

For discussion
on 15 January 2018

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 affecting the quality of public service if they have to redeploy their existing staff for the work.

3. Agency workers are under the direct supervision of the B/Ds procuring the services. 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 2010¹. 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 for the situation at (c) above, any short-term service demand should be for no 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 2017

6. According to the data collected by CSB, there were 831 agency workers in B/Ds as at 30 September 2017. Compared with the peak of 2 398 as at 30 September 2009, that represented a reduction of about 1 570 (i.e. exceeding 65%). It also represented a decrease of about

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.

150 as compared with the number of agency workers used on the same day in 2016. We have been striving 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 of agency workers has been reduced continuously in the past eight years and contained at a steady level for coping with B/Ds' 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 831 agency workers used by B/Ds as at 30 September 2017 is set out below –

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

The majority of the agency workers (71%) were used for this purpose, such as agency workers used by the Education Bureau for supporting the Pre-Secondary One Hong Kong Attainment Test 2017 and the handling of applications for the 2018/19 Registration Certificate for Kindergarten Admission. Another example was 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 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 15% 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 14% 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 Information Services Department for services relating to news editing, location shooting, video production, etc., which entailed irregular working hours and required work 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 831 agency workers, about 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 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).

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 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 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 from time to time 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 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 SMW² 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 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

² The prevailing SMW rate is \$34.5 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.

work in the procuring B/Ds if the bids are successful).

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 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 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 operationally essential and that there are no other more appropriate means to meet the relevant service need. In the past three years, CSB has 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 831 agency workers used by B/Ds as at 30 September 2017, most of them (511 in number, or about 61%) were sourced from service contracts lasting nine months or less. The remaining 320 agency workers (about 39%) 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.

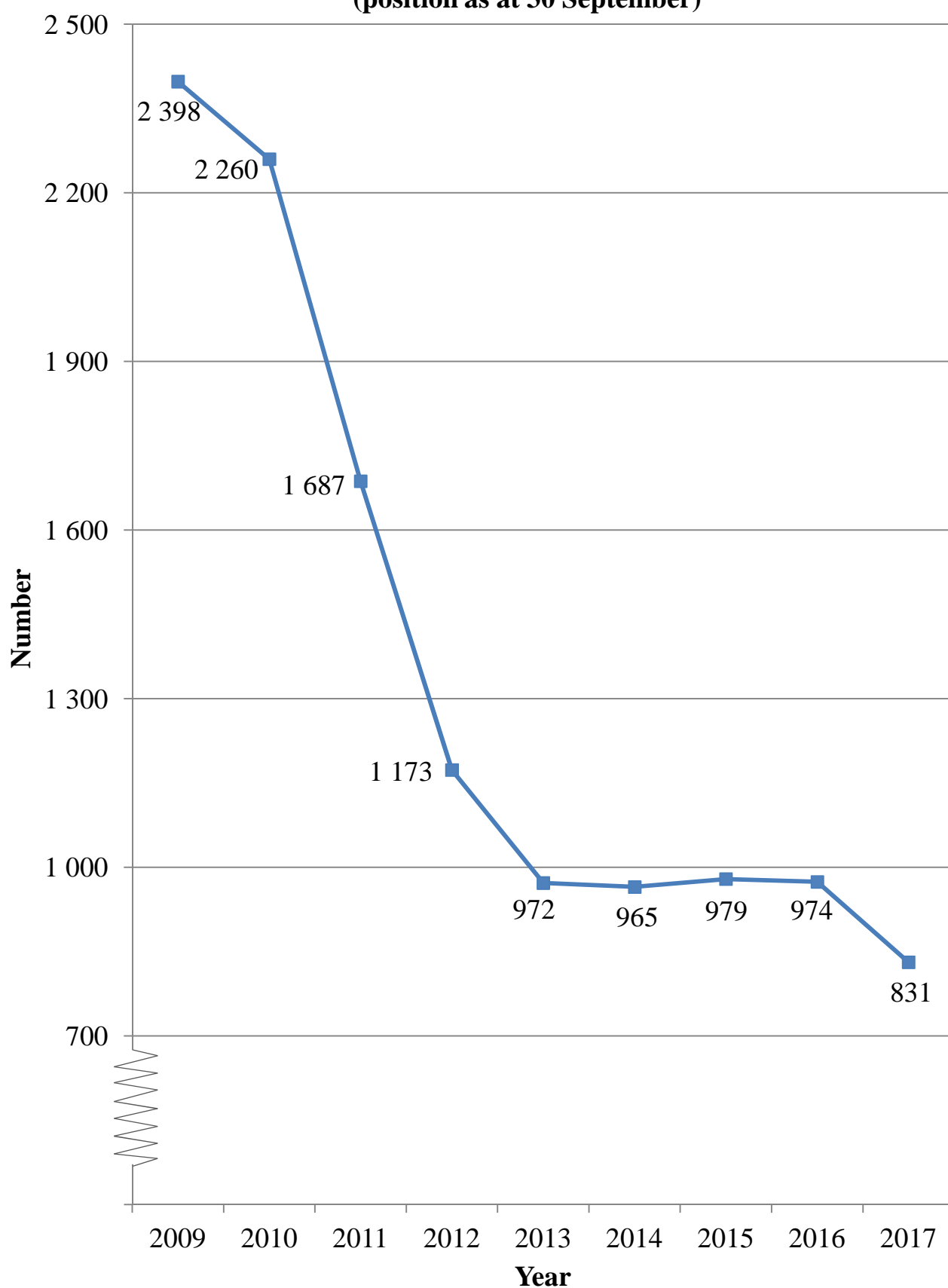
Civil Service Bureau
January 2018

**A breakdown of the number of agency workers by bureaux/departments
(position as at 30 September 2017)**

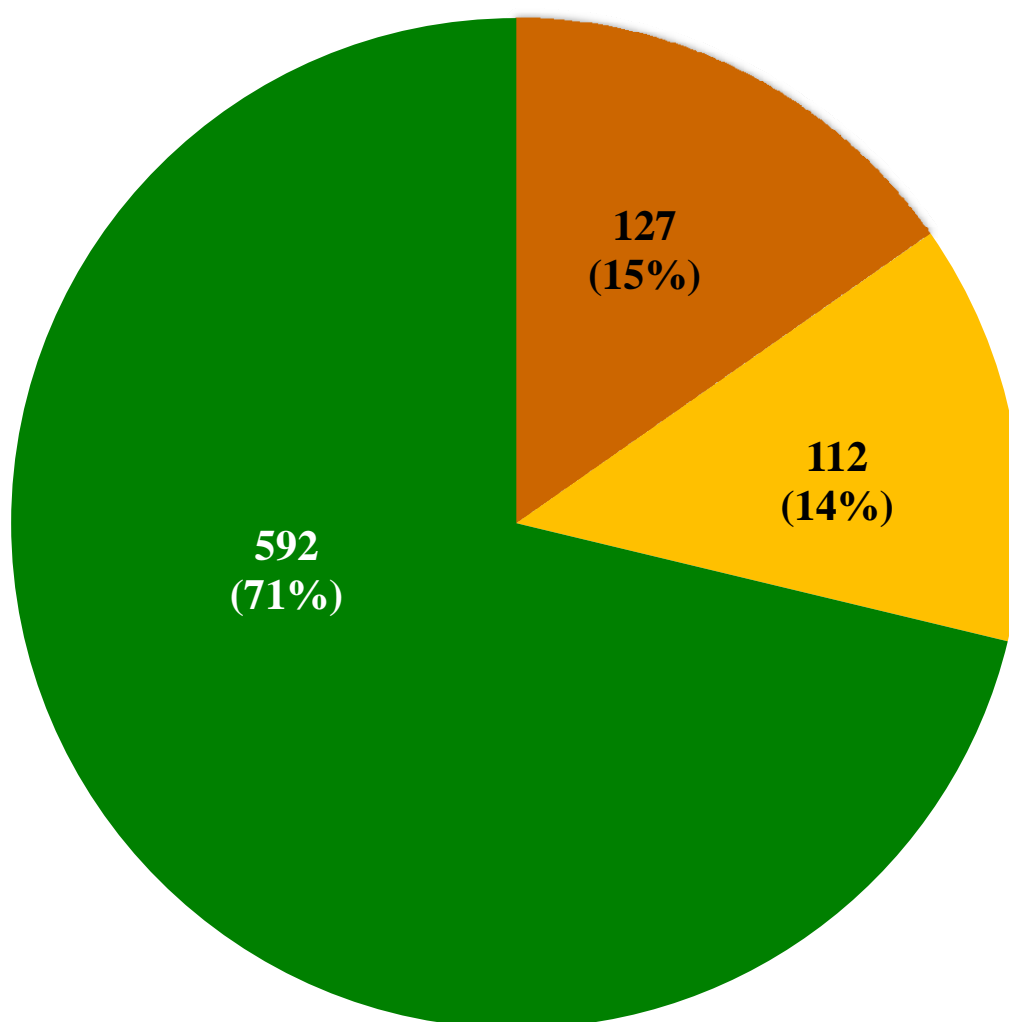
Bureau/Department	Number of agency workers
Agriculture, Fisheries and Conservation Department	11
Chief Secretary and Financial Secretary's Offices	8
Civil Aid Service	3
Civil Engineering and Development Department	5
Constitutional and Mainland Affairs Bureau	1
Commerce and Economic Development Bureau	13
Correctional Services Department	11
Department of Health	58
Department of Justice	25
Development Bureau	5
Drainage Services Department	7
Education Bureau	117
Electrical and Mechanical Services Department	12
Environmental Protection Department	37
Financial Services and the Treasury Bureau	3
Fire Services Department	2
Food and Environmental Hygiene Department	17
Food and Health Bureau	9
Government Flying Service	1
Government Laboratory	1
Government Logistics Department	10
Home Affairs Bureau	2
Hong Kong Police Force	1
Immigration Department	35
Information Services Department	27
Innovation and Technology Commission	6
Intellectual Property Department	1
Invest Hong Kong	6

Bureau/Department	Number of agency workers
Labour and Welfare Bureau	8
Lands Department	58
Leisure and Cultural Services Department	62
Marine Department	24
Official Receiver's Office	18
Planning Department	9
Hongkong Post	2
Rating and Valuation Department	37
Transport and Housing Bureau	4
Transport Department	17
University Grants Committee Secretariat	4
Water Supplies Department	65
Working Family and Student Financial Assistance Agency	89
Total	831

**Number of agency workers used by bureaux/departments
from 2009 to 2017
(position as at 30 September)**



**Breakdown by Scopes of Use of Agency Workers
(as at 30 September 2017)**



- 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