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INDUSTRIAL ACTION AND AGENCY WORKERS

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Statutory Provision

- Regulation 7 – Conduct of Employment Agencies and Employment Businesses Regulations 2003
- Unlawful for employment business to introduce or supply a work seeker to a hirer to
 - Perform the duties normally performed by a worker taking part in strike action
 - Or to cover a worker performing the duties normally carried out by the first worker employed by the hirer to carry out the duties of the first worker



Statutory Provision

- Qualifications
 - The employment business does not know or has no reasonable grounds for knowing that the first worker in industrial action
 - Only covers official industrial action under the 1992 Act



Permissible Options

- Direct hire of new staff-permanent/temporary
- Contracting out the work to an external service provider
- Training existing staff not taking strike action



Policy Issues

- International Confederation of Private Employment Agencies
- Agreed regulatory framework
- Generally prohibits the replacement of striking workers
- Avoid becoming involved in industrial disputes



Policy Issues

- Hinder procurement in the public sector within the EU
- Possible breach of EU's agreed code on hiring temporary staff
- Workers accused of strike breaking
- Prolonging the dispute?



Government Consultation

- Lead up to Trade Union Act 2016
- Concerns about disruption in the public sector and important public services
- Responses from trade unions, employment agencies and other stakeholders



Government Consultation

- 17%-27% of days lost to industrial action would be covered by agency workers
- 0.6% of days lost were in disputes lasting more than 10 days
- 90% of industrial action lasts for only one day
- Training, health and safety and regulatory issues for important public services?



Right to strike?

- Article 11
- Demir
- ILO
 - “The hiring of workers to break a strike in a sector which cannot be regarded as an essential sector....constitutes a serious violation of freedom of association”.



Potential Claims

- Inducing a breach of a statutory duty?
- Injunctive relief
- Damages claim?
- Trade Union/Individual members
- Article 11 claims against public authority



Questions?



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