

EXPLANATORY MEMORANDUM TO
THE CONDUCT OF EMPLOYMENT AGENCIES AND EMPLOYMENT
BUSINESSES (AMENDMENT) REGULATIONS 2007

2007 No. 3575

1. This explanatory memorandum has been prepared by the Department for Business, Enterprise and Regulatory Reform and is laid before Parliament by Command of Her Majesty.

2. **Description**

2.1 These Regulations amend the provisions governing the conduct of the private recruitment industry and establishing a framework of minimum standards for its clients, both agency workers and hirers. They increase protections for agency workers and also include measures to reduce administrative burdens on agencies. They also clarify some points in the original Regulations.

2.2 The additional protections for agency workers include situations where an employment agency provides or makes provision through a third party to workers for additional services such as living accommodation or transport. The other main protection relates to the practices of agencies in the entertainment and modelling sector.

2.3 Where an employment agency provides or makes provision for additional services to agency workers such as transport or accommodation, the worker has the right to opt out of the service after giving a period of notice to the service provider. The period of notice in the case of services other than living accommodation is 5 working days; for living accommodation, notice of 10 working days is needed. The agency also has to give the worker a statement in writing setting out the right to withdraw.

2.4 The Regulations ban entertainment and modelling agencies from taking any fees from work-seekers on the day of a casting session or for 7 days after the work-seeker has signed a contract for including their details in a publication. Entertainment and modelling agencies can normally only charge work-seekers a fee out of earnings the agency has found for them, but there is a limited exception for including the work-seeker's details in a publication. This provision in effect gives work-seekers the protection of a cooling off period.

2.5 The measure to reduce administrative burdens exempts employment agencies from providing detailed information to hirers and to agency workers where the worker's assignment lasts for five working days or less. In order to be able to take advantage of this exemption the essential details (e.g. type of work, experience, training and qualifications needed, risks to health and

safety, rate of pay) have already been provided with the employment agency's terms and conditions.

2.6 Regulation 6 clarifies the procedure where an employment agencies supply agency workers to work with the vulnerable and where the agency has been unable to comply with all the necessary requirements.

2.7 Regulation 9 requires an employment agency to inform a hirer where a worker who is a limited company has opted out of the original Regulations. Where agency workers are limited companies they may opt-out of the Regulations provided that both the limited company contractor and the person being supplied to do the work agree not to be covered by the Regulations.

3. Matters of special interest to the joint committee on statutory instruments

3.1 None.

4. Legislative background

4.1 Employment agencies are prohibited from charging work-seekers any fee for providing work-finding services under the Employment Agencies Act 1973. In other words, individuals should not have to pay in order to look for work.

4.2 The relationship between agencies, agency workers and hiring companies is governed by the Conduct of Employment Agencies and Employment Businesses Regulations 2003 ("Conduct Regulations"). The Conduct Relations require that agency workers are paid on time and in full for the work done, and require agencies to establish the identity and suitability of candidates.

4.3 Under the Conduct Regulations, entertainment and modelling agencies are entitled to charge fees to work-seekers, either a commission from work that the agency has found for the work-seeker or for including the work-seeker's details in a publication.

5. Territorial Extent and Application

5.1 These Regulations apply to Great Britain.

6. European convention on human rights

6.1 Pat McFadden, the Minister for Employment Relations has made the following statement:

I am satisfied that these Regulations are compatible with the European Convention of Human Rights,

7. Policy background

7.1 The purposes of the Employment Agencies Act 1973 and the Conduct Regulations made under the Act in 2003 are to set minimum standards for the private recruitment industry and to provide a balance between the interests of agency workers, agencies and hiring companies in the complex three-cornered relationship between employment agencies, those who work for them, and the businesses who use their services.

7.2 While the majority of employment agencies treat their workers fairly, there are a minority of disreputable agencies whose bad practices adversely affect their workers. There are also some agency workers who, for a variety of reasons, are more at risk of being denied their employment rights and are less able to protect themselves.

7.3 In the labour market strategy paper, *Success at Work*, the Government committed to take forward measures to address the bad practices that can affect the most vulnerable agency workers, but without placing burdens on the majority of reputable agencies. At the same time, in line with the Government's commitments on better regulation, we sought to reduce burdens on reputable agencies where we can do so without removing important protections for agency workers.

7.4 As well as changes to legislation, other means such as guidance were considered. As a result, the regulatory changes to increase protection for vulnerable agency workers were limited to the right to withdraw from services and a cooling off period for contracts with entertainment and modelling agencies for including work-seekers' details in a publication.

7.5 Any additional costs to agencies in respect of the measures to protect vulnerable agency workers will be small and will be more than offset by the savings achieved by the reduction in administrative burdens in respect of short term assignments.

Commencement date

7.6 The Regulations will come into force on 6th April 2008.

Consultation

7.7 The consultation paper on *Measures to Protect Vulnerable Agency Workers* was published in February 2007. It proposed measures in respect of services and loans provided by agencies, driver agencies and hard-selling by entertainment agencies. It also proposed a measure to reduce the

information requirements on agencies where assignments were very short (i.e. 5 working days or less).

7.8 A total of 66 written responses were received from a cross section of the recruitment agencies sector. Representations received were from a wide range of interested parties including individual agency workers, recruitment agencies, legal experts and organisations representing agencies and workers.

7.9 The great majority of responses supported the proposals although there was opposition to one proposal (a clarification of the definition of reasonable estimate of costs in respect of including an individual's details in a publication by a modelling or entertainment agency). As a result, this proposal was dropped and replaced by applying the proposed cooling off period to all such contracts.

Guidance

7.10 Guidance on the new Regulations will be placed on the BERR website by the end of this year. The Regulations will be made by the end of 2007 so there will be a three month period for affected business (i.e. employment agencies) to familiarise themselves with the Regulations and amend their practices.

8. Impact

8.1 A Regulatory Impact Assessment is attached at Annex A.

8.2 There is no impact on the public sector as this Statutory Instrument only applies to companies (i.e. employment agencies and employment businesses).

9. Contact

John Thorpe at the Department for Business, Enterprise and Regulatory Reform (telephone: 020 7215 5708 or email john.thorpe@berr.gsi.gov.uk).

Summary: Intervention & Options

| | | |
|---|---|------------------------------|
| Department /Agency: BERR | Title: Impact Assessment of Protecting Vulnerable Agency Workers | |
| Stage: Final | Version: Final draft | Date: 9 November 2007 |
| Related Publications: Government Response to Consultation on measures to protect vulnerable agency workers | | |

Available to view or download at:

<http://www.dti.gov.uk/employment/employment-agencies/vulnerable-agency-workers->

Contact for enquiries: Tim Harrison

Telephone: 0207 215 5799

What is the problem under consideration? Why is government intervention necessary?

Government intervention would correct the market failure resulting from employees not knowing their employment rights and would create a fairer environment for them. In the absence of Government intervention, there is a risk that some vulnerable agency workers will be more at risk of mistreatment as a result of certain work practices carried out by a minority of businesses and agencies who act in ways the vast majority of agencies would never consider, and who, in doing so, cut corners at the expense of workers and gain an unfair commercial

What are the policy objectives and the intended effects?

To introduce a package of specific measures to help protect vulnerable agency workers. In addition government intervention may level the competitive playing field by requiring a small minority of agencies to reach the same standards of performance as the majority.

What policy options have been considered? Please justify any preferred option.

Two options have been considered. The first option is no government intervention; the second is to introduce a package of measures to deal with specific problems affecting vulnerable workers, these imply changes to the Conduct Regulations or to guidance. The Government response to the consultation gives details of each measure and the options considered.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

The policy on the regulations will be reviewed two years after the amended Regulations come into force.

Ministerial Sign-off For final proposal/implementation stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:

Pat McFadden – Minister of State for Employment Relations and Postal Affairs –
Department for Business, Enterprise and Regulatory Reform

..... Date:15/11/07

Summary: Analysis & Evidence

| | |
|-------------------------|--|
| Policy Option: 2 | Description: Introduce a package of measures to protect vulnerable agency workers |
|-------------------------|--|

| | | | |
|--|---|-----------|--|
| COSTS | ANNUAL COSTS | | Description and scale of key monetised costs by 'main affected groups' Costs fall solely on employers (agencies). See summary table in IA |
| | One-off | Yr | |
| | £ 0.163m | 1 | |
| | Average Annual Cost (excluding one-off) | | |
| | £ 0.375m | | Total Cost (PV) £ 0.538m |
| Other key non-monetised costs by 'main affected groups' | | | |

| | | | |
|--|-------------------------------|-----------|--|
| BENEFITS | ANNUAL BENEFITS | | Description and scale of key monetised benefits by 'main affected groups' Main benefit is to employers from simplifying information provisions on agencies supplying workers for very short-term tasks (£6.0m in total) Also, quantifiable benefits to individuals will amount |
| | One-off | Yr | |
| | £ 0 | 0 | |
| | Average Annual Benefit | | |
| | £ 6.375m | | Total Benefit (PV) £ 6.375m |
| Other key non-monetised benefits by 'main affected groups' Agency workers will benefit also from the right to withdraw from agency services. Society as a whole will benefit as a result of increased road safety | | | |

Key Assumptions/Sensitivities/Risks Precise data on the number of agencies working in the UK is not currently available. In this IA we have used the best available estimates to produce the cost-benefit analysis.

| | | | |
|-----------------|---------------------|----------------------------------|---|
| Price Base Year | Time Period Years 1 | Net Benefit Range (NPV) £ | NET BENEFIT (NPV Best estimate) £ 5.837m |
|-----------------|---------------------|----------------------------------|---|

| | |
|---|---------------|
| What is the geographic coverage of the policy/option? | GB |
| On what date will the policy be implemented? | 1 April 2008 |
| Which organisation(s) will enforce the policy? | EAS |
| What is the total annual cost of enforcement for these | £ 800k approx |
| Does enforcement comply with Hampton principles? | Yes |
| Will implementation go beyond minimum EU requirements? | No |
| What is the value of the proposed offsetting measure per | £ N/A |
| What is the value of changes in greenhouse gas emissions? | £ N/A |
| Will the proposal have a significant impact on competition? | No |

| | | | | |
|---|--------------|--------------|---------------|----------------------|
| Annual cost (£-£) per organisation (excluding one-off) | Micro N/A | Small N/A | Medium N/A | Large N/A |
| Are any of these organisations exempt? | No | No | N/A | N/A |
| Impact on Admin Burdens Baseline (2005 Prices) | | | (Increase - | |
| Increase | £ 0.163m | Decreases | £ 6.0m | Net £ (5.837) |

Key:

Annual costs and benefits: Constant Prices

(Net) Present Value

Purpose and intended effect

Objective

The private recruitment industry¹ has grown significantly in recent years. Agency work is a key element in our labour market – providing a route into employment for those previously excluded from it or economically inactive. Industry values the flexibility agency workers provide - for example, to increase or reduce their workforce to handle peaks and troughs in workload and agency workers value the choice and flexibility agency work can give them. Employment agencies are regulated by the Conduct of Employment Agencies and Employment Businesses Regulations 2003, which came into force in April 2004.

The vast majority of agencies treat their clients, both work-seekers and user companies, fairly and comply with legislation. However, there are certain sub-sets of workers who, through a number of factors, may be at more risk of being denied their employment rights and less able to protect themselves. *Success at Work*, the Government's labour market strategy paper published in March 2006, highlighted a number of bad practices that can affect the most vulnerable agency workers.

The Government proposes to introduce a package of measures that would assist those agency workers most likely to be mistreated and vulnerable, leaving the vast majority of agencies who comply with their legal requirements largely unaffected. These measures will cover charging for unwanted services of agency workers and the offering of loans to work seekers; HGV drivers employed through agencies working excessive hours; and hard-sell tactics used in the entertainment and modelling sectors to persuade people to pay fees for services. In addition the Government is proposing a measure to simplify the information requirements that agencies need to supply to the worker and hirer for very short-term tasks.

Background

The vast majority of employment agencies adhere to decent standards. But the Government is aware that there are a number of agency workers who are vulnerable to mistreatment by a minority of employment agencies who would seek to abuse them.

Vulnerable agency workers may be exposed to a range of agency behaviours, which are listed below. In addition, the Government has identified a simplification measure that will ease the information requirements on agencies supplying workers for very short-term tasks.

(i) Charges for services; provision of loans

There are a small number of agencies that mistreat vulnerable work-seekers by making offers of work conditional on paying for additional services such as accommodation and transport.

¹ For the purpose of this document, any reference to agency means an employment agency, employment business or both, as defined under the Employment Agencies Act 1973.

Workers, particularly from overseas, are sometimes given loans to help them take up temporary employment, lured by the promise of high-sounding wages. Cases investigated by EAS inspectors show that there are instances where workers have had difficulty repaying such loans.

(ii) Information provisions on agencies supplying workers for very short-term tasks

The information requirements in the Conduct Regulations can be burdensome where agencies supply workers for very short-term assignments (i.e. of less than 5 working days). Such assignments are common in the hospitality, catering and industrial sectors but are not confined to these sectors.

(iii) Driving Hours

A number of issues have arisen relating to drivers employed through agencies working longer hours driving than is legal, in some cases with collusion, or even some coercion, on the part of the agency.

(iv) Fees payable by entertainers, models etc

A particular problem has emerged in cases where individuals hire a venue for a very short period, invite would-be actors/models to attend and then engage in hard sell tactics to persuade them or their parents to pay high fees for the provision of 'services'.

Rationale for government intervention

In the absence of Government intervention, there is a risk that some vulnerable agency workers will be more at risk of mistreatment as a result of certain work practices carried out by a minority of companies who act in ways the vast majority of agencies would never consider, and who, in doing so, cut corners at the expense of workers and gain an unfair commercial advantage at the expense of reputable agencies.

Consultation

BERR conducted a public consultation exercise on the draft Regulations between 20 February and 31 May.

In total, 66 responses were received and were broadly supportive of the options proposed. No consultation responses were received relating to the partial impact assessment. Full details of the consultation can be found in the Government Response, published alongside this impact assessment.

Options

The consultation considered the following two options:

Option 1. Do nothing. No changes to be made either to the Conduct Regulations or to guidance.

Option 2. Introduce a package of measures to protect vulnerable agency workers. This package would include:

(i) Charges for services; provision of loans

Under the Conduct Regulations agencies are allowed to provide ancillary services to work-seekers but it is an offence to make an offer of work conditional on a work-seeker using and paying for such services. We propose strengthening this provision by

including a right of withdrawal from any service after the work-seeker had taken the job, subject to a notice period, and requiring that the worker not suffer any detriment for exercising the right to withdraw. This would help protect vulnerable workers who can be put under pressure to accept unfair terms. We also wish to avoid making it impossible for legitimate agencies to offer the option of services such as transport to remote areas at reasonable rates, which workers value.

With regard to loans, the Conduct Regulations already require that where a loan is provided by a UK agency to a work-seeker to enable him or her to take up a position with a hirer, the work-seeker cannot be required to repay a greater sum than the money loaned. However, there is evidence of vulnerable agency workers, especially those from overseas, being given loans to help them take up temporary employment, including arranging travel, visas and documentation, interviews and accommodation on arrival, and sometimes also being charged interest accrued. These loans can be for very large sums and with high levels of interest.

However, given that these loans are arranged outside the UK, and are often not unlawful in the country where they are arranged, there seems to be little UK statutory action that would prevent this practice. A number of these loans are taken out on the promise of wages that sound very high, as the workers are given no information about the cost of living in the UK. The purpose of proposed advice is to give EU migrant workers a more accurate picture of the cost of living in the UK before they take out loans or make their decision to leave their home countries. This advice should reduce the risk of loans taken out that would become very difficult for the worker to repay in practice and also help migrant workers in deciding whether to depart. The Government therefore proposes, working with other EU member states, providing simple advice about living in Britain, including the cost of living. This advice should ideally be circulated via trusted channels (such as community groups, Citizens Advice, churches etc.) in the migrant worker's country of origin. Clear advice is also needed when migrant workers reach the UK, but then the emphasis is more on sources of help and advice. The information will be targeted at sources of advice trusted by vulnerable workers, and placed on the BERR website. We plan to build on the work done previously through the Know Before You Go leaflets already produced in Polish, Lithuanian, and Portuguese.

We are currently revising the Portuguese leaflet, and, in line with the Vulnerable Agency Workers Consultation document, we are updating the Polish leaflet to include details on the cost of living in the UK, to ensure that migrant workers have realistic expectations of life here but also to reflect changes in the Polish tax arrangements. We are also producing a generic leaflet for other A8 countries where the migrant flows are too low to justify a bilingual leaflet.

Following the consultation the Government will

- implement the proposals relating to charges for services and provision of loans
- strengthen the existing legislation by amending the Conduct Regulations to permit the agency workers the right to withdraw from extra services the agency provides when giving 5 working day notice period, or 10 working days in the case of accommodation.
- Provide EU migrants with clearer guidance and advice about living in Britain, including the cost of living and ensure the advice is supplied through trusted intermediary sources in the country of origin

(ii) Simplify information provisions on agencies supplying workers for very short-term tasks.

The Conduct regulations require that agencies have to provide detailed information on every assignment to both the hirer and the work-seeker at the time when the worker is proposed to the hiring company and when the agency offers the worker a position with the hiring company. The information that the agency is required to provide to the worker includes the date on which the assignment starts, and the identity of the hirer. Similarly the agency has to provide to the hirer details of the worker, including his/her experience, qualifications and a confirmation that the worker is willing to work in this position. Agencies are required to follow-up verbal notification with written confirmation within 3 working days. With very short-term assignments, the confirmation could be provided after the assignment has been completed so is of limited value. In practice this requirement has proved to be burdensome for agencies dealing with a large volume of workers on short assignments, and similarly hirers who have received a lot of information they do not want. In some cases, hirers have been sent 500 items of information on a single day (i.e. one for each worker). There have been occasions when hirers have asked agencies not to provide this information, although agencies cannot comply with this request, as the information provision is a legal requirement.

Following the consultation, the Government will amend Regulation 21 to exempt agencies from providing information requirements where the assignment is of less than 5 working days duration (the figure comes from pre-consultation discussions) and where the information has already been provided. Guidance on the information provisions will also be clarified to help agencies comply and help workers understand their rights.

The recent Administrative Burdens exercise identified two Information Obligations connected with these provisions, with an estimated cost to business of £11.44². Providing the simplification proposed above could reduce this cost by around a half or £6m.

(iii) Agency Drivers

Legitimate agencies seek to ensure drivers working for them do not exceed their hours and new EU legislation and enforcement regulations have since come into force. However, there have been cases of HGV drivers gaining employment through agencies seeking to work longer hours driving than is legal and in a very few cases, we have evidence that agency staff have colluded with workers to evade the law. Particular problems can arise where drivers work for a number of different agencies either where the driver lies to each agency in order to work longer or where rogue agencies deliberately break the law. In the worst cases fatalities have occurred following agency drivers working excessive hours.

The Government does not propose amending the Conduct Regulations as Agency legislation already covers the issue of ensuring that the driver is aware of, and complies with, the EU Regulations on drivers' hours (Section 20 of the legislation³). However, the Government will amend existing guidance on Section 20 for agencies employing drivers, warning them of the consequences of coercing or colluding with drivers to work excessive hours, including the risk of prosecution for manslaughter in the event of a fatal accident.

² PWC Information Obligations connected with these provisions are IO 703 and IO 722 that give an estimated cost of £4.08m and £7.36m respectively, making the total estimated cost of business £11.4m

³ Section 20 of the existing legislation already requires agencies to "take all such steps, as are reasonably practicable, to ensure that the work-seeker and the hirer are each aware of any requirements imposed by law, or by any professional body, which must be satisfied by the hirer or the work-seeker to enable the work-seeker to work for the hirer in the position which the hirer seeks to fill".

(iv) Fees payable by entertainers, models etc

The Government considered a ban on the seeking or taking of fees, or the promise of fees, on the day on which the audition occurred, and perhaps also for a further period of 7 days afterwards. This would give individuals a chance to reconsider and perhaps make the practice of holding mass casting sessions less attractive to unscrupulous agents. We also wished to ensure that this would not disrupt legitimate industry practice.

We also considered some modest clarification of provisions in the Conduct Regulations governing fees for inclusion of a worker's details in a publication to make the charges more transparent. Where the agency also provides work-finding services to the worker, the fee must be limited to an estimate of reasonable costs. The Government proposed limiting those costs that can be recovered to those of production (including photography), distribution and consumables (e.g. paper and web space). The aim was to limit the costs that can be recovered to those directly attributable to the individual worker. We also planned to give work-seekers information to help them distinguish between reputable companies and the unscrupulous by distributing the Top Tips information leaflet through reputable sources. The information leaflet is available on the BERR website.

Following the consultation, the Government intends to ban the taking of fees (or a promise of fees) on the day or during a casting session and introduce a 7-day cooling-off period. However, the Government has taken note of the views expressed by consultees and does not intend to clarify the costs for inclusion of a worker's details in a publication. Instead, protection for workers will be provided by extending the 7-day ban on taking fees so that a cooling-off period will also apply to all offers made to work-seekers to include their details in a publication.

(v) Miscellaneous changes

Further minor clarifications in the Conduct Regulations have also been identified and the Government will make the proposed changes:

- Regulation 22(3) – Under this regulation, if it has not been possible for the agency to fully comply with the requirements set out in Regulation 22, where professional qualifications are required or where agencies supply workers to work with vulnerable persons, the agency must inform the hirer of what steps it has taken to comply.
- **Currently, the regulation only applies to obtaining references on the work-seeker, but the Government proposes to extend this provision to obtaining copies of qualifications and authorisations.**
- Regulation 32(9) – This regulation relates to the opt-out of the Regulations by a worker who is a company. The Government proposes to include a requirement for an agency to inform a hirer if a worker they supply has opted out of the regulations.
- **Schedule 3 – Currently, the list of occupations for which employment agencies may charge fees to work-seekers does not include clothes, hair and make-up stylists which are, in practice, part of the modelling and entertainment sector. The Government proposes to amend schedule 3 to include “clothes, hair or make-up stylist”.**
- **Following the consultation exercise, a further need for clarification was identified regarding Regulation 28(1) on confidentiality to make it clear that the duty of an agency or employment business relating to confidentiality is subject to the duty in**

Regulation 20 to inform the hirer of information that suggests a worker is or may not be suitable.

Costs and benefits

Sectors and groups affected

Obtaining an accurate picture of the numbers of agency workers in the labour market has always proven difficult. The Labour Force Survey (LFS) reports a UK figure of almost 260,000 agency workers in the fourth quarter of 2006. However, partly because of definitional problems, this is likely to result in an underestimate of the numbers of agency workers⁴.

In an effort to get more reliable figures, BERR commissioned a survey of agencies during 1999. Based on this data it estimated the number of agency workers at 550,000. Updating this figure for the growth in agency workers implied by the LFS since then would imply a figure of 560,000 in 2006. The DTI/BERR survey found there were around 10,000 agencies in 1999. This figure is likely to have grown since then: the ONS Annual Business Inquiry indicates there were around 17,000 enterprises involved in labour recruitment and provision in 2005, with an aggregate turnover of £27bn. The DTI/BERR survey found that most agencies have fewer than 10 employees. Some 37 per cent of those directly employed by agencies work in single site establishments. Agencies with over 100 direct employees account for approximately 15 per cent of the industry. BERR is currently commissioning research to obtain firmer numbers of agency workers.

The leading industry organisation, the Recruitment Employment Confederation (REC) also produces its own estimates. Data presented in *The Recruitment Industry Census 2006* suggests there are 1.08 million agency workers in the UK⁵. While this Census is the most widespread survey of the industry to date, as it is based on over 4,500 site level responses, it consistently provides a higher number of agency workers than other sources. This compares with a total of 10,426 recruitment businesses and 15,970 recruitment sites (hence the majority of recruitment agencies are single site agencies).

Overall the proposals in this impact assessment are targeted at specific businesses and agencies either operating in particular entertainment/modelling work) or behaving in particular ways (offering services and loans); the simplification measure will in principle affect all agencies. In general the evidence on the number of agency workers and firms' effects is somewhat incomplete, as the available data is patchy. In the following sections we provide illustrative cost estimates where the data allows.

Analysis of costs and benefits

(i) Charges for services and provision of loans

The proposal to introduce a right to withdraw for services such as accommodation should result in a welfare transfer from employers, agencies or loan providers back to individuals. The ability of individuals to withdraw without detriment ought to allow for a more competitive setting in the rates that agencies charge for services. Agencies that have in the past extracted a price for services higher than exists in the market will therefore see a reduction in revenue and profits from this source. This will be offset by the benefits to individuals from being able to buy services

⁴ The LFS asks respondents whether their work is not permanent in some way and if so whether they are in seasonal work, working on contract for a fixed period or on a fixed task, doing agency work, casual work, or not permanent in some other way. Some workers who are supplied by employment agencies will classify themselves as fixed term workers or self-employed rather than as agency workers. The LFS will also miss those temps who self-assess themselves as workers for a user enterprise when they are in fact workers of the agency.

⁵ REC *Recruitment Industry 'Census' 2006*, Executive Summary - Key Industry Metrics.

at low prices. In principle there could also be some positive benefits in terms of labour market flexibility and efficiency in agency workers not being 'tied' to particular employers or agencies.

The overall size of costs and benefits of the proposed changes is difficult to quantify, as there is little data available on the extent of these practises. The Labour Force Survey indicates that only a very small percentage of agency workers have accommodation tied to their job (around 3,000). Although this is likely to be an underestimate, the numbers affected do not appear to be large. The overall costs to business and benefits to individuals are therefore likely to be small, though for certain businesses and certain individuals the costs and benefits could clearly be larger.

It is also proposed to improve guidance so that potential migrants coming into the UK are given clear advice about living and working in Britain. If the EU guidance leads individuals to make better-informed decisions, this will improve their welfare. The numbers who may benefit here are not clear. However in 2005 there were 194,953 registrations on the Workers Registration Scheme. Using data from the Labour Force Survey we estimate that around 6.5% of these may be working for an agency.

For those overseas offering loans, any reduction in the principals or interest they can offer may lead to a reduction in their profits. But it is not clear whether these revenues would accrue to UK entities or those abroad, and so it is not clear these would warrant being taken account of in a cost-benefit analysis.

(ii) Relax information provisions on agencies supplying workers for very short-term tasks

The Government will exempt agencies from providing the information required in Regulation 21 where the assignment is very short; and all the essential details had already been provided to the worker in writing with the agency's terms and conditions.

The benefits from this measure should in the first instance accrue to agency businesses, through reduced costs in conducting business involving short-term assignments; the final benefits may be passed-on to a wider business if the hiring charges for short-term business fall as a result. There should be no implications for the costs or benefits to agency workers themselves, as they will already getting essential details in the agency's terms and conditions. In addition there may be a small benefit if reduced costs will increase demand, but this is not quantifiable at this stage.

The recent Administrative Burdens exercise identified two Information Obligations connected with Regulation 21, with an estimated cost to business of £11.44. The relaxation of the burden on short term assignments will have a disproportionate effect on those agencies that provide the most assignments. As it is reasonable to assume that these agencies will be very likely to take advantage of the relaxation, the simplification proposed above could reduce this cost by around a half or £6.0m. The variation in costs is partly a result of uncertainty regarding the overall number of agency workers – other methods such as the Labour Force Survey put the numbers at a much lower level than the figures in the REC survey. BERR is currently commissioning research to obtain firmer numbers of agency workers.

(iii) Agency Drivers

The Government proposed amending existing guidance for agencies employing drivers, warning them of the consequences of coercing or colluding with drivers to work excessive hours, including the risk of prosecution for manslaughter in the event of a fatal accident.

The benefits from this policy would fall largely on society and individuals. Where drivers are working longer hours than the EU Regulations allow, then drivers will benefit from better work-

life balance etc from the ensuing reduction in hours. Further, the costs to society from road accidents are large⁶ and any reduction in their incidence will be beneficial.

Many agencies will already take practical steps to ensure their drivers comply with the EU Regulations. But the improved guidance should lead those agencies which currently do not take adequate steps to ensure their drivers comply to take the necessary action to help ensure compliance. The *Recruitment Industry Census 2006* indicates that around 9% - or just under 93,000 - of agency workers are drivers⁷. We do not anticipate that any additional (to those already indicated at the time the EU Regulations came into force) costs will result from the amended guidance.

(iv) Fees payable by entertainers, models etc

The Government proposed a provision that bans the seeking or taking of fees, or the promise of fees, on the day on which the audition takes place. It also proposed to tighten the Conduct Regulations by strengthening the rule that fees towards the costs of productions and circulation of a publication must be limited to an estimate of reasonable costs, so that agencies are limited to recovering only those costs directly attribute to the individual worker concerned.

The numbers of people who attend the sort of mass casting sessions where they may be asked for fees on the day in order to compile photographic portfolios etc is unclear. The Employment Standards Agency received 342 complaints in 2005/6 related to entertainment and modelling. The numbers attending casting sessions will clearly be in significant excess of this number.

The effect of introducing a cooling-off period may be to allow some people who would otherwise have paid the fees to, on reflection, not do so. They will therefore, ex-post, benefit from a welfare transfer from the agents to themselves. Conversely, the agents will lose the fee income they would have received.

It is not possible to accurately estimate the benefits and costs from this policy in the absence of better data. But as an illustration, anecdotal evidence suggests the fees levied may be around £150. If 10,000 people per year attend these forms of mass casting sessions and if on reflection 25% would not have paid the fee, then the benefits to individuals would be £375,000.

(v) Miscellaneous changes

Regulation 22(3)

Regulation 22(3) already covered references but did not cover qualifications and authorisations. Data on the extent to which agencies are not able to provide information of qualifications and authorisations where they have been required by the hirer is unavailable. However these costs are likely to be small.

Regulation 32(9)

The Government proposed to include a requirement for an agency to inform a hirer if a worker they supply has opted out of the regulations. This will ensure hirers are better informed about the status of agency workers who are working for them.

It is reasonable to assume that an agency will simply add a line to its existing terms of business when informing hirers whether a worker has opted out of the Regulations or not rather than sending out a separate letter, since it is likely that an agency will send the hirer these terms

⁶ The Department for Transport Economic Note No.1 estimates the average cost for all road accidents at £5,444) and £62,196 for all accidents involving a casualty.

⁷ REC *Recruitment Industry 'Census' 2006*, Appendix 1 – Summary Tables.

even in the former instance where it would not be a legal requirement since the Regulations did not apply⁸.

We can therefore assume that agencies will spend around half an hour making the necessary changes to their terms of business and drawing up two versions for each instance where a worker has opted out and where they haven't and so the Regulations still apply. There are around 16,000 agencies which, taking the median hourly pay of a manager as £16.82, would equate to total one-off costs (after allowing for 21% non-wage costs) of £163,000⁹.

Schedule 3

Currently, the list of occupations for which employment agencies may charge fees to work-seekers excludes clothes, hair and make-up stylists which are, in practice, part of the modelling and entertainment sector. The Government proposes to amend schedule 3 to include "clothes, hair and make-up stylists". Data on the number of stylists who seek work through agencies is unavailable. But any cost implications from this change are likely to be small.

Regulation 28

This proposed amendment seeks to clarify that, where an agency or employment business, having supplied a worker, receives information that the worker is not suitable or may not be suitable for the position the hirer seeks to fill, the obligation under Regulation 20 to inform the hirer (and if the information indicates that the worker is not suitable, to end the supply) takes precedence over the obligations in Regulation 28(1) with regard to confidentiality. Any costs resulting from this clarification are likely to be small.

Enforcement, sanctions and monitoring

Enforcement of these provisions is likely to be through the Employment Agency Standards (EAS) Inspectorate who have powers to prosecute breaches of employment agencies legislation, and to seek to prohibit unsuitable individuals from being involved in the running of agencies. Prosecution (with a fine) and prohibition (of up to 10 years) are the likely sanctions. The effectiveness of the measures will be monitored by the EAS and any significant results reported in the EAS Annual Report.

Summary and recommendation

A summary of the costs and benefits is presented in Table 1 below

⁸ A reason for this could be as a precautionary measure in case of disputes with the hirer. The agency may also choose to do this for business reasons in order to set out its level of fees and other terms and conditions.

⁹ i.e. (16,000 x £16.82 x ½ hour) x 1.21

Table 1 Summary of Quantifiable Employer (Agency) Costs and Benefits*

| Measure | Cost | Benefit |
|--|--|----------------|
| Charges for services and provision of loans | Not quantified | Not Quantified |
| Relax information provisions on agencies supplying workers for very short-term tasks | None | £6.0m |
| Possible additional requirements where agencies supply drivers | None | None |
| Fees payable by entertainers, models etc | £0.375m | £0.375m |
| Miscellaneous changes | £0.163m (one-off) | None |
| Total | £0.538m (of which £0.163m is one off) | £6.375m |

Source: BERR calculations

In addition to the costs and benefits to/for employers (agencies) given above, individuals/society would benefit from:

- **The provision enabling workers to withdraw from services provided by agencies as this would reduce pressure on vulnerable agency workers by enabling individuals to shop around and buy services at lower prices.**
- **Better guidance to agencies providing drivers would benefit society through some reduction in the number of road accidents as agency monitor drivers' hours more closely.**

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

NB: I need to insert correct table here

| Type of testing undertaken | <i>Results in Evidence Base?</i> | <i>Results annexed?</i> |
|----------------------------|----------------------------------|-------------------------|
| Competition Assessment | No | Yes |
| Small Firms Impact Test | No | Yes |
| Legal Aid | No | No |
| Sustainable Development | No | No |
| Carbon Assessment | No | No |
| Other Environment | No | No |
| Health Impact Assessment | No | No |
| Race Equality | No | Yes |
| Disability Equality | No | Yes |
| Gender Equality | No | Yes |
| Human Rights | No | Yes |
| Rural Proofing | No | No |

Annexes

Competition assessment

To the extent that these measures require a small minority of agencies to reach the same standards of performance as the majority, this could lead to competition benefits in the sense that a more level playing field is created.

Small Firms Impact Test

The measures discussed above are likely to have a greater impact on smaller firms, as these dominate the agency sector. There has been full consultation with BERR's Enterprise Directorate (formerly the Small Business Service) as well as with agencies and their representative organisations on the proposals.

Equality Impact Assessment

Employment Agency Standards is responsible for ensuring agency standards and policies are developed and enforced to enable all to contribute to a flexible labour market and tackle problems facing vulnerable workers.

We held an informal consultation with stakeholders during May/June 2006 and a formal stakeholder event with a cross-section of the industry in May 2007. We also published a formal public consultation paper. The responses received were not able to provide reliable estimates of the likely impacts by sexual orientation, race, disability, age or gender. However statistics provided from the *Recruitment Industry Census 2006* suggest that a women, people from ethnic minorities, younger and older people are more likely to work through agencies than in the general population. Hence these groups should particularly benefit from the planned changes.