

For discussion  
on 20 February 2017

## **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 raised in past Panel meetings.

### **Background**

2. Agency workers in general 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. These service contracts enable B/Ds to flexibly arrange temporary manpower and avoid impact on the quality of public service due to redeployment of existing staff.

3. Agency workers are under the direct supervision of the procuring B/Ds. They, however, 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 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 2010<sup>1</sup>. Under the guidelines, B/Ds may only use agency workers in one or more of the following situations –

- (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 meet service needs which entail irregular work patterns or where the nature of the work involved renders it difficult to recruit and retain staff; or
- (d) to provide short-term manpower to deliver services the mode of which will be changed shortly.

As a general guideline, except the situation at (c) above, any short-term service demand should be for no more than nine months.

5. To strengthen control on the use of agency workers, CSB issued a set of supplementary guidelines to B/Ds in April 2011 on the renewal or re-letting of service contracts for the supply of agency workers, and the requirement of Statutory Minimum Wage (SMW).

### **Position of Agency Workers as at 30 September 2016**

6. According to the data collected by CSB, there were 974 agency workers in B/Ds as at 30 September 2016. Compared with the peak of 2 398 as at 30 September 2009, this represented a reduction of about 1 420 (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 4 above. Through the concerted efforts of B/Ds, the number

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<sup>1</sup> 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.

of agency workers has been reduced continuously in the past seven years and contained at a level that is 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 the nature of work, the majority of agency workers were involved in providing general office and technical support, and delivering customer services.

8. Our brief analysis on the 974 agency workers being used by B/Ds as at 30 September 2016 is set out below –

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

The majority of the agency workers (64%) were used for this purpose, such as agency workers used by the Education Bureau for supporting the Pre-Secondary One Hong Kong Attainment Test 2016 and the handling of applications for the 2017/18 Registration Certificate for Kindergarten Admission, and those used by the Working Family and Student Financial Assistance Agency for coping with the application peaks of its various student financial assistance schemes.

(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. In this regard, about 24% of the agency workers were deployed to tide over the short-term manpower gap at the relevant workplaces.

(c) Catering for irregular work pattern

About 12% 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 agency workers used by the Water Supplies Department for supporting its round-the-clock customer hotline services.

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

No agency worker was required to provide service in this situation.

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

9. Among the 974 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. The majority of these agency workers were used for meeting urgent or unforeseen service needs or unexpected surge in service demands (e.g. agency workers used by B/Ds to cope with the surge in workload arising from application peaks of public services).

### **Issues of Concern**

10. In the past, Members have raised a number of concerns over 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 paragraphs 4 and 5 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. When inviting quotations or tenders for the supply of agency workers, B/Ds must require all bidders to state the amount of wages which they would pay to their employees to be assigned to work in the procuring B/Ds should their bids be successful. B/Ds should also specify that the bids would not be considered if the wage amounts stated therein are lower than the higher of the following two benchmarks –

- (a) the prevailing SMW<sup>2</sup> plus one paid rest day for every period of seven days; or
- (b) the average monthly wages for the relevant industry/occupation as published in the Census & Statistics Quarterly Report of Wage and Payroll Statistics for December 2010 (for non-skilled workers<sup>3</sup> 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).

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<sup>2</sup> The prevailing SMW rate is \$32.5 per hour. The SMW rate is proposed to be raised to \$34.5 per hour with effect from 1 May 2017 pending passage of the subsidiary legislation relating to SMW by the Legislative Council.

<sup>3</sup> 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 contracts concerned;
  - (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 wages less than the committed monthly wages of staff and/or made false declaration that its staff have been paid no less than the wages as specified in the service contract.

According to information provided by the procuring B/Ds, no employment agency had contravened the above wage requirements in the past three years.

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. Individual Members have previously suggested the Government to provide civil service fringe benefits to agency workers. As agency workers are not government employees, it is not appropriate for the Government, as the service user, to provide employment benefits to them. Since agency workers may be arranged by the employment agencies to work for service users other than the Government, 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. Individual Members have previously expressed concern over the prolonged use of certain agency workers. In this regard, we have reminded B/Ds that contracts should only be renewed or re-let with strong justifications. As a general guideline, the length of a contract for provision of services by agency workers should not exceed nine months. B/Ds are required to seek approval from CSB if an existing contract is to be renewed or re-let and the aggregated period of contract service 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 or re-letting of service contract for the supply of agency workers for an aggregated period of service exceeding 15 months.

17. Of the 974 agency workers used by B/Ds as at 30 September 2016, most of them (63% or 610) were sourced from service contracts lasting nine months or less. The remainder 37% (or 364) 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, therefore, a continued need for B/Ds to use agency workers in appropriate situations to complement the civil service workforce in providing 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  
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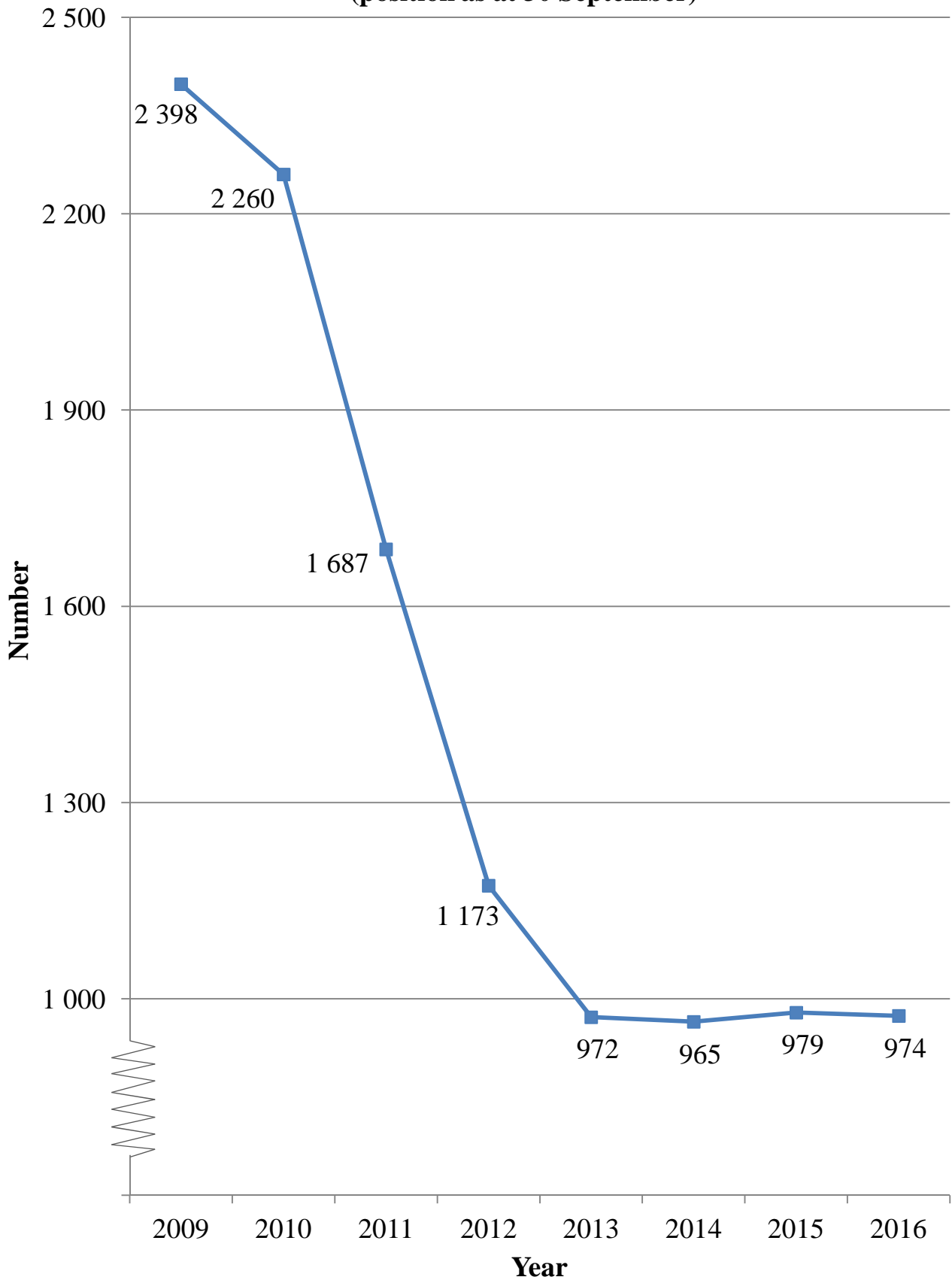


**A breakdown of the number of agency workers by bureaux/departments  
(position as at 30 September 2016)**

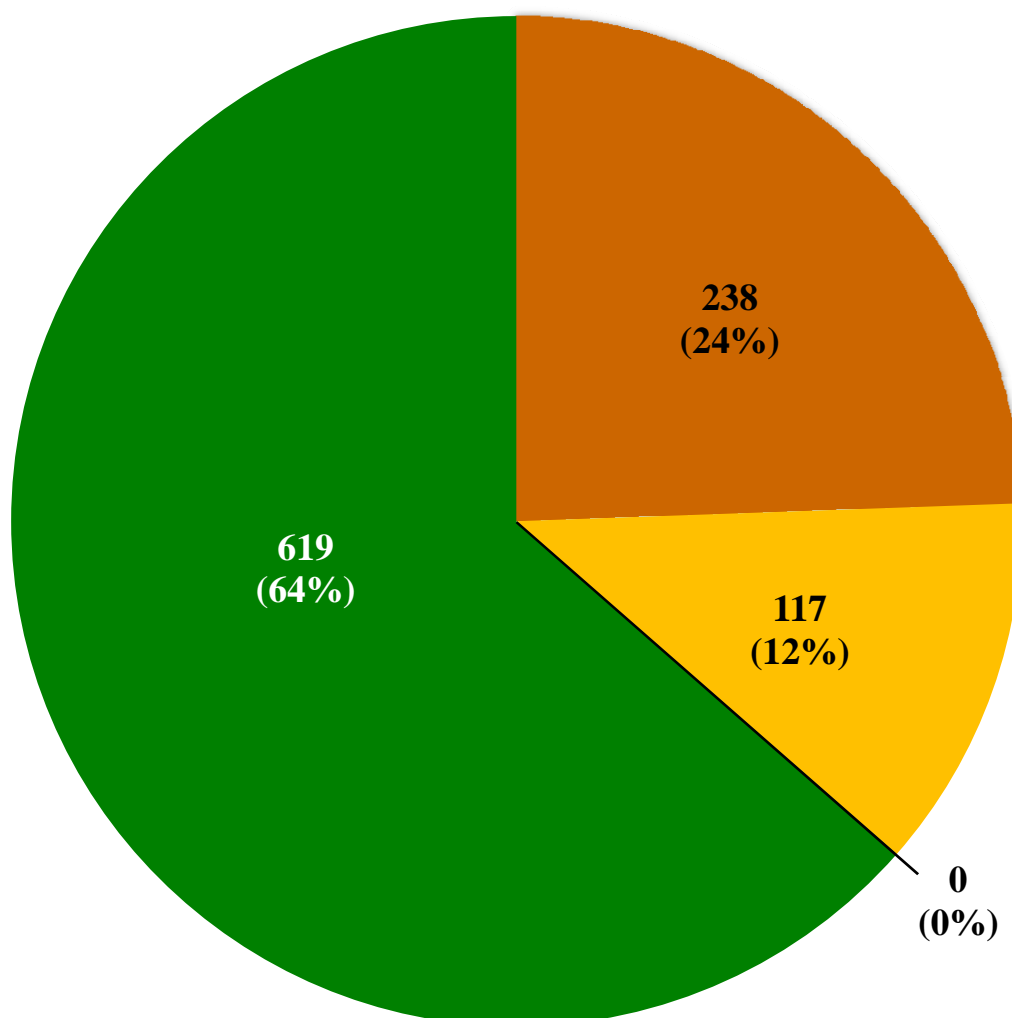
<b>Bureau/Department</b>	<b>Number of agency workers</b>
Agriculture, Fisheries and Conservation Department	5
Buildings Department	82
Chief Secretary and Financial Secretary's Offices	18
Civil Aid Service	1
Civil Engineering and Development Department	2
Commerce and Economic Development Bureau	9
Correctional Services Department	19
Department of Health	89
Department of Justice	22
Development Bureau	10
Drainage Services Department	5
Education Bureau	99
Electrical and Mechanical Services Department	20
Environment Bureau	3
Environmental Protection Department	41
Financial Services and the Treasury Bureau	3
Fire Services Department	3
Food and Environmental Hygiene Department	30
Food and Health Bureau	6
Government Flying Service	3
Government Logistics Department	13
Home Affairs Bureau	3
Hong Kong Police Force	1
Immigration Department	28
Information Services Department	22
Innovation and Technology Commission	4
Intellectual Property Department	2

<b>Bureau/Department</b>	<b>Number of agency workers</b>
Invest Hong Kong	4
Labour and Welfare Bureau	7
Lands Department	60
Leisure and Cultural Services Department	61
Marine Department	38
Official Receiver's Office	26
Planning Department	12
Radio Television Hong Kong	2
Rating and Valuation Department	42
Registration and Electoral Office	5
Security Bureau	1
Transport and Housing Bureau	5
Transport Department	23
University Grants Committee Secretariat	5
Water Supplies Department	69
Working Family and Student Financial Assistance Agency	71
<b>Total</b>	<b>974</b>

**Number of agency workers used by bureaux/departments  
from 2009 to 2016  
(position as at 30 September)**



**Breakdown by Scopes of Use of Agency Workers  
(as at 30 September 2016)**



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