

For discussion  
on 21 January 2019

## **Legislative Council Panel on Public Service Use of Agency Workers**

### **Purpose**

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

### **Background**

2. Agency workers in general refer to the manpower supplied by employment agencies under service contracts with B/Ds. They provide temporary manpower which can be sourced readily by B/Ds to meet their urgent, ad hoc or temporary operational and service needs. Service contracts sourced from agencies enable B/Ds to flexibly arrange temporary manpower and avoid having to redeploy their existing civil servants for the work at the expense of the quality of their public services.

3. Agency workers are under the direct supervision of the B/Ds procuring the service. However, 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 subject to the Government's long-standing established procurement principles, including 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 operational and service needs, or unexpected surge in operational and service demands for the short-term;
- (b) to fill short-term manpower gap;
- (c) to meet operational and 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 for the situation at (c) above, these short-term operational and service demands should not last for more than nine months. In recent years, B/Ds have not used any agency workers to provide service in the situation at (d) above.

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 2018**

6. To monitor the situation on the use of agency workers by B/Ds more effectively, CSB collects relevant data from B/Ds annually.

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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.

According to the latest data, there were 1 025 agency workers in B/Ds as at 30 September 2018. Compared with the peak of 2 398 as at 30 September 2009, there had been a reduction of about 1 370 agency workers, i.e. about 57%. Compared with the corresponding figure for 2017, the number of agency workers increased by about 190, i.e. about 23%. The increase was mainly attributed to the significant growth in civil service posts in the last two years which is way above the average growth in the past. The growth in civil service posts in 2018/19 is 3.7%, which is far higher than the yearly growth of 0.6% to 1.9% in the preceding ten years. Since recruitment of civil servants takes time, B/Ds are using more agency workers for the short-term meanwhile to provide new public services and kick-off new initiatives in a timely manner. Moreover, some B/Ds are using more agency workers to help expedite recruitment of civil servants. When newly recruited civil servants report for duty, those agency workers will no longer be required. 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 1 025 agency workers used by B/Ds as at 30 September 2018 is set out below –

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

The majority of the agency workers (72%) were used for this purpose, such as the provision of clerical support for the upsurge in short-term workload related to the civil service recruitment, and the use of agency workers by the Working Family and Student Financial Assistance Agency for coping with the workload during the application peaks of its various student financial assistance schemes.

(b) Filling short-term manpower gap

On some occasions, civil service vacancies cannot be filled in a timely manner due to the lead time required for conducting recruitment. In this regard, about 16% 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 operational and 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 Information Services Department for services relating to news editing, location shooting, video production, etc., which entailed irregular working hours and required working at night or during public holidays.

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

9. Among the 1 025 agency workers, over 40% were sourced from term contracts under which the employment agencies concerned were not required to provide service on a continuous basis throughout the contract period. Instead, agency workers were supplied only as and when required by the procuring B/Ds and with varying service durations, e.g. a few months/weeks or certain days in a week. The majority of those agency workers were used for meeting urgent or unforeseen operational and service needs or unexpected surge in operational and service demands (e.g. agency workers used by B/Ds to cope with the surge in workload arising from application peaks of public services).

## **Matters of Concern**

10. In the past, Members have raised a few 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 for using agency workers, the approving authority, the wage requirement, renewal and re-letting of service contracts, etc. Every proposal to procure the service of agency workers is required to be considered and approved personally by an 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 discuss with B/Ds to keep us abreast of the situation on their use of agency workers.

### Wage protection for agency workers and sanctions

12. Some Members have previously raised concern 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

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<sup>2</sup> The prevailing SMW rate is \$34.5 per hour.

- (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).
13. B/Ds are also required to specify in the service contracts –
- (a) that 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 for monitoring compliance with the wage requirement; and
  - (c) the sanctions to be imposed in case of non-compliance, e.g. the contract will be terminated if the contractor is found to have paid wages less than the committed monthly wages of staff and/or made false declaration on the level of wage.

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

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<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.

workers. For example, agency workers are accorded the protection and benefits under the EO including those on payment of wages and restriction on deduction of wages. Moreover, subject to their meeting the relevant eligibility criteria, the agency workers concerned are entitled to rest days, paid statutory holidays, annual leave, sickness allowance, etc.

#### Provision of fringe benefits

15. Individual Members have previously suggested that the Government should 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.

#### 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 procurement of the service of agency workers (except term contracts) 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 aggregate period of contract service is expected to exceed 15 months. For example, extension of an existing nine-month contract by more than six months would require the approval of CSB. B/Ds have to provide full justifications to demonstrate that renewal or re-letting of contracts in such circumstances is essential for the operation and service, and that there are no other more appropriate means to meet the relevant operational and service needs. In the past three years, CSB had not received any application for extending the service contract for the supply of agency workers for an aggregate service period exceeding 15 months.

17. Of the 1 025 agency workers used by B/Ds as at 30 September 2018, most of them (644 in number, or about 63%) were sourced from service contracts of nine months or less. The remaining 381 agency workers (about 37%) 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 or temporary operational and service 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 non-civil service contract 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 services 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  
January 2019

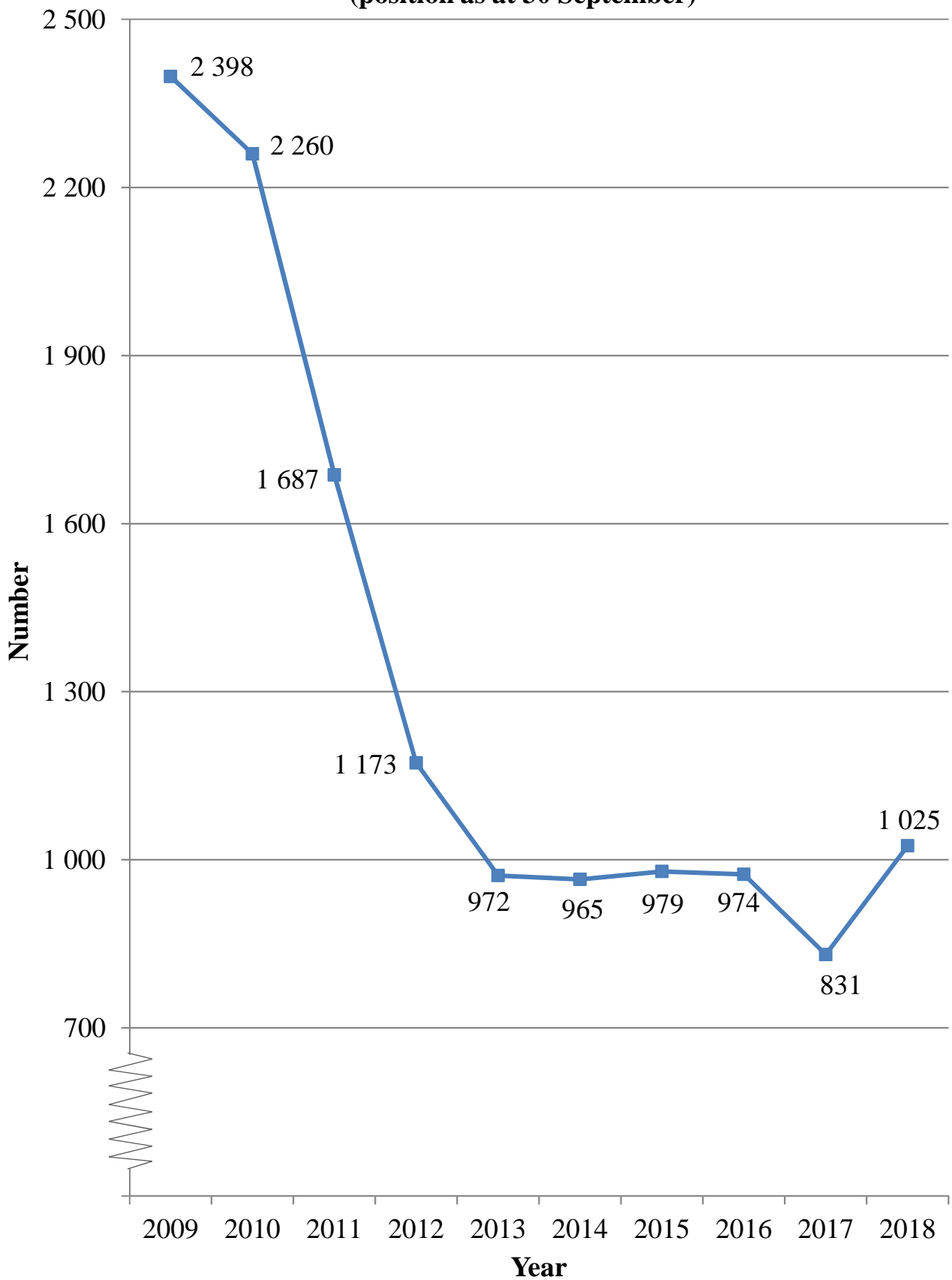


**Breakdown of the number of agency workers by bureaux/departments  
(position as at 30 September 2018)**

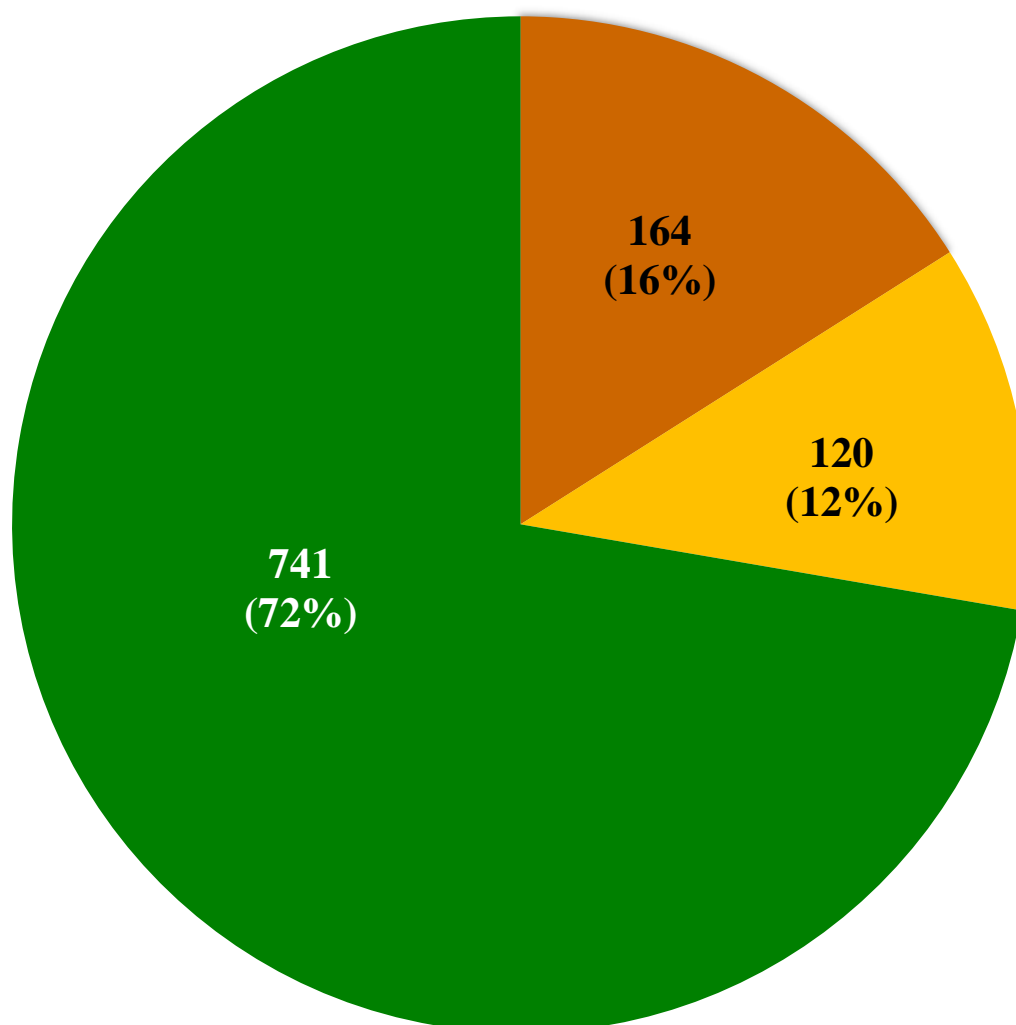
<b>Bureau/Department</b>	<b>Number of agency workers</b>
Agriculture, Fisheries and Conservation Department	29
Buildings Department	37
Civil Aid Service	5
Chief Secretary and Financial Secretary's Offices	10
Civil Engineering and Development Department	3
Commerce and Economic Development Bureau	12
Correctional Services Department	12
Department of Health	76
Department of Justice	23
Development Bureau	7
Drainage Services Department	16
Education Bureau	144
Efficiency Office	3
Electrical and Mechanical Services Department	21
Environment Bureau	1
Environmental Protection Department	48
Financial Services and the Treasury Bureau	5
Fire Services Department	6
Food and Environmental Hygiene Department	30
Food and Health Bureau	14
Government Flying Service	1
Government Logistics Department	8
Home Affairs Bureau	5
Hong Kong Police Force	3
Immigration Department	18
Information Services Department	32
Innovation and Technology Bureau	5
Innovation and Technology Commission	6
Invest Hong Kong	4

<b>Bureau/Department</b>	<b>Number of agency workers</b>
Labour and Welfare Bureau	7
Lands Department	52
Leisure and Cultural Services Department	72
Marine Department	27
Official Receiver's Office	20
Planning Department	11
Rating and Valuation Department	36
Registration and Electoral Office	22
Transport and Housing Bureau	5
Transport Department	11
University Grants Committee Secretariat	9
Water Supplies Department	61
Working Family and Student Financial Assistance Agency	108
<b>Total</b>	<b>1 025</b>

**Number of agency workers used by bureaux/departments  
from 2009 to 2018  
(position as at 30 September)**



**Breakdown by Scopes of Use of Agency Workers  
(as at 30 September 2018)**



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