



dti

SUCCESS AT WORK

Consultation on
measures to
protect vulnerable
agency workers

FEBRUARY 2007

Consultation on Measures to Protect Vulnerable Agency Workers

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Foreword

Since 1997 the UK labour market has become one of the most successful in the world, with more people in work than ever before. We have combined social justice with economic prosperity so that businesses grow and employment expands - delivering opportunity for all.

We have created a strong and stable economy, historically low interest rates enabling businesses to take advantage of opportunities offered by the global economy. A cornerstone of this success has been our labour market, which combines the flexibility that both workers and employers seek alongside key protections for workers.

The private recruitment industry has grown significantly in recent years and currently there are around 17,000 employment agencies and employment businesses in the UK¹ with around 1 million temporary, business and contract workers². Agency work is a key element in our labour market – providing a route into employment for those previously excluded from it or economically inactive. Indeed, evidence indicates that approximately 36 per cent of agency workers were previously economically inactive³.

For some, agency work acts as a gateway to a permanent job, but others choose agency work because permanent work is not what they are looking for. Some choose temporary work because it allows them better to balance the needs of work and home. Others enjoy the variety it offers and the opportunity to learn new skills or test the water before changing careers. Indeed, recent research sponsored by the EU shows that temporary workers are among the happiest in the workforce⁴.

Industry values the flexibility agency workers provide - for example, to increase or reduce their workforce to handle peaks and troughs in workload. Agency work also can create extra jobs as it allows companies to experiment and risk expanding production on a temporary basis, testing the water before making a permanent commitment to expansion.

Agency work is a key part of the labour market. Some of the fastest growing sectors of agency activity are at the top end of the market (e.g. managers, highly qualified professionals with scarce skills and workers in the knowledge economy). Indeed one estimate of the contribution of

¹ Department of Trade and Industry Regulatory Impact Assessment

² REC Industry Research Unit, 2004/05 Recruitment Industry Survey – REC figures may over state the number – see analysis on page 6 of RIA

³ CIETT report 'Orchestrating evolution of Private Employment Agencies towards a strong society' 2000

⁴ Temporary Employment Contracts, Workers' Well-Being and Behaviour: Evidence from the UK, King's College, London

agency workers to the economy puts the value at some £24.8bn⁵ per year.

Over the last few years, we have implemented a number of significant changes to ensure the flexibility hirer companies need and agency workers value is balanced by appropriate protections for agency workers. We have completely revised and updated the Regulations governing the British recruitment industry, the Conduct of Employment Agencies and Employment Businesses Regulations 2003, which came into force in April 2004. These revised regulations introduced new protections for workers. They also repealed outdated provisions that placed obligations on companies without being of any real benefit to agency workers. Agency workers continue to benefit from the protection of Working Time legislation and from the National Minimum Wage, which was raised to £5.35 in October 2006 as well as other protections such as health and safety and social security provisions (such as maternity pay) and anti-discrimination legislation. Agency workers are likely to be the largest single group to benefit from the increase in the UK's statutory entitlement to paid annual leave⁶. As a result of this work, we now have a good domestic legislative framework for agency work.

However, we would draw attention to two other key issues highlighted in Success at Work. First, the Government continues to support the underlying principles enshrined in the current draft Agency Workers Directive. We look forward to debate resuming on these important principles in the Directive in the EU in 2007 and will play our part in helping to reach an agreement.

It is important we get this Directive right. We need to ensure appropriate treatment of agency workers in terms of their pay and working conditions while maintaining the flexibility that makes agency work popular and creates jobs.

Second, Success at Work highlighted the fact that while the bulk of UK employment legislation was now in place, we need to consider the issue of certain subsets of workers who, due to a variety of factors, may be more at risk of being denied their employment rights than their fellow workers and less able to protect themselves. Given our identification that the Directive will not address mistreatment and abuse of such agency workers, we announced in Success at Work, a further package of measures designed to offer further protections to the most vulnerable of agency workers. We have also already announced the creation of two Vulnerable Worker Pilots. The pilots will develop local partnerships with unions, business groups, local authorities, community groups, government agencies and others to help vulnerable workers secure their

⁵ REC Industry Research Unit, 2005/06 Recruitment Industry Survey

⁶ Increasing from 4 weeks to 4.8 in October 2007 and 5.6 in October 2008

employment rights and put them in touch with opportunities to develop their skills. They will also help employers to comply with the law and help raise workplace standards.

Our intention in this document is to address the bad practices highlighted in Success at Work that can affect the most vulnerable agency workers. But without placing burdens on the majority of reputable agencies who would not use such practices, yet are undercut unfairly by those that do. Simultaneously, in line with the Government's commitments on better regulation, we are seeking to reduce burdens on reputable agencies where we can do so without removing important protections for workers.

We believe we have identified the key abuses requiring action in this document. However, where respondents can identify further measures – legislative or otherwise - that would:

- remedy abuses not practiced by legitimate agencies, making a real difference to workers but without burdening legitimate agencies; or
- make it easier for agencies/hirer companies to comply with the agency legislation without reducing protections for workers;

we will consider addressing these as well when we take this consultation forward.

Executive Summary

1. This consultation aims to gather information and views from interested parties, including those who may be affected by the proposed changes to the Conduct Regulations, on the package of action outlined below, which includes provision of better guidance for workers and for agencies, closer work with other Government Departments, and legal and other measures.

Charges for services and provision of loans

2. It is already an offence to make an offer of a job conditional on an agency worker paying for other services, such as transport or accommodation, (including when these services are provided by a connected company) but we would now propose to strengthen this provision by giving agency workers **a right of withdrawal**, subject to an appropriate, defined, notice period, together with changes to prohibit an agency from taking any action detrimental to a worker if and when the worker exercises a right of withdrawal. With regard to loans, the law already requires 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. There is however little the Government can do to control situations where loans are taken out by work-seekers overseas, before they reach the UK. By the time the worker arrives, the damage is already done. Therefore, since many overseas loans are taken out by EU workers lured by the promise of high sounding wages (but with no evidence of the cost of living in the UK) which make loans sound repayable we propose to seek to work with relevant fellow EU Member States to distribute information and advice to workers in their countries of origin before they have taken the decision to come to the UK. We would aim to provide, amongst other things, simple advice about living in Britain, including the cost of living, and to seek to ensure the advice is supplied through trusted sources in the country of origin. This will allow workers better to assess the likelihood of their being able to repay such loans. At the same time, we will provide additional clear guidance to prospective EU migrant agency workers on their rights and sources of advice.

Simplify information provisions for short-term assignments

3. The Government is aware that agencies and hirer companies have encountered problems in complying with information requirements in the Conduct Regulations where agencies supply workers for very short-term tasks. Sometimes the information reaches the worker after they have already finished their assignment – this is clearly of no use to the

worker. As a result, we are proposing to exempt temporary worker agencies from providing the information required in Regulation 21 where the assignment is very short (of less than 5 working days in duration) and all the essential details have already been provided in writing with the agency's terms and conditions.

Drivers supplied by Agencies

4. We promised to explore the issue of HGV drivers seeking to gain employment through agencies without proper driving qualifications and seeking to work longer hours driving than is legal with stakeholders such as the Department of Transport and the Vehicle and Operator Services Agency. Given that it is very difficult to remedy a situation where a worker deliberately chooses to lie to all their employers about their driving patterns, we were clear we would want to be sure before making any changes that any action would actually make an appreciable difference to our ability to prevent or crack down upon rogue agencies and drivers. We would not want to place additional heavy burdens on legitimate firms, as existing agency legislation already covers these issues and legitimate agencies ensure appropriate qualifications are in place before placing a worker and seek to ensure drivers working for them do not exceed their hours. On careful review of the existing legislation, we have concluded that an additional requirement on agencies to make all reasonable checks before supplying drivers is not necessary as it would not provide additional protection. Section 20 of the existing legislation already requires agencies and employment businesses (before introducing or supplying a worker) 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'. This provision also requires that 'when the business has information indicating actual or potential unsuitability of worker, it must either end supply of worker or take further steps to establish suitability'. We do not therefore propose to amend the Regulations further on this point. We would however propose to amend our guidance on Section 20 and seek publicity for this change to make clear to agencies that employ drivers that this section has the effect that they would breach the Conduct Regulations if they failed to abide by other applicable legislation in force in the UK governing drivers. Moreover, new legislative measures are already in train. From the 11 April 2007, the main provisions of a new EU Regulation on drivers' hours will come into force. This will place an automatic liability on transport operators for infringements committed by their drivers, as well as introducing co-liability for driver employment agencies that fail to ensure that contractually agreed transport time schedules respect the new EU Regulation.

5. Following close consultation with the Department for Transport and the Vehicle and Operator Services Agency, we have however identified a series of additional actions we can take to improve our ability to tackle these issues. We are developing a protocol to allow DTI and Transport colleagues to share relevant information more easily; we will provide clearer guidance for agencies, including warning agencies of the consequences of coercing or colluding with drivers to work excessive hours. It is doubtful whether those running rogue agencies are aware that if they encourage drivers to work excessive hours and this results in a fatal accident, they will be liable to a prosecution for manslaughter as well as being in breach of agency legislation.

Fees payable by entertainers and models

6. The entertainment and models sector is one where agencies are permitted to charge work-seekers fees for finding jobs including fees for inclusion in a publication. There are cases where unscrupulous individuals hire a venue for 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' and the promise of work.
7. Legitimate companies do not indulge in such hard-sell tactics and we would propose to address this practice by banning the taking of fees or seeking the promise of fees on the day or at the session (some casting sessions are held over a weekend) that a prospective model/actor first met an agent. We are also considering whether such a ban should extend to a period of days thereafter – perhaps a period of 7 days, but would wish to take the views of industry on the length of any such extra period, as we would not want to disrupt legitimate industry practice. We consider banning fees on the day/during the session would give individuals a chance to reconsider and make the practice less attractive to unscrupulous agents.
8. In addition, we have become aware that there is a degree of confusion surrounding a related provision in the existing legislation. Where an agency provides work-finding services to workers in addition to offering to include a work-seeker's details in a publication, any fees charged for including information about the worker in a publication are limited to a reasonable estimate of the cost of production and circulation of the publication. It has become clear that there is confusion over what sort of costs can be included in the reasonable estimate, with certain unscrupulous agents seeking to include routine day to day running costs and 'staff time' at exorbitant rates in the estimate, and legitimate agencies seeking only to recover printing, distribution costs etc. In order to simplify and clarify the law on this point, we are considering limiting

the costs that can be recovered through fees to those directly relating to production (including photography), distribution and consumables (e.g. paper and web space). Agencies would not be able to recover any other costs associated with publications through fees. We would welcome the comments of agencies as to whether there are legitimate additional costs for which allowance should be made.

9. Finally, we will produce and distribute 'Top Tips' information to help would-be models/actors spot unscrupulous agents coupled with advice on getting into the entertainment industry. We will make this available on the DTI and other relevant web sites as well as making it available to the sort of magazines would-be models and actors would read.

Miscellaneous changes

10. We have identified three very minor clarifications in the Conduct Regulations, which it would be desirable to address as part of this exercise. Two of them relate to Regulation 22 and to the opt-out of the Regulations by a worker who is a company. The third relates to Schedule 3, which lists occupations for which employment agencies can charge fees to work-seekers, and proposes to clarify that this list also extends to 'stylists'.

Details of the Consultation

How to respond

11. The consultation will close on 31 May 2007. A response can be submitted by letter, fax or email to:

Anita Thandi
Employment Agencies Inspectorate
Department of Trade and Industry
Bay 3137, 1 Victoria Street
London SW1H 0ET
Tel: 0207 215 3870
Fax: 0207 215 0227
Email: vulnerableagencyworkers@dti.gsi.gov.uk

12. When responding please state whether you are responding as an individual or representing the views of an organisation. If responding on behalf of an organisation, please make it clear who the organisation represents and, where applicable, how the views of members were assembled. A copy of the Consultation Response form is enclosed, which is also available online at (www.dti.gov.uk/employment/employment-agencies/consultation/index.html). You can also respond by letter if you do not wish to use the questionnaire provided.

Additional copies and contact details

13. You may make copies of this document without seeking permission. Further printed copies of the consultation document can be obtained from:

DTI Publication Orderline
ADMAIL 528
London SW1W 8YT
Tel: 0845 015 0010
Fax: 0845 015 0020
Minicom: 0845 015 0030
Web: www.dti.gov.uk/publications

14. An electronic version of this document can be found at www.dti.gov.uk/employment/employment-agencies/vulnerable-agency-workers-consultation as can a Welsh version. Other versions of the document in Braille, other languages or audiocassette are available on request.

Confidentiality & Data Protection

15. Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004). If you want other information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.
16. In view of this it would be helpful if you would explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.
17. The Department will process your personal data in accordance with the DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

Help with queries

18. Questions about the policy issues raised in the document can be addressed to:

Anita Thandi
Employment Agencies Inspectorate
Department of Trade and Industry
Bay 3137, 1 Victoria Street
London SW1H 0ET
Tel: 0207 215 3870
Fax: 0207 215 0227
Email: vulnerableagencyworkers@dti.gsi.gov.uk

19. If you have comments or complaints about the way this consultation has been conducted, these should be sent to:

Stephen Childerstone
Better Regulation Team
Department of Trade and Industry
1 Victoria Street
London SW1H 0ET
Tel: 0207 215 0354

Fax: 0207 215 8303

Email: Stephen.Childerstone@dti.gsi.gov.uk

20. A copy of the Code of Practice on Consultation is attached.

The Proposal

A. Charges for services and Provision of loans

21. Under the Conduct Regulations agencies are allowed to provide ancillary services to work-seekers such as transport services, but it is an offence to make an offer of work conditional on a work-seeker using and paying for such services. This offence also applies where the services are provided by a connected company (i.e. one connected to the agency). In addition, under the National Minimum Wage (NMW), the agency must ensure that any deductions made do not bring a worker's pay below the NMW. The only 'benefit in kind' for which a deduction may be counted towards national minimum wage pay is accommodation. This is subject to a limit of £29.05 per week, or £4.15 per day. There is evidence however that there is some mistreatment of the most vulnerable agency workers through provision of services and anecdotal evidence that workers are being charged excessive amounts for services they do not want or need.
22. In terms of 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 anecdotal evidence of overseas workers arriving in the UK having already entered into loan agreements in their home countries. These loans can be for very large sums and with high levels of interest.

Strengthening the Conduct Regulations - The right to withdraw

23. While the Conduct Regulations clearly prohibit the take up of services as a requirement of getting work, it is not clear whether there is a right to withdraw later. The Government would propose to legislate to strengthen existing powers by giving agency workers the option, subject to an appropriate, defined, notice period, to opt out of any extra service an agency provides (whether directly or through a connected company). In addition, we would introduce changes to prohibit an agency from taking any action detrimental to a worker if and when the worker exercises a right of withdrawal. In this way, for example, individuals can use accommodation or transport provided when they first start work, but then make their own arrangements after a period of settling in should they wish to do so.
24. It is planned that the notice period should be defined otherwise rogue agencies could set an excessive period of notice. The Government is considering a period of 5 or 10 days as a reasonable period for most services, but would welcome views on what would be an appropriate period.

Questions

Is there a need for a notice period?

Is a notice period of 5 days adequate or would ten days, or longer be more appropriate? If so, why?

Should there be different notice periods for different services and if so, which services and for how long?

Are there any types of service that require a long notice period and if so, why?

As a recruitment agency, would a right to withdraw have a seriously detrimental effect on your business? If yes, why?

Providing clearer guidance - working through targeted intermediaries

25. With regard to loans, the law already requires 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. There is however little the Government can do by way of law to control situations where loans are taken out by work-seekers overseas, before they reach the UK. By the time the worker arrives, the damage is already done.
26. Therefore, since many overseas loans are taken out by workers lured by the promise of high sounding wages (but given no information on the cost of living in the UK) which make loans sound repayable, we propose to seek to work with relevant fellow EU Member States to distribute information and advice to workers in their countries of origin before they have taken the decision to come to the UK. Armed with this information, overseas workers should be better able to make informed decisions about whether or not to enter into a loan agreement in order to find work in the UK. We would aim to provide, amongst other things, simple advice about living in Britain, including the cost of living, and to seek to ensure the advice is supplied through trusted intermediary sources in the country of origin. This will allow workers better to assess the likelihood of their being able to repay such loans.
27. At the same time, we plan to refresh and reinforce existing advice for EU workers, building on the work done through our production of Know Before You Go leaflets produced already in Portuguese, Polish and Lithuanian and prepared in partnership with home country Governments. The text of these leaflets is available on the DTI website - www.dti.gov.uk/employment/migrant-workers/index.html.)

28. We would aim to ensure this help and advice was distributed widely in appropriate home countries (to help ensure workers do not leave without considering the likely costs and benefits and do not fall prey to rogues in their home countries or in the UK). Similarly, we would aim to ensure the information was made available within the UK. Since the most vulnerable workers are sometimes convinced, unjustly, by rogue companies that they are illegal, they can be wary of seeking help from the authorities. To combat this we would aim to distribute advice through trusted intermediaries such as community and voluntary organisations, faith groups, churches, trade unions etc.
29. Detailed information will be available on the DTI website Directgov and we will also produce one page flyers summarizing key advice and listing sources of help.

Questions

What would be the most appropriate groups to help circulate such information?

Would you/your organisation be happy to distribute information?

B. Simplification of information requirements for short-term assignments

30. The Government is aware that agencies and hirer companies have encountered problems in complying with information requirements in the Conduct Regulations where agencies supply workers for very short-term tasks.
31. Such short-term assignments are common in the hospitality, catering and industrial sectors but can also be seen in the professional sector for example, supply teachers and interpreters. In these sectors assignments can quite often be at short notice and last only half a day, and in some cases the duration of the assignment can be as little as an hour.
32. The current regulations require that agencies must 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. Although the existing regulations permit this information to be verbally advised to each party concerned initially, they also require an agency to follow up initial verbal notification with either written or electronic confirmation within three working days. With some very short-term assignments, this can mean that the information is provided after the assignment has been completed, so is of very limited value. In practice this requirement has proved to be burdensome for agencies dealing with a large volume of workers and similarly hirers who have received a lot of information they do not want.
33. As a result, we are proposing to exempt agencies from providing the information required in Regulation 21 where:
 - i) The assignment is of less than 5 working days duration;
 - ii) to limit the proposed exemption to employment business activity and
 - iii) All the essential details (i.e. type of work, experience, training and qualifications necessary, any risks to health and safety, rate of pay etc) have already been provided to the worker in writing with the agency's terms and conditions.
34. So, where agencies have provided the necessary information in advance, they would not have to provide this information to the worker in respect of each and every short assignment. Instead agencies could simply send each worker a schedule setting out the various assignments they had over the next few days or weeks. In this context, we are considering defining 'very short' assignments as those of less than 5 working days duration. We are limiting the exemption to employment business activity

(temporary labour provision), as this information is likely to be more useful to workers in the entertainment and modelling industry who work through the employment agency route.

35. This change will also benefit hirer companies in that the employment business will be able to send them one communication covering all workers supplied, instead of information on each worker. This is particularly useful when an employment business is supplying a lot of workers for big events.
36. As a safeguard, the information exemption will not apply to repeats of the same assignment, so rogues cannot avoid information provision by sub-dividing longer assignments into a series of very short ones.

Questions

Is 5 working days a reasonable definition of a short-term contract?

Do you consider the period should be longer or shorter and if so, why?

Would the easing of these information requirements be an improvement for your agency/hiring company?

C. Drivers supplied by Agencies

37. The UK driver agency market has grown at a similar rate to the agency market as a whole.
38. In 'Success at Work' we promised to explore the issue of HGV drivers seeking to gain employment through agencies without proper driving qualifications and seeking to work longer hours driving than is legal, with stakeholders such as the Department of Transport and the Vehicle and Operator Services Agency. Given that it is very difficult to remedy a situation where a worker deliberately chooses to lie to all those for whom they work about their driving patterns, we were clear we would want to be sure before making any changes that any action would actually make an appreciable difference to our ability to prevent or crack down upon rogue agencies and drivers. We would not want to place additional heavy burdens on legitimate firms, as existing agency legislation already covers these issues and legitimate agencies ensure appropriate qualifications are in place before placing a worker and seek to ensure drivers working for them do not exceed their hours. On careful review of the existing legislation, we have concluded that an additional requirement on agencies to make all reasonable checks before supplying drivers is not necessary, as it would not provide additional protection. Section 20 of the existing legislation already requires agencies and employment businesses (before introducing or supplying a worker) 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'. This provision also requires that 'when the business has information indicating actual or potential unsuitability of worker, it must either end supply of worker or take further steps to establish suitability'. We do not therefore propose to amend the Regulations further on this point. We would however propose to amend our guidance on Section 20 to make clear to agencies that employ drivers that they would breach this provision of the Conduct Regulations if they failed to abide by other applicable legislation in force in the UK governing drivers.
39. Following close consultation with the Department for Transport (DfT) and the Vehicle and Operator Services Agency (VOSA), we have however identified forthcoming new EU legislation and a series of additional actions we can take to improve our ability to tackle these issues together.
40. As stated above, existing agency legislation already covers these issues. However, new legislative measures are already in train. For example, from the 11 April 2007, the main provisions of a new EU Regulation on drivers' hours will come into force. This will place an automatic liability on transport operators for infringements committed by their drivers, as

well as introducing co-liability for driver employment agencies that fail to ensure that contractually agreed transport time schedules respect the new EU Regulation. The Department for Transport already provides guidance for both goods and passenger vehicles on the 'Drivers' hours and tachograph rules in the UK and Europe'. In addition DfT also provide guidance on the application of the Road Transport (Working Time) Regulations 2005, which apply to mobile workers (basically drivers and crew) operating on vehicles subject to the EU drivers' hours rules. DfT is currently reviewing its drivers' hours and working time guidance and as part of this process is considering whether to produce targeted guidance for drivers. In addition to this VOSA will be distributing its 'Safe Operators Guide' to all vehicle operators to ensure there is little excuse for failing to have a copy when inspected.

Better Information Sharing between Enforcement Agencies

41. Secondly, DTI, in partnership with our Transport colleagues and the Association of Chief Police Officers, are developing a protocol that provides a framework for information sharing between all the organisations to help prevent crime and take more effective action against rogue operators who break the law.

Better Guidance

42. In addition, DTI plan to provide clearer guidance for agencies and the companies that use them. DTI will include material warning agencies of the consequences of coercing or colluding with drivers to work excessive hours and spelling out that such practices breach agency legislation. It is doubtful whether those agencies seeking to cut corners illegally are aware that if they encourage drivers to work excessive hours and this results in a fatal accident, they will be liable to a prosecution for manslaughter. DTI also will not hesitate to use its powers under the Conduct Regulations to seek to ban those who have demonstrated themselves to be unsuitable from running a driver or any other agency. As mentioned earlier DfT has guidance on drivers' hours and working time and VOSA produces the 'Safe Operators Guide' for both goods and passenger vehicles on the 'Drivers hours and tachograph rules in the UK and Europe'. DTI will work in partnership with DfT and VOSA to ensure that, where necessary, these guides refer to appropriate agency guidance and legislation.

Questions

What do you consider would be the best way to communicate this additional guidance to agencies, drivers and hiring companies?
Would you or your organisation be willing to distribute information?

D. Services offered to entertainers and models

43. The entertainment and models sector is one where agencies are permitted to charge work-seekers fees for finding jobs. In this sector it is the norm for agencies to be used by workers to represent them and to find them work. Under the Conduct Regulations fees can only be charged out of earnings from work, which the agency has found for the worker, with one exception.
44. The only exception concerns fees for inclusion of information about the work-seeker in a publication. The fees cover inclusion in model books, websites and photographic portfolios, materials produced with a view to increasing the likelihood that models and actors will find work.
45. However, there are cases where unscrupulous individuals hire a venue for very short period, advertise in newspapers to 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 and the promise of work. The promise is usually that for a fee, the individual will take a portfolio of photographs and find at least one top agency that will offer a contract.

Banning taking fees (or a promise of fees) on the day or during a casting session

46. Legitimate companies do not indulge in such hard-sell tactics and we would propose to address this practice by banning the taking of service fees or seeking the promise of fees on the day or at the casting session when a prospective model/actor first met an agent and perhaps for a period of days thereafter. Rogues rely on individuals getting caught up in the atmosphere of the event, believing what they are told about their potential as models or actors and succumbing to pressure to part with a fee to secure a dream of stardom. Banning taking fees for services and/or seeking the promise of fees for services on the day or at the session (some casting sessions are held over a weekend) would provide individuals with a 'cooling off period' or 'pause for reflection'. This would allow individuals better to assess whether what they have been told is realistic, perhaps investigate the industry further, and consider whether it is really worth paying the fee.
47. We are considering extending the ban on the taking of such fees on the day or during the casting session to a ban on seeking or taking fees for services for a further period of 7 days after the agent and client first meet. However, we would wish to take the views of the industry and workers on the merits and the length of such a period, as we would not want to disrupt legitimate industry practice.

Questions

Would the banning of taking fees or seeking the promise of taking fees on the day of or during a casting session damage legitimate firms/individuals working in the entertainment/modelling industry? If so, how?

If we were to extend the ban on the taking of fees for services on the day/during the session to a ban on seeking or taking fees for services for a further period of 7 days after the agent and client first meet, would this damage legitimate firms/individuals working in the entertainment/modelling industry? If so, how?

Should this further period be shorter than 7 days or should there be no further period?

Fees relating to a reasonable estimate of the cost of production and circulation of a publication

48. The Government is also aware that there is a degree of confusion surrounding a related provision in the existing legislation. Where an agency provides work-finding services to workers in addition to offering to include a work-seeker's details in a publication, any fees charged for including information about the worker in a publication are limited to a reasonable estimate of the cost of production and circulation of the publication.
49. It has become clear that there is confusion over what sort of costs can be included in the reasonable estimate, with certain unscrupulous agents seeking to include routine day to day running costs and 'staff time' at exorbitant rates in the estimate, and legitimate agencies seeking only to recover printing, distribution costs etc. In order to simplify and clarify the law on this point, the Government is therefore considering whether, in addition to banning fees (or the promise of fees) on the day, costs that can be recovered through fees should be limited to those directly relating to production (including photography), printing, distribution and consumables (e.g. paper and web space). Agencies would not be able to recover any other costs associated with publications through fees. The aim would be to clarify which costs should be covered by the agency and not charged to individual work seekers. This clarity will simplify the legislation for reputable companies, make life far harder for rogues and help the Inspectorate crack down upon those that would mistreat work-seekers. We would also aim, in parallel, to give work-seekers information (see below) to help them distinguish between legitimate companies providing worthwhile services and the rogues. We would welcome the comments of agencies as to whether there are legitimate additional costs for which allowance should be made.

Questions

Do you think that the list of costs that can be recovered - photography, printing, distribution and consumables (e.g. paper and web space) includes the right costs?

If you consider there are other costs, which should be included in the list of those that can be recovered, what are they and why should they be included?

Public Information/Awareness Raising

50. In addition to the above proposals, we plan to produce and distribute 'Top Tips' information to help would-be models/actors spot the rogues coupled with advice on getting into the entertainment industry. We will make this information available on the DTI and other relevant web sites as well as making it available to the sort of magazines would-be models and actors would read.

Questions

Would you or your organisation be willing to circulate this information so it reached would-be entertainers and models?

What distribution channels for advice are most likely to reach would-be-actors models?

E. Request for Specific Further Information

51. The Government considers it has identified the key abuses requiring action in this document. However, where respondents can identify further measures - legislative or otherwise - that would:

- remedy abuses not practiced by legitimate agencies, making a real difference to workers but without burdening legitimate agencies; or
- make it easier for agencies/hirer companies to comply with the agency legislation without reducing protections for workers;

we will consider addressing these as well when we take this consultation forward.

F. Minor Miscellaneous changes

52. We have identified three minor clarifications in the Conduct Regulations, which it would be desirable to address as part of this exercise.
53. Regulation 22(3) – in the second line replace ‘paragraph 2(b)’ with ‘paragraph (2)(a) or (b)’. Regulation 22 sets out the additional requirements where professional qualifications are required or where agencies supply workers to work with vulnerable persons. Under Regulation 22(3), if it has not been possible for the agency to comply fully with these requirements, the agency must inform the hirer of what steps it has taken to comply. At present regulation 22(3) only applies to obtaining references on the work seeker. The effect of this change would be to extend this provision to obtaining copies of qualifications and authorisations.
54. Regulation 32(9) – we propose to include a specific requirement for an agency to inform a hirer if a worker whom they supply has opted out of the Regulations. The opt-out available for workers in Regulation 32 only applies to a worker who is a company and the information as to a worker’s opted-out status is relevant to issues concerning charges to hirers where the hirer wishes to take on an agency worker on a permanent basis. At present Regulation 32(9) does not address the question of passing on the information.
55. Schedule 3 - to add ‘stylists’ to the list of occupations in respect of which employment agencies may charge fees to work-seekers. Clothes, hair and make-up stylists are not currently specifically included in Schedule 3. However, in practice they are part of the modelling and entertainment sector and the borderline between the activities of stylists and those of those in listed occupations is unclear. We propose to amend Schedule 3 to make the position clear.

Questions

Do you have any comments on these proposed amendments?

4. In Regulation 6—

(1) After paragraph (1)(a)(ii) insert—

“(iii) the relevant work-seeker has given notice or has exercised his right to cancel or withdraw under Regulation 5(2); or”

(2) In paragraph (2)(c) after “in a contract” insert—

“for work-finding services”.

5. In Regulation 13(1)(b)(iii) after “relates” insert—

“and a statement of the work-seeker’s right to cancel or withdraw from the service and the notice period required”.

6. In Regulation 21—

(1) In paragraph (1) replace “paragraph (3)” with “paragraphs (3), (4) and (5)”.

(2) After paragraph (3) insert—

“(4) Subject to paragraphs (3) and (5), where an employment business intends to introduce or supply a work-seeker to a hirer for an assignment of five consecutive working days’ duration or less—

(a) paragraph (1)(a)(i) may be satisfied by the employment business giving to the hirer (whether orally or otherwise) the name of the work-seeker to be supplied and a written confirmation by the employment business that it has complied with Regulation 19; and

(b) paragraph (1)(b) may be satisfied, where the employment business has previously provided the work-seeker with the information referred to in Regulation 18(c) to (f) and that information remains unchanged, by the employment business giving to the work-seeker in paper form or by electronic means the information referred to in Regulation 18(a) and (b).

(5) Where an assignment to which paragraph (4) applies is extended after it has started beyond a duration of five working days, the information referred to in paragraph (1) which has not already been provided shall be provided in paper form or by electronic means by the end of the eighth working day of the assignment.”.

7. In Regulation 22(3) change “paragraph (2)(b)” to “paragraph (2)(a) and (b)”.

8. In Regulation 26—

(1) In paragraph (5)(b)(ii) delete “production and circulation” and replace with “photography, printing, and distribution”.

(2) Following paragraph (5)(c) insert—

“(d) where an agency proposes to include in a publication information about a work-seeker obtained at a casting session or audition or similar event which has been advertised to the general public, for 7 days from the date of the event—

(i) no fee permitted under this section shall be payable by the work-seeker; and

(ii) the work-seeker shall be entitled without penalty to cancel or withdraw from any contract, whether written or oral and whether or not expressly mentioning fees permitted under this paragraph, entered into at that event.”.

9. In Regulation 32, replace paragraph (9) with—

“(9) Subject to paragraph (12), paragraphs (1) to (8) shall not apply where, before an employment business or agency introduces or supplies to a hirer a work-seeker which is a company —

(a) the work-seeker and the person who is or would be supplied by that work-seeker to carry out the work agree that they should not apply, and give notice of that agreement to the employment business or agency; and

(b) the employment business or agency proposing to introduce or supply that work-seeker and person to a hirer informs the hirer of such agreement.”.

10. In Schedule 3, insert “clothes, hair or make-up stylist,” after “make-up artist,”.

Jim Fitzpatrick

Parliamentary Under Secretary of State
Employment Relations and Postal Services, Minister for London
Department of Trade and Industry

[Date]

What Happens Next

56. This consultation will close on 31 May and the Government's response to the consultation will be published within three months of this date. Depending on the outcome of this consultation, draft regulations will be published for a further consultation by the end of this year before being debated by Parliament. A provisional timetable is as follows:

| | |
|---|--------------------|
| Close of consultation | 31 May 2007 |
| Government response published | July 2007 |
| Agreement of proposals following consultation | August 2007 |
| Regulations debated in Parliament | October 2007 |
| Amended Regulations made | December 2007 |
| Guidance provided to stakeholders | January-March 2008 |
| Regulations come into effect | 1 April 2008 |

57. In preparing this consultation, initial discussions have been held with a number of bodies within the industry. As part of this consultation, we would welcome the opportunity to discuss these proposals with other representative organisations. To help the consultation process, a number of events are planned, further details of which will be placed on the consultation website (www.dti.gov.uk/employment/employment-agencies/vulnerable-agency-workers-consultation). If you wish to be kept informed of these meetings and progress on the proposals, please tick the box on the response form, giving your email address.
58. The Government will make the responses to the consultation public unless respondents specifically request that their response be kept confidential. The response form attached to this consultation document includes a box to request that the response be treated as confidential.

Annex

The Consultation Code of Practice Criteria

1. Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.
2. Be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses.
3. Ensure that your consultation is clear, concise and widely accessible.
4. Give feedback regarding the responses received and how the consultation process influenced the policy.
5. Monitor your department's effectiveness at consultation, including through the use of a designated consultation co-ordinator.
6. Ensure your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.

The complete code is available on the Cabinet Office's website (www.cabinet-office.gov.uk/regulation/consultation/index.asp).

Comments or complaints

If you wish to comment on the conduct of this consultation or make a complaint about the way this consultation has been conducted, please write to:

Stephen Childerstone
Better Regulation Team
Department of Trade and Industry
1 Victoria Street
London SW1H 0ET

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Fax: 0207 215 8303

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Partial Regulatory Impact Assessment: Protecting Vulnerable Agency Workers

Purpose and intended effect

Objective

The private recruitment industry 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 the 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 freedom agency work provides. Employment agencies are regulated by the Conduct of Employment Agencies and Employment Businesses Regulations 2003, which came into force in April 2004, introducing new protections for workers.

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 agency 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 highlighted a number of bad practices that can affect the most vulnerable agency workers.

As envisaged in Success at Work, the Government proposes to introduce a package of specific measures and actions to assist those agency workers most likely to be mistreated and vulnerable, leaving the vast majority of businesses (and agencies) who comply with their legal and moral requirements largely unaffected. The consultation seeks to address agency workers being charged for unwanted services, the offering of loans to work-seekers; issues relating to HGV drivers employed through agencies; 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 in terms of being at risk of being denied their employment rights and not having the capacity to protect themselves.

Vulnerable agency workers may be exposed to a range of employer 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.

1. Charges for services and 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.

Workers, particularly from overseas, are sometimes given loans overseas to help them take up temporary employment, lured by the promise of high-sounding wages.

2. Information provisions on agencies supplying workers for very short-term tasks

The information requirements in the Conduct Regulations have proved to 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.

3. HGV agency drivers

We are aware of a few cases where drivers employed through agencies have worked longer hours driving than is legal, in some cases with collusion, or even some coercion, on the part of the agency.

4. 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 and the promise of work.

Rationale for government intervention

In the absence of Government intervention, there is a risk that some vulnerable agency workers will continue to be mistreated 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 advantage at the expense of reputable agencies.

Consultation

The DTI will also hold a public consultation exercise on the draft Regulations between 20 February and 31 May.

Options

1. Do nothing. Make no changes to the Conduct Regulations or no changes to guidance.

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

Charges for services and 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 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. There is evidence of vulnerable agency workers, especially those from overseas, being given loans overseas to help them take up temporary employment. Sometimes the loan also covers arranging travel, visas and documentation, interviews and accommodation on arrival, and sometimes also interest accrued. These loans can be for very large sums and with high levels of interest.

Given that these loans are arranged outside the UK, often in countries where such loans are entirely lawful 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 Government therefore proposes providing simple advice about living in Britain, including the cost of living. This advice should ideally be circulated via trusted channels in a possible 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 as once the loan is taken out, it is very hard to assist such a worker with such a loan. The information will be targeted at sources of advice trusted by vulnerable workers, and placed on the DTI website. We plan to build on the work done previously through the Know Before You Go leaflets already produced in Polish, Lithuanian, and Portuguese.

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, the hirer will be 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.

The Government is considering exempting 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 and the hirer in writing with the agency's terms and conditions.

Possible additional requirements where agencies supply drivers

Legitimate agencies seek to ensure drivers working for them do not exceed their hours. 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.

The Government does not propose amending the Conduct Regulations as close examination has shown Agency legislation already covers the issue (Section 20 of the legislation¹¹). However, the Government does propose amending 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.

¹¹ 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'.

Fees payable by entertainers, models etc

The Government is proposing a provision banning the seeking or taking of fees, or the promise of fees, during the session in which the audition occurred. This would give individuals a chance to reconsider and perhaps make the practice of holding mass casting sessions and hard selling to would-be models/entertainers less attractive. In addition, the Government is consulting upon whether the ban on taking fees should be for a longer period. We wish to ensure that this would not disrupt legitimate industry practice.

We are also considering 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 is proposing to limit those costs that can be recovered to those of production (including photography), distribution and consumables (e.g. paper and webspace). More generally, we also plan to give work-seekers information to help them distinguish between reputable companies and the unscrupulous.

Miscellaneous changes

Further minor clarifications in the Conduct Regulations have also been identified:

- 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, clothes, hair and make-up stylists are not currently specifically included in Schedule 3. However, in practice they are part of the modelling and entertainment sector and the borderline between the activities of stylists and those in listed occupations is unclear. The Government proposes to amend Schedule 3 to make the position clear and include 'clothes, hair or make-up stylist'.

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 reports a UK figure of 256,000 agency workers in spring 2005. But this is likely to underestimate the numbers of agency workers partly because of definitional problems¹². The leading industry organisation, the Recruitment Employment Confederation (REC) suggests there are over a million agency workers in the UK. But the REC survey has a fairly low response. In addition, the situation is further confused by the fact that many agency workers may have more than one job and work with more than one agency, so double counting is frequent.

In order to get more reliable figures, the DTI 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 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 a turnover of £27bn. The DTI survey found that most agencies have less than 10 employees. Some 37 per cent of those directly employed work in single site establishments. Agencies with over 100 direct employees account for approximately 15 per cent of the industry.

Overall the proposals in this RIA are highly targeted at specific businesses and agencies either operating in particular sectors (the supply of drivers and 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 costs estimates where the data allows.

¹² 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 be classed as fixed term workers or self-employed rather than as agency workers. The LFS will also miss those temps who are supplied by agencies but paid by the user and also those individuals who self-assess themselves as employees of a user enterprise when they are in fact agency workers.

Analysis of costs and benefits

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 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 practices. 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 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. Of these, around 6.5 per cent (according to the Labour Force Survey) may be working for an agency. For those offering loans abroad, 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.

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

The Government is considering exempting 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, assuming they are already getting essential details in the agency's terms and conditions.

In order to estimate the benefits to agency businesses we need to know how many short-term assignments are made each year. Although evidence suggests there are between 560,000 and over a million agency workers, we do not have a good estimate for the number of tasks each agency worker does per year and of the number of tasks that last for a week or less. As an illustration, the estimate of the number of agency workers would suggest there could be between 27 million and 62 million weeks of work available from the number of agency workers per year¹³. If 10 per cent of these weeks constituted stand-alone short-term tasks, then there would be around 2.7 million to 6.2 million of these tasks. If the simplification measure saved each agency 15 minutes per short-term task, then the total saving to business from this measure may be in the order of £6.6 million to £15.4 million¹⁴. Information provided from the consultation exercise will hopefully allow more accurate costings.

Possible additional requirements where agencies supply drivers

The Government proposes 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. It also envisages closer cooperation with other relevant enforcement bodies with a view to improving Government's ability to take action against those that seek to break the law.

The benefits from this policy would fall largely on society and individuals. Where drivers are working longer hours than the law allows, 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 large¹⁵ and any reduction in their incidence will be beneficial.

Many agencies will already take practical steps to ensure their drivers comply with the law. 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 ensure compliance. The REC Survey 2005/6 indicates that around 5 per cent of temporary placements are for drivers. Taking the updated DTI numbers and the REC

¹³ Making the simple assumption that agency workers work 48 weeks per year.

¹⁴ Taking the median employee wage from the Annual Survey of Hours and Earnings 2006 (£9.88).

¹⁵ 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.

figures as a lower and upper bound on the numbers working for agencies would suggest there are between 28,000 to 65,000 drivers working for agencies. We assume around 10 per cent of agencies will take further steps to ensure their drivers comply with the regulations and also assume the average number of drivers per agency is distributed uniformly between those that currently ensure compliance and those that do not. Then, if further checks involved spending 15 minutes each quarter of an agency employee's time, an estimate of the total costs to business would be between £28,000 and £64,000. This estimate assumes that drivers on average are signed up to one agency, which will be too low: if on average drivers sign up to three agencies (all of which will have to make checks on the drivers' hours) then the cost estimate would be between £83,000 and £200,000.

Fees payable by entertainers, models etc

The Government is proposing 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 is also proposing to clarify the 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.

The numbers of people who attend the sort of mass casting sessions where they face hard selling tactics to part with fees on the day in order to compile photographic portfolios etc is unclear. The Employment Standards Agency received 356 complaints in 2004/5 related to entertainment and modelling. The numbers attending casting sessions will clearly be in significant excess of this number, although equally, not all casting sessions are undertaken by unscrupulous companies, and many companies are happy to allow would-be clients time to consider before paying a fee.

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 per cent would not have paid the fee, then the benefits to individuals would be £375,000. Contributions to the consultation exercise may assist in establishing a firmer evidence base for the benefits and costs.

The proposal to clarify the Conduct Regulation requiring that fees towards the costs of productions and circulation of a publication must be limited to a reasonable estimate of the costs will entail a reduction in

revenue for some businesses subject to the revised regulations. There will be an ensuing benefit to those individuals who in the past have paid fees in excess of reasonable costs. It is not possible to quantify these costs and benefits, as the population of businesses engaged in this activity is not known clearly, but the overall costs and benefits are likely to be small.

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 proposes 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.

The Treasury estimates that around 250,000 contractors have set up limited companies¹⁶. According to REC, the majority of these contractors are likely to work through agencies, and of these, the majority will choose to opt out of the Regulations. Allowing for those contractors that do not work through agencies or that do not opt out, it is likely that somewhere between 150,000 to 200,000 workers fall into this category.

However, 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 even in the former instance where it would not be a legal requirement since the Regulations did not apply¹⁷.

We can therefore assume that agencies will spend around half an hour adding a sentence 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 17,000 agencies, which, taking the median hourly pay of a manager as £16.82, would equate to total one-off costs (after allowing for 30 per cent non-wage costs) of £186,000.

¹⁶ Tackling Managed Service Companies – December 2006 www.hm-treasury.gov.uk/media/53E/48/pbr06_managedservicecompanies_453.pdf

¹⁷ 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.

Schedule 3

Currently, the list of occupations for which employment agencies may charge fees to work-seekers does not clearly 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 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.

Small Firms Impact Test

The measures discussed above are likely to have a greater impact on smaller firms, as these dominate the agency sector. The extent of this can be determined better once information from the consultation is available. The DTI will consult fully with the Small Business Service and small firms on the proposals.

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. The DTI will consult fully with stakeholders, including the Small Business Service and the Office of Fair Trading, so that any potential competition issues are identified.

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 the results reported in the EAS Annual Report.

Contact point

Any enquiries relating to this Regulatory Impact Assessment should be addressed to:

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Success at Work – Protecting Vulnerable Agency Workers

Response Form

Name:

Organisation (if applicable):

Address:

.....

.....

.....

Email:

Please tick the box below that best describes you as a respondent to this consultation:

Single Agency

Multiple Agency

Company using Agency Service

Organisation Representing Workers

Business Organisation

Agency Worker

Community Support Organisation

Local Government

Central Government

Other:

A. Charges for services and provision of loans

Under the Conduct Regulations, agencies are allowed to provide ancillary services to work seekers such as transport services, but it is an offence to make an offer of work conditional on a work seeker using and paying for such services. Under the National Minimum Wage (NMW) the agency must ensure that any deductions made do not bring workers pay below the NMW. However there is some anecdotal evidence that workers are being charged excessive amounts for services they do not want or need.

Strengthening the Conduct Regulations – the right to withdraw

The government would propose to legislate to strengthen existing powers by giving agency workers the option to opt out of any extra services an agency provides. In addition we would introduce changes to prohibit an agency taking any action detrimental to a worker if and when the worker exercises their right to withdraw. It is planned that the notice period should be defined otherwise rogue agencies could set an excessive period of notice. The Government is considering a period of 5 or 10 days as a reasonable period for most services.

Questions

Is there a need for a notice period?

Yes
No

Is a notice period of 5 days adequate or would 10 days, or longer be more appropriate?

Yes
No

If so, why?

.....
.....

Should there be different notice periods for different services and if so, which services and for how long?

Yes
No

If yes, which service?

.....
Are there any types of service that require a longer notice period? Please comment:

As a recruitment agency, would the right to withdraw have a seriously detrimental effect on your business?

Yes
No

If yes, why?

.....
Providing clearer guidance working through targeted intermediaries

The Government proposes to provide advice about living in Britain, including the cost of living in Britain and ensure advice is supplied through trusted intermediaries such as community and voluntary organisations, faith groups, churches, trade unions etc.

Questions

What would be the most appropriate groups to help circulate such information? Please comment:

.....
Would you/your organisation be happy to distribute information?

Yes

B. Simplify information provisions for short-term assignments

The Government is aware that the information provision requirements in the Conduct Regulations on agencies supplying workers for very short-term tasks can form an administrative burden for agencies and user companies but do not seem to have any real benefit for the worker or the hiring company. We are considering exempting agencies from providing the information required in Regulation 21 where the assignment is very short and all the essential details had already been provided in writing with the agency's terms and conditions.

Questions

Is 5 working days a reasonable definition of a short-term contract?

Yes
No

Do you consider the period should be longer or shorter and if so why?

Yes
No

If yes, please comment

.....

Would the easing of information requirements be an improvement for your agency/hiring company?

Yes
No

C. Drivers supplied by Agencies

The DTI plan to provide clearer guidance for agencies and the companies that use them. The guidance will include material warning agencies of the consequences of coercing or colluding with drivers to work excessive hours and spelling out that such practices breach driver agency legislation.

Questions

What do you consider would be the best way to communicate this additional guidance to agencies, drivers and hiring companies? Please comment

.....

Would you or your organisation be willing to distribute information?

Yes

D. Services offered to entertainers and models

The entertainment and models sector is one where agencies are permitted to charge work-seekers fees for finding jobs including up-front fees for inclusion in a publication. However there are cases where unscrupulous individuals hire a venue for very short periods, advertise in newspapers to invite would be actors/models to attend and then engage in hard sell tactics to persuade them or their parents to pay high fees on the promise of work that very rarely materialises.

Ban taking fees (or a promise of fees) on the day or during a casting session

The Government is considering banning the taking of fees on the day or during the casting session, and extending the ban on taking fees or seeking fees for services for a further period of 7 days after the audition occurred.

Questions

Would the banning of taking fees or seeking the promise of taking fees on the day on or during a casting session damage legitimate firms or individuals working in the entertainment/modelling industry?

Yes

No

If so how?

.....

If we were to extend the ban on the taking of fees for services on the day/during the session to a ban on seeking or taking fees for services for a further period of 7 days after the audition, would this damage legitimate firms/individuals working in the entertainment/modelling industry?

Yes

No

If so how?

.....

Should this further period be shorter than 7 days or should there be no further period?

Yes

No

If yes, how short?

.....

Fees relating to a reasonable estimate of the cost of production and circulation of a publication

The Government aims to clarify which costs can be covered by the Agency and to limit these costs to those directly related to production (including photography), printing, distribution and consumables (e.g. paper, and web space). Agencies would not be able to recover any other costs associated with publications through fees for example marketing.

Questions

Do you think that the list of costs that can be recovered – photography, printing, distribution and consumables (e.g. paper and web space) includes the right costs?

Yes

No

If no, why?

.....

If you consider there are other costs, which should be included in the list of those that can be recovered, what are they and why should they be included?

.....

Public Information and Awareness Raising

The Government plans to produce and distribute 'Top Tips' information to help would be models/actors spot the rogues coupled with advice on getting into the entertainment industry. This information will be available on the DTI and other relevant websites as well as making it available to the sort of magazines would be models and actors would read.

Questions

Would you or your organisation be willing to circulate this information so it would reach would be entertainers and models?

Yes

What distribution channels for advice are most likely to reach would be models/actors? Please comment:

.....

E. Request for Further Information

The Government considers it has identified the key abuses requiring action in this document. However, where respondents can identify further measures – legislative or otherwise we will consider addressing these as well when we take this consultation forward. Further measures that would:

Remedy abuses not practiced by legitimate agencies, making a real difference to workers but without burdening legitimate agencies. please comment:

.....

Make it easier for agencies/hirer companies to comply with the agency legislation without reducing protections for workers, please comment:

.....

F. Minor Miscellaneous changes

We have identified three minor clarifications in the Conduct Regulations, which it would be desirable to address as part of this exercise.

- i) Regulation 22(3) – in the second line replace ‘paragraph 2(b)’ with ‘paragraph (2)(a) or (b)’
- ii) Regulation 32(9) – we propose to include a specific requirement for an agency to inform a hirer if a worker whom they supply has opted out of the Regulations
- iii) Schedule 3 – to add ‘stylists’ to the list of occupations in which employment agencies may charge fees to work seekers.

Do you have any comments on either of these proposed amendments?

Yes

No

If yes, please specify

.....

General comments

Do you have any other comments on the proposed changes to protect vulnerable agency workers outlined above?

.....
.....

Thank you for taking the time to let us have your views.

We do not intend to acknowledge receipt of individual responses unless you tick the box below.

Please acknowledge this reply

We will publish all the responses received in this consultation, unless you tick the box below.

Please treat my response as confidential

We would like to keep you informed of the progress of these proposals, including further consultations. If you wish to join the mailing list for the Vulnerable Agency Workers proposals, please tick the box below.

Please add me to the mailing list on Vulnerable Agency Workers

Return completed forms by 31 May 2007 to:

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