained in Section 10 of The Gangmasters (Licensing Conditions) Rules 2009.

It is not clear whether the omission from the consultation of those employment businesses that are subject to the Gangmasters (Licensing) Act 2004 is deliberate or inadvertent. This should be made clear in any decision the government makes on this matter.

Numbering refers to UK Government consultation.

Consultation questions 1) a) i)

The removal of Regulation 7 has the potential to affect the overall reputation of employment businesses negatively.

Consultation questions 1) a) ii)

- Supplying temporary staff during industrial action to perform duties normally performed by workers taking part in industrial action is contrary to international codes of good practice for employment businesses including the Ciett Code of Conduct. Ciett, the International Confederation of Private Employment Agencies, is the authoritative voice representing the interests of agency work businesses globally. Principle 7 of the Ciett Code of Conduct – Respect for the Worker’s Rights states: “3. In accordance with national law and practice, private employment agencies shall not make workers available to a user company to replace workers of that company who are legally on strike.”

The removal of Regulation 7 is thus contrary to the international standard for our industry sector.

- The removal of Regulation 7 provides opportunity for those sectors of our economy opposed to the UK flexible working model and temporary agency work to vilify our sector and enables them to use such emotive terms as “scabs” and “strike-breakers” when describing employment businesses generally. This would be detrimental to the efforts and achievements of the recruitment industry over decades to be rightly recognised as a responsible partner in a well-functioning flexible labour market.
- The removal of Regulation 7 presents the potential that some employment businesses may be required contractually by some hirers to supply workers during strike action. In certain cases to be required to supply workers during strike action could be a pre-condition of tender.

If Regulation 7 is to be removed then legislation should be drafted such that hirers may not contractually require or that it be a pre-condition of tender for employment businesses to supply

workers to perform duties normally performed by workers taking part in industrial action or other workers covering for their colleagues taking part.

- There is the potential that industrial relations may be negatively impacted:
 - Between employment businesses who do not wish to supply workers to cover industrial action and their hirer clients who may be pressuring them to do so.
 - Between employment businesses and those of their work-seekers who do not wish to cover industrial action when set against the pressure of hirers to cover those on strike.
 - Between trade unions at sites to which employment businesses supply.

Consultation questions 1) b) i)

The removal of Regulation 7 has the potential to affect the overall reputation of work-seekers negatively.

Consultation questions 1) b) ii)

The removal of Regulation 7 may increase tension between agency workers and permanent workforces. Agency workers supplied to perform duties of workers taking part in industrial action, once the industrial action has concluded and who are then supplied to cover normal workforce variation demands may be the subject of retribution and intimidation by workers whose strike action they were sent to cover.

If Regulation 7 is to be removed then there is the possibility that some work-seekers may not be informed and be unaware that they are being supplied to perform the duties of workers taking part in industrial action.

If Regulation 7 is to be removed then legislation should be drafted such that:

- Employment businesses are required to notify work-seekers in advance of the assignment that they are being requested to perform duties of workers taking part in industrial action.
- Work-seekers may not be compelled, contractually or otherwise through fear of a detriment to perform duties of workers taking part in industrial action and that it be a matter of free will on the part of the work seeker.