

Royal College of Nursing response to Department for Business and Trade Care consultation on Hiring agency staff to cover industrial action

With a membership of over half a million registered nurses, midwives, health visitors, nursing students, health care assistants and nurse cadets, the Royal College of Nursing (RCN) is the voice of nursing across the United Kingdom and the largest professional union of nursing staff in the world.

Consultation responses

1. Effect of regulation 7:

- 1.1. The RCN believes that regulation 7 has a positive effect on local and national industrial relations. Industrial action is an option of last resort for trade unions and the ability to participate in lawful industrial action ensures that all stakeholders approach negotiations with a solution-focused attitude.
- 1.2. The likely effects of damaged industrial relations are myriad, including but not limited to, increased recruitment and retention costs, lower levels of productivity, and higher rates of absenteeism.
- 1.3. During all of the RCN strike action during 2022-2023, a system of derogation was operated to ensure that life-preserving care continued on strike days. We believe the existing system, underpinned by good local industrial relations negates the need for any further changes to regulations.

2. Effect of repealing regulation 7:

- 2.1. The RCN believes the repeal of regulation 7 would have an impact on workers and the wider economy and society. Further to point 1, any repeal is likely to negatively impact industrial relations.
- 2.2. The RCN agrees with the judgment concerning the ***Conduct of Employment Agencies and Employment Businesses (Amendment) Regulations 2022 ('the Regulations')*** which, from 21 July 2022, removed the ban on the supply of agency workers to carry out the duties of a striking worker taking part in official strike action.
- 2.3. The Honourable Mr Justice Linden said, *'even on the evidence before the Secretary of State at the time that he made the 2022 Regulations, the case for the measure was on any view less than overwhelming. The advice which he had been given was that it would have negligible short-term beneficial effects and might be harmful...'*¹
- 2.4. There is significant concern from employers and NHS bodies regarding the department's actions regarding minimum service level legislation. The RCN views this proposal as more of the same draconian action and would refer the department to Sir Julian Hartley's (Chief Executive, NHS Providers)

¹ [Unison -v-Secretary of State for Business and Trade \(judiciary.uk\)](https://www.judiciary.uk/cases/unison-v-secretary-of-state-for-business-and-trade/)

comments, made before the Health and Social Care Select Committee on 9 May 2023, where he said: *'additional legislation could make things more difficult, rather than improve the situation.'*²

- 2.5. Responding to the publishing of the Department of Health and Social Care's recent minimum service consultation in respect of paramedics, the Deputy Chief Executive of NHS Providers, Saffron Cordery said that this *'risks worsening industrial relations.'* The worsening of industrial relations risks precipitating further strike action not discouraging it.³

3. Differing sectors:

- 3.1. The RCN does not support the repeal of regulation 7 in any sector. However, the impact(s) on health and social care would be particularly detrimental.
- 3.2. The repeal of regulation seeks to undermine workers' freedom to participate in lawful strike action by rendering any action useless. However, this proposal takes no account of the fact that there is a staffing crisis within our health service. In nursing this is particularly acute, the latest figure shows that there are over 40,000 nursing vacancies in the NHS in England alone.⁴
- 3.3. In a recent survey 83% of nursing staff surveyed by the RCN said that staffing levels on their last shift were not sufficient to meet all the needs of patients safely and effectively.⁵ This crisis is reflected across the health and care system and our members say that services often operate with unsafe levels of staff on non-strike days. This is part of the reason that RCN members were driven to take mass industrial action; nursing staff want safe staffing levels, year-round not just when participating in lawful industrial action. Addressing this should be the government's priority. Failure to do so risks precipitating further industrial action.
- 3.4. Our members have repeatedly called for accountability for staffing for safe and effective care in health and social care settings, at all times, and not only in extreme circumstances. Efforts to include this in the Health and Care Bill in 2022 were not supported by the government and efforts to introduce safe staffing legislation in England have not been successful to date and this is to be contrasted with the position in Wales and Scotland
- 3.5. The Government committed as part of the 2023/24 NHS pay deal to work collaboratively with employers and trade unions to reduce agency spending. A repeal of regulation 7 would run counter to this commitment and demonstrate bad faith.

² Health and Social Care Committee (2023) [Industrial action in the NHS - Oral evidence](#)

³ NHS Providers (2023) [NHS Providers responds to new consultation on minimum service levels in hospitals](#)

⁴ NHS Digital (2023) [NHS Vacancy Statistics, England](#)

⁵ Royal College of Nursing (2022) [Nursing Under Unsustainable Pressure: Staffing for Safe and Effective Care](#)

4. Equality impacts:

- 4.1. We echo the concerns raised by the Joint Committee on Human Rights in respect of minimum service requirements. Namely, they may impact more severely on certain protected groups, *'most obviously women in respect of nursing.'* We believe this statement applies equally to the proposed repeal of regulation 7 and represents a gendered attack on the freedoms of our members.⁶

5. Additional points:

- 5.1. The UK already has some of the strictest anti-trade union laws in Europe. The present government has already passed the Lobbying and Trade Union Administration Act 2014, and the Trade Union Act 2016 (which introduced ballot thresholds for industrial action).
- 5.2. On 25 April 2023, a joint statement signed by 121 politicians from 18 countries condemning the UK Government's attack on workers' ability to strike noted that the UK *'already has some of the most draconian restrictions on trade unions anywhere in the democratic world.'*⁷
- 5.3. This consultation proposes an unacceptable further encroachment on what is already a heavily restricted freedom.
- 5.4. Section 240 of the Trade Union and Labour Relations (Consolidation) Act 1992 already makes it an offence to take industrial action wilfully or maliciously in the knowledge or belief that human life will be endangered, or serious bodily injury caused. As such, the repeal of regulation 7 is unnecessary.
- 5.5. The crisis engulfing the health and social care sector is not a consequence of doctors and nurses having too many freedoms; it is a crisis of underfunding. The UK Government must focus on introducing safe levels of staffing throughout the year, not just on strike days.

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⁶ Joint Committee on Human Rights (2023) [Legislative Scrutiny: Strikes \(Minimum Service Levels\) Bill](#)

⁷ Trades Union Congress (2023) [Statement on UK workers' rights from international politicians](#)