

For discussion
on 15 February 2016

Legislative Council Panel on Public Service Use of Agency Workers

Purpose

This paper reports on the use of agency workers by Bureaux/Departments (B/Ds) and the measures taken to address the concerns that Members have previously raised.

Background

2. Agency workers generally refer to the manpower supplied by employment agencies under service contracts with B/Ds concerned. They provide temporary manpower which can be sourced readily by B/Ds to meet their urgent, ad hoc and temporary operational needs. Otherwise, the temporary manpower requirements would have to be absorbed by existing staff of the B/Ds, which would affect the quality of their services to the public.

3. Agency workers are under the direct supervision of the procuring B/Ds. They do not have a contractual employment relationship with the B/Ds concerned. The procurement of agency worker service is governed by the relevant Stores and Procurement Regulations and Financial Circulars. It is also subject to the Government's procurement principles of value for money, transparency, open and fair competition and accountability.

4. The Civil Service Bureau (CSB) issued a set of guidelines on the proper use of agency workers in April 2010¹. To strengthen the control on the use of the agency workers, CSB issued a set of supplementary guidelines in April 2011 on the renewal or re-letting of service contracts for the supply of agency workers, and on the wage requirement to be followed by employment agencies providing agency workers to B/Ds to take account of the Statutory Minimum Wage (SMW) which came into effect in May 2011.

Scope of using agency workers

5. Under CSB's guidelines, B/Ds may only use agency workers under one or more of the following circumstances –

- (a) to meet urgent or unforeseen service needs or unexpected surge in service demands for the short-term;
- (b) to fill short-term manpower gap;
- (c) to provide short-term manpower to deliver services the mode of which will be changed shortly; or
- (d) to meet service needs which entail irregular work pattern or where the nature of the work involved renders it difficult to recruit and retain staff.

As a general guideline, the short-term service demands under the circumstances at (a), (b) and (c) above should be for no more than nine months.

¹ For the purpose of CSB's guidelines, agency workers do not include information technology manpower supplied by technical service providers under a term contract centrally administered by the Office of the Government Chief Information Officer (commonly known as "T-contract staff"), service bureau staff providing public library service in the Leisure and Cultural Services Department, body-shopped personnel used by the Housing Department and manpower supplied through outsourcing services procured by individual B/Ds.

Position of Agency Workers as at 30 September 2015

6. As at 30 September 2015, there were 979 agency workers in B/Ds. Compared with the peak of 2 398 as at 30 September 2009, this represented a reduction of about 1 420, or about 60%. We are mindful of the need to ensure that agency workers are only used by B/Ds strictly for the purposes set out in paragraph 5 above. Through the concerted efforts of B/Ds, the number of agency workers has been reduced to that absolutely required to cope with their urgent, ad hoc and temporary operational needs. A breakdown of the distribution of agency workers by B/Ds is at **Annex A**. **Annex B** shows the number of agency workers used by B/Ds in the past years.

7. As for nature of work, the majority of agency workers were involved in providing general office and technical support, and delivering customer services.

8. A brief analysis of agency workers being used by B/Ds as at 30 September 2015 is set out below -

(a) Meeting urgent or unforeseen service needs or unexpected surge in service demands

The majority of the agency workers (62%) were used for this purpose, such as for the 2015 District Council ordinary election and the re-launched Community Care Fund's "One-off living subsidy for low-income households not living in public housing and not receiving Comprehensive Social Security Assistance" Programme.

(b) Filling short-term manpower gap

On some occasions, civil service vacancies or vacant Non-Civil Service Contract (NCSC) positions cannot be filled in a timely manner due to the lead time required for conducting recruitment. About 21% of the agency workers were deployed to fill such short-term manpower gap.

(c) Providing short-term manpower where the mode of service delivery will be changed

No agency worker was used by B/Ds for this purpose.

(d) Catering for irregular work pattern

About 17% of the agency workers, were deployed to meet service needs that entailed an irregular work pattern or where the nature of work involved rendered it difficult to recruit and retain staff, such as provision of customer services for hotlines operating round the clock.

A breakdown of the distribution by scopes of the use of agency workers is at **Annex C**.

9. Among the 979 agency workers, almost half were sourced from term contracts under which agency workers are not required on a continuous basis throughout the contract period but are supplied only as and when required by the procuring B/Ds, e.g. a few months/weeks or certain days in a week. A substantial portion of these agency workers were engaged for filling short-term manpower gap to meet various seasonal and ad hoc manpower needs (e.g. to cope with application peaks).

Issues of Concern

10. In the past, Members have raised a number of concerns pertaining to the use of agency workers. Our views on them and the actions taken are set out in paragraphs 11 to 17 below.

Proper use of agency workers

11. Members remind the Government from time to time to ensure the proper use of agency workers. As mentioned in paragraph 4 above, CSB issued guidelines in April 2010 and April 2011 covering the scope of using agency workers, the approving authority, the wage requirement,

renewal and re-letting of service contracts, etc. Every proposal to procure the service of an employment agency to supply agency workers is required to be considered and approved personally by a directorate officer at Directorate Pay Scale D2 or above of the concerned B/D. We also collect statistics from B/Ds on their use of agency workers from time to time for monitoring purpose, and have regular discussions with B/Ds to keep abreast of the situation on their use of agency workers.

Wage protection for agency workers and sanctions

12. Some Members have previously raised concerns over the wage level and fringe benefits of agency workers. We have advised B/Ds that, when inviting quotations or tenders for the supply of agency workers, all bidders are required to state the amount of wages they would pay to their employees to be assigned to work in the procuring B/Ds (should their bids be successful), and that their bids would not be considered if the wage amounts stated in the bids are lower than the higher of the following two benchmarks –

- (a) the prevailing SMW² plus one paid rest day for every period of seven days; or
- (b) the relevant average monthly wages for a relevant industry/occupation as published in the Census & Statistics Quarterly Report of Wage and Payroll Statistics for December 2010 (for non-skilled workers³ to be assigned to work in the procuring B/Ds if the bids are successful) or the average monthly wages for “General Workers for all selected industries” as published in the above mentioned Report (for employees other than non-skilled workers to be assigned to work in the procuring B/Ds if the bids are successful).

² The prevailing SMW rate is \$32.5 per hour.

³ Non-skilled workers are those performing functions comparable to the duties of civil servants in the Model Scale 1 grades, namely the grades of Car Park Attendant II, Explosives Depot Attendant, Ganger, Gardener, Property Attendant, Supplies Attendant, Ward Attendant, Workman I, Workshop Attendant and Workman II.

13. B/Ds are also required to specify in the service contracts that –
- (a) the wages of the agency workers assigned to work in the procuring B/Ds cannot be less than the stated wages in the bids for the whole duration of the concerned contracts;
 - (b) the mechanism to monitor compliance with the wage requirement; and
 - (c) sanctions to be imposed in the case of non-compliance, e.g. to terminate the contract if the contractor is found to have paid wage less than the committed monthly wage of staff and/or made false declaration that its staff have been paid no less than the wages as specified in the service contract.
14. Employment agencies are also required, in their capacity as the employers of agency workers and in accordance with the terms of contracts, to comply with the Employment Ordinance (EO) as well as other relevant legislation to provide employment benefits to agency workers. For example, agency workers are accorded the protection and benefits under the EO on payment of wages, restriction on deduction of wages, as well as entitlement of rest days, paid statutory holidays, annual leave, sickness allowance, etc., subject to their meeting the relevant eligibility criteria.

Provision of fringe benefits

15. Some Members have previously suggested that the Government provides civil service fringe benefits to agency workers. Our position is that it is not appropriate for the Government, as the service user, to provide employment benefits to agency workers who are not Government employees. Since agency workers may be arranged by the employment agencies to work not only for the Government but also for other service users, the respective employment agencies, instead of the Government, should be responsible for the provision of any fringe benefits that are considered appropriate.

Avoiding prolonged use of agency workers

16. Some Members have previously expressed concern over the prolonged use of certain agency workers. B/Ds have been reminded that renewal or re-letting of contracts should only be pursued with strong justification. They are required to seek approval from CSB if an existing contract for the supply of agency workers is to be renewed/re-let where the aggregated period of service under the existing and renewed/re-let contracts is expected to exceed 15 months. For example, extension of an existing nine-month contract by more than six months requires the approval of CSB. B/Ds have to provide full justifications to demonstrate that renewal or re-letting of contracts is operationally essential and that there are no other more appropriate means to meet the service need. In the past three years, CSB has not received any application for renewal of service contract for the supply of agency workers for an aggregated period of service exceeding 15 months.

17. Of the 979 agency workers used by B/Ds as at 30 September 2015, most of them (61% or 599) were sourced from service contracts lasting nine months or less. The remainder 39% (or 380) were mostly sourced from term contracts.

Conclusion

18. The use of agency workers has allowed B/Ds the necessary flexibility to reinforce their manpower on a temporary basis to respond to urgent, ad hoc and temporary operational needs, or to tide over short-term manpower gap. Such temporary manpower needs cannot be met in a timely manner by other means, such as employment of civil servants or NCSC staff. There is thus a continued need for B/Ds to use agency workers to complement the civil service workforce in providing quality service to the public. On the other hand, we will continue to monitor the use of agency workers by B/Ds to ensure that it is within the prescribed scope and that agency workers are used only when fully justified.

Views Sought

19. Members are invited to note the information in this paper and offer comments.

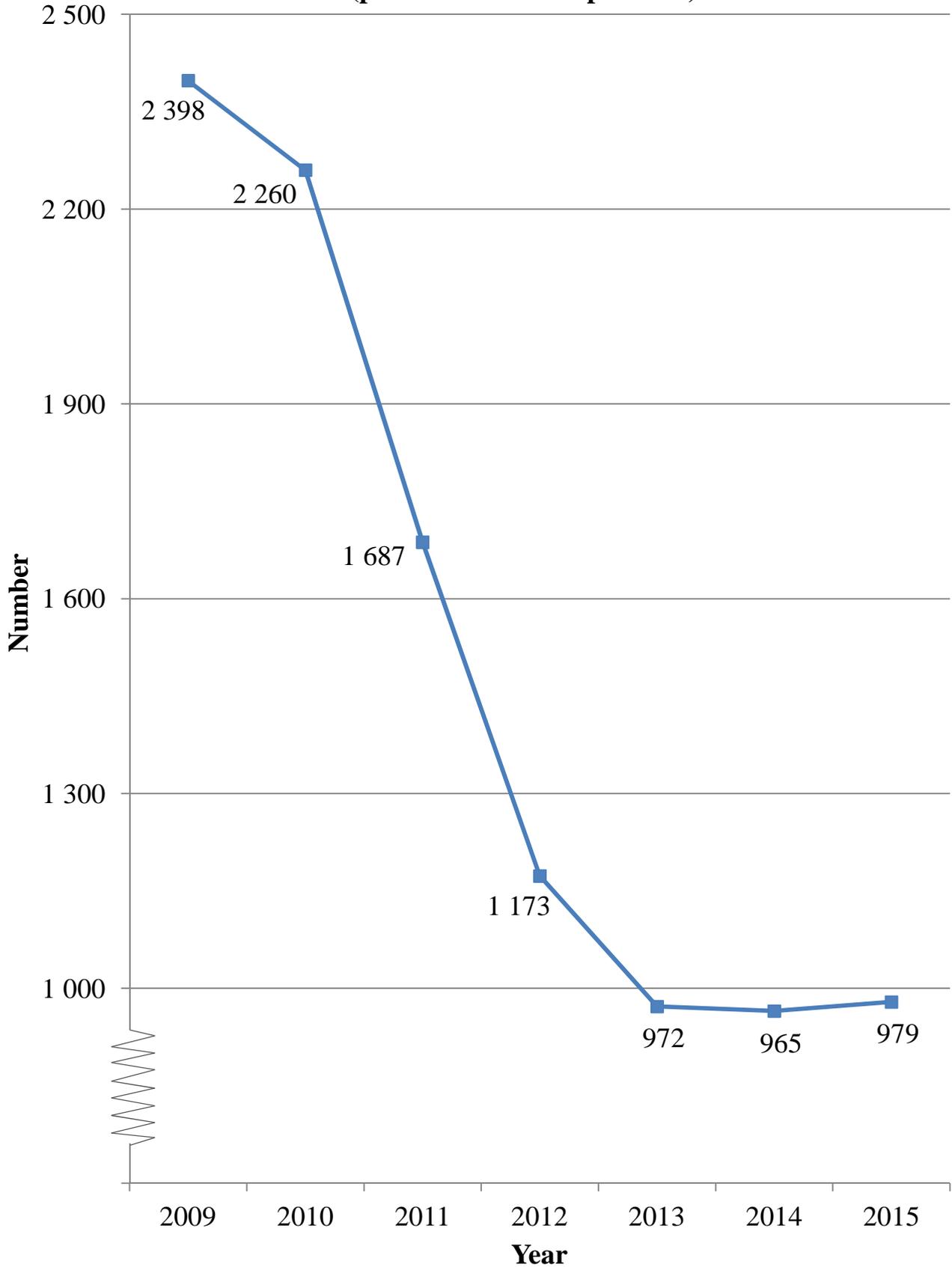
Civil Service Bureau
February 2016

**A breakdown of the number of agency workers by bureaux/departments
(position as at 30 September 2015)**

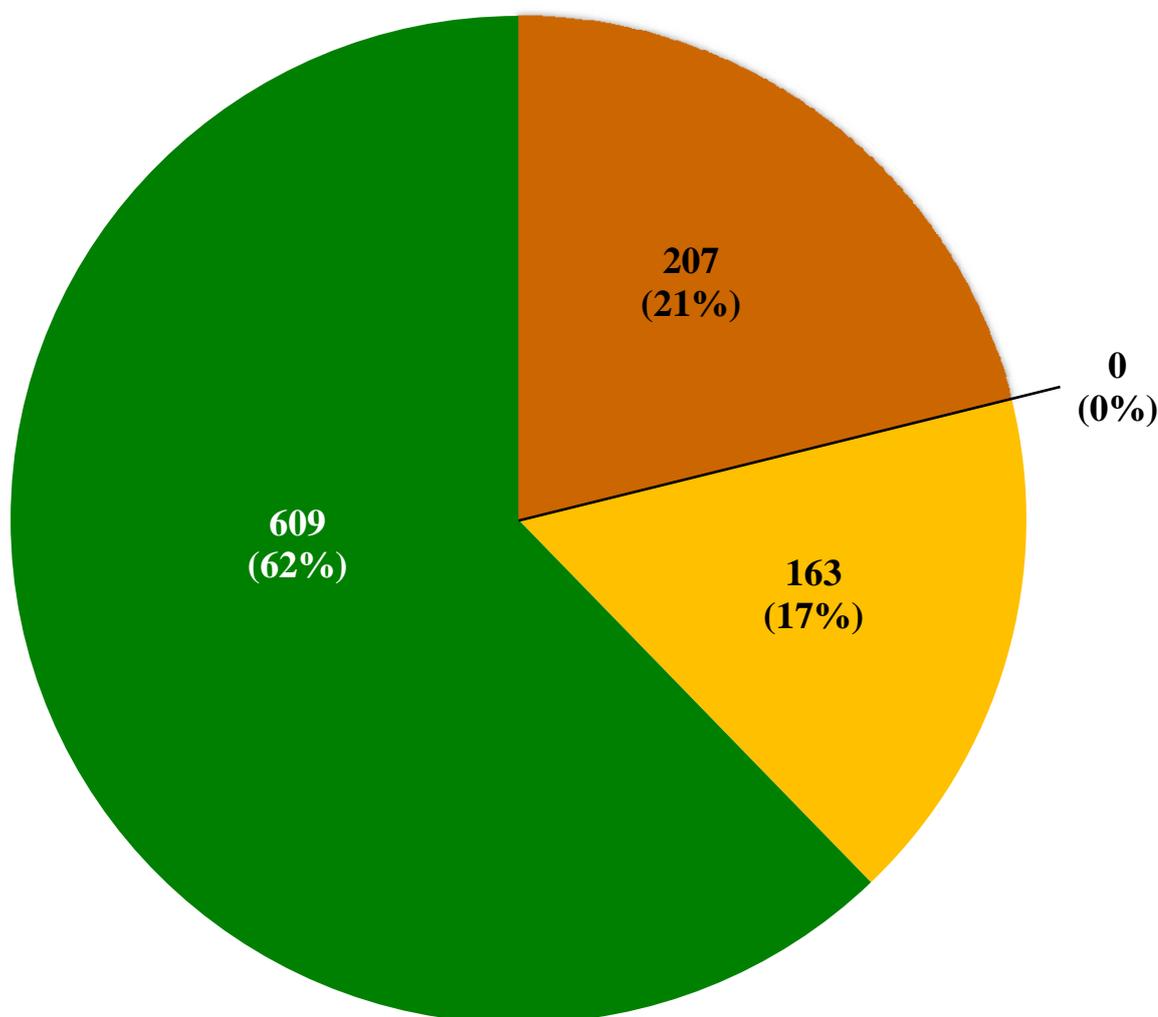
Bureau/Department	Number of agency workers
Agriculture, Fisheries and Conservation Department	7
Buildings Department	56
Chief Secretary and Financial Secretary's Offices	14
Commerce and Economic Development Bureau	7
Correctional Services Department	34
Department of Health	61
Department of Justice	13
Development Bureau	12
Drainage Services Department	10
Education Bureau	70
Electrical and Mechanical Services Department	15
Environment Bureau	5
Environmental Protection Department	54
Financial Services and the Treasury Bureau	3
Fire Services Department	12
Food and Environmental Hygiene Department	12
Food and Health Bureau	6
Government Flying Service	5
Government Logistics Department	17
Home Affairs Bureau	21
Hong Kong Police Force	11
Immigration Department	38
Information Services Department	23
Innovation and Technology Commission	6
Intellectual Property Department	3
Labour and Welfare Bureau	7

Bureau/Department	Number of agency workers
Labour Department	33
Lands Department	54
Leisure and Cultural Services Department	83
Marine Department	18
Office of the Communications Authority	1
Official Receiver's Office	15
Planning Department	33
Registration and Electoral Office	38
Rating and Valuation Department	42
Security Bureau	2
Transport and Housing Bureau	8
Transport Department	25
University Grants Committee Secretariat	3
Water Supplies Department	77
Working Family and Student Financial Assistance Agency	25
Total	979

**Number of agency workers used by bureaux/departments
from 2009 to 2015
(position as at 30 September)**



**Breakdown by Scopes of Use of Agency Workers
(as at 30 September 2015)**



- To meet urgent or unforeseen service needs or unexpected surge in service demands for the short-term
- To fill short-term manpower gap
- To provide short-term manpower to deliver services the mode of which will be changed shortly
- To meet service needs which entail irregular work pattern or where the nature of the work involved renders it difficult to recruit and retain staff