

BERR

Department for Business
Enterprise & Regulatory Reform

**PROTECTING VULNERABLE
AGENCY WORKERS**

**Government response to
the consultation**

NOVEMBER 2007

Government response to Protecting Vulnerable Agency Workers Consultation

Contents

Summary.....	2
Summary of responses.....	3
Number of EAS Inspectors.....	3
Section A	4
<i>Charges for services and provision of loans</i>	
Section B	5
<i>Simplification of Information requirements for short-term assignments</i>	
Section C	6
<i>Drivers supplied by agencies</i>	
Section D	7
<i>Services offered to entertainers and models</i>	
Section E	8
<i>Request for specific further information</i>	
Section F	10
<i>Minor miscellaneous changes</i>	
Impact Assessment.....	11
Equality Impact Assessment.....	.11
Annex A	12
Consultation Questions and Government Response	
Annex B	19
<i>Impact Assessment</i>	

Summary

The Government carried out this Consultation on a package of measures to Protect Vulnerable Agency Workers. Our intention in this document was to address the bad practices highlighted in the Government policy document "Success at Work" that can affect the most vulnerable agency workers. These were identified as:

- Abuses around the provisions of services and loans to vulnerable workers
- Drivers supplied by agencies working beyond their legally permitted hours and driving without proper qualifications
- Hard sell tactics used by unscrupulous agencies to persuade would-be entertainers and models to pay high fees for services

Equally as the Government does not wish to place burdens on the majority of reputable agencies who do not use such practices simultaneously, in line with Government's commitments on better regulation, we sought to reduce burdens on reputable agencies where this could be done without removing important protections for workers.

We also asked a wider question,

" 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."

In the consultation document we made clear our aim to publish the Government's response and make any consequent amendments to the Conduct of Employment Agencies and Employment Businesses Regulations 2003 (known as the Conduct Regulations) by end of December 2007 to come into force on 1 April 2008. A Partial Regulatory Impact Assessment was also published for comments and views were sought on how the proposed changes could be supported through guidance and some amendment of the existing Conduct Regulations.

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.

The proposals relating to services offered to would-be entertainers and models were the most complex, so a round table meeting was also held to discuss these proposals in detail and help us to gather useful information and the views of stakeholders. This meeting was attended by a wide range of those from the entertainment sector ranging

from businesses, organisations representing workers, recruitment agencies and groups of individual performers representing their own interests.

Summary of responses

In total there were 66 written responses to this consultation:

6 were from recruitment agencies (5 single and 1 multiple agency);

21 from organisations representing agency workers, including unions;

5 from business organisations representing the interests of their members;

21 responses were from individuals who find employment through recruitment agencies;

7 were from public bodies (5 local governments, 1 central Government and 1 licensing authority);

*5 law firms/representative bodies of solicitors/ lawyers

1 from a casting directory service.

* one of the law firms responded on behalf of 9 respondents from 7 agencies

Overall the proposals in the consultation document were well received by the recruitment agency industry and the union representatives who welcomed the changes giving greater protection to vulnerable agency workers.

Number of EAS inspectors

Some respondents raised the issue of whether there were a sufficient number of Inspectors in the Employment Agency Standards Inspectorate to enforce the proposals and some also suggested that existing enforcement should be proactive. (In 2005/06 approximately one-third of EAS inspections were undertaken on a proactive basis with the remainder being made in response to specific complaints).

A few respondents also called for more prosecutions, particularly of the more high profile agencies or hirers. Following on from the work of the Vulnerable Workers Enforcement Forum, the Secretary of State for Business, Enterprise and Regulatory Reform announced at the TUC congress in Brighton in September his plan to double the number of EAS Inspectors.

Section A

Charges for services and provision of loans

The consultation paper proposed to give agency workers a specified right to withdraw from services (such as accommodation and transport) provided by agencies, subject to an appropriate period of notice. In addition, the consultation paper proposed that agencies should be prohibited from taking any action detrimental to a worker who had exercised their right to withdraw.

There was overwhelming support for the right to withdraw from services and widespread agreement about the need for a notice period. Most respondents agreed with introducing a right to withdraw, subject to giving five working days notice. The introduction of a right for agency workers to withdraw from additional services offered by agencies, without suffering detriment, was also considered to be worthwhile.

Most respondents saw no need for a different notice period for different services. However a significant minority (including a number of agencies and their representatives) considered that a longer period was justified in the case of accommodation. We therefore propose to provide a right of withdrawal subject to five working days notice for all services except accommodation and subject to 10 working days notice in the case of accommodation.

Most respondents agreed that the right to withdraw would not have an effect on legitimate businesses. A few suggested a further requirement that agencies providing additional services must inform all workers in writing at the time of offer, of their right to withdraw from services and the time limits. Some respondents suggested information should also be made available in different languages.

The Government's information leaflet "Know your Rights" has been already been produced in partnership with home countries, unions and industry for migrant workers and is available in Portuguese, Polish and Lithuanian. As the consultation paper itself proposed, we will be refreshing and reinforcing existing advice for EU workers and BERR will ensure that information on these new and existing rights as well as details of the cost of living in Britain will be made available to workers in a number of languages. This should enable workers to make better informed decisions before they come to the UK to find work.

Section B

Simplification of Information requirements for short-term assignments

The consultation paper proposed simplifying the information requirements that agencies are currently required to provide to workers and hirers, in the case of short-term assignments. For this purpose, short-term assignments were defined as those of less than five working days duration. The proposed exemption from the requirements in Regulation 21 of the Conduct Regulations would apply to short term assignments where the essential details of the assignment had already been supplied to the worker in the agency's terms and conditions.

Respondents agreed that an exemption for assignments of less than five working days would ease burdens on business as there would be less administration for very short term assignments. Respondents also agreed they would not like this extension to apply to a longer period than five working days as it has the potential to be abused. One respondent argued that such information was in any case likely to be received after the short term assignment finishes thus rendering it useless. Ridding agencies of this administrative obligation would ease the burden on employers without making any material difference to protection enjoyed by workers.

Some respondents, representing unions, were concerned that this deregulation measure would encourage bad practice and could undermine workers' rights since they argued disputes could result from confusion over which assignments are defined as short term in this context. In order to address this concern the Government proposes to provide clearer guidance with regard to Regulation 21.

Section C

Drivers supplied by agencies

The consultation paper proposed clarifying guidance to agencies supplying drivers, to include warnings as to the possible consequences of coercing or colluding with drivers to work excessive hours.

Respondents supported the Government proposals to provide clearer guidance for driver agencies and the companies that use their services. Some respondents also suggested guidance should be directly communicated to drivers rather than relying upon driver agencies. One respondent suggested including in the guidance cases of where coercion between drivers and driver's agencies has breached legislation, together with the consequences, as a warning to others.

A number of respondents helpfully suggested many different ways to distribute the guidance which will be considered when the guidance is ready for distribution.

Section D

Services offered to entertainers and models

The consultation paper set out two proposals in respect of entertainment and modelling agencies. The first proposal was to ban the taking of fees during casting sessions. The paper also suggested extending the ban for seven days to create a cooling off period.

The great majority of respondents supported the proposal to ban the taking of fees (or a promise of fees) during casting sessions. There was also widespread support for extending the ban for a further seven days to create a cooling off period.

The second proposal was to clarify which costs agencies could include in a reasonable estimate of the cost of production and circulation of a publication. Where the agency also provides work-finding services to a worker, the fee they can charge for including that worker's details in a publication is limited to a reasonable estimate of these costs.

The majority of those responding opposed the proposals for clarifying which costs can be covered by the agency for including a work-seeker's details in a publication. Of the 23 responses received to this proposal, 16 objected leaving only seven in agreement. In addition to this the round table meeting with the entertainment sector explored this proposal in depth and the general consensus was that the proposed change would be unproductive and not achieve the results expected. In fact some argued it could result in higher costs being charged. In addition, some argued that this proposal would not achieve its objective of simplifying or clarifying the legislation.

The Government therefore proposes to drop this suggestion and, instead, to achieve its aim of providing greater protection to workers, apply a seven day cooling off period in this case as well and ban taking fees on the day to all offers to include a worker's details in a publication, whether made at a casting session or in any other way.

Section E

Request for specific further information

The consultation asked a wider question,

“ 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.”

A significant proportion of activity highlighted in responses was already illegal under agency or other employment legislation and did not appear to have been previously brought to the attention of the enforcement agencies. BERR has subsequently approached a number of respondents to see if they would pass further details of the cases mentioned to the enforcement authorities so that companies could be identified and enforcement action be considered. Subsequently more detail has been received from respondents and this is now with relevant enforcement authorities.

Other respondents submitted evidence that was outside the scope of agency legislation e.g. relating to changes in the way housing standards are regulated or outside the scope of this consultation. Where respondents identified wider abuses, BERR has ensured that this evidence is taken into account and not lost, by passing on details to other Government departments, where appropriate, and also to the Vulnerable Worker Enforcement Forum¹ to consider.

Several respondents also raised the issue of the Agency Workers Directive and the proposals within it for equal treatment in terms of pay and basic working conditions. As the Protecting Vulnerable Agency Workers Consultation made clear, this consultation was designed to fill gaps in legislation relating to mistreatment of workers that had been identified which the Directive would not address. This consultation was not intended to replace action to fulfil the Government’s commitment to engage with the European Commission with a view to reaching an early agreement on the proposed Directive.

Some respondents suggested the re-introduction of licensing for the whole recruitment agency sector through the Gangmasters Licensing Authority. The Government has no plans to expand the remit of the Gangmasters Licensing Authority. While the Government has introduced licensing into the food processing and agricultural sectors, this followed widespread evidence of abuse in these sectors, together with a cross-sector consensus (by labour providers, labour users and worker

¹ The Vulnerable Worker Enforcement Forum was launched in June 2007 and its members include representatives of industry, unions, enforcement agencies and Citizens Advice.

representatives) in favour of the introduction of licensing. No such consensus exists outside this sector. Moreover, in previous years licensing across the board was not found to be an effective means to control abuses – the Employment Agency Standards Inspectors found many breaches of the Conduct Regulations were committed by those operating with licences. This was why licensing was repealed and replaced by a new power given to allow the Inspectorate to apply to an Employment Tribunal to prohibit unscrupulous individuals running from agencies or employment businesses. This power is currently in active use.

Section F

Minor miscellaneous changes

The consultation paper proposed three minor clarifications to the Conduct Regulations:

- An amendment to clarify Regulation 22(3) which sets out the additional requirements where professional qualifications are required or where agencies supply workers to work with vulnerable persons.
- An amendment to Regulation 32(9) to require an agency to inform the hirer if a worker has opted out of the Conduct Regulations. The opt-out only applies to workers who are companies.
- An addition to Schedule 3 which lists the occupations in respect of which agencies can charge fees to workers. The proposal would add “clothes, hair or make-up stylist” to this list.

The relatively few respondents who commented on this section were satisfied with the proposed minor clarifications to the Conduct Regulations. One respondent commented that including stylists in Schedule 3 could use too wide a term meaning relatively low paid hairdressers carrying out basic work could face fees to have their details placed in agency’s publicity books when actually hired to carry out basic duties. Conversely another respondent questioned why the list of occupations listed in Schedule 3 was so restricted and suggested broadening it to cover support to services for entertainment/entertainers instead of inclusion of stylists only.

No comments were received on the Regulation 22 and Regulation 32 proposals. The Government proposes to make all three proposed clarifications in the Conduct Regulations.

In addition, it has emerged following the consultation that one provision in the Conduct Regulations is not currently clearly expressed. This concerns the obligation on agencies (Regulation 20) to inform the hirer if they receive information that suggests a worker that they have supplied may be unsuitable. It is not totally clear from the regulations that this obligation takes precedence over the general prohibition in the regulations (Regulation 28) against disclosing information regarding a work-seeker without the individual’s consent. The Government proposes a small amendment to make clear that disclosure in accordance with Regulation 20 would not be in breach of Regulation 28.

Impact Assessment

The Partial Regulatory Impact Assessment was published in the consultation document and views were invited from stakeholders on the estimate costs and benefits. The proposals in the Partial Regulatory Impact Assessment were targeted at specific businesses and agencies operating in particular sectors, supply of driver and entertaining/ modelling or behaving in particular ways, offering services and loans. The simplification measure will in principle benefit all agencies. No respondents commented on the Partial Regularity Impact Assessment.

Equality Impact Assessment

The Employment Agency Standards Inspectorate 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 agency workers some of whom may be from minority ethnic groups or may be migrant 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, disability or religion or belief. However, we will be refreshing and reinforcing existing advice for EU workers and BERR will ensure that information on these new and existing rights as well as details of the cost of living in Britain will be made available to workers in a number of languages.

Annex A

Consultation Questions and Government Response

A. Charges for services and provision of loans

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. The Government proposed a period of 5 or 10 days as a reasonable notice period for most services.

Questions

Is there a need for a notice period?

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

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 longer notice period?

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

Providing clearer guidance working through targeted intermediaries

Government will implement the proposals relating to charges for services and provision of loans.

The Government will strengthen the existing legislation giving the agency worker the right to withdraw from extra services the agency provides subject to 5 working day's notice in the case of all services other than accommodation and 10 working days in the case of accommodation.

The Government will amend Regulation 6 to prohibit an agency from taking any action detrimental to a worker if and when a worker exercises their right to withdraw.

The Government will provide clearer guidance and advice about living in Britain, including the cost of

<p>The Government proposes to provide advice to potential migrants 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.</p>	<p>living and ensure the advice is supplied through trusted intermediary sources in the country of origin</p>
<p><i>Questions</i></p> <p>What would be the most appropriate groups to help circulate such information?</p>	
<p>B. Simplify information provisions for short-term assignments</p>	
<p>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.</p> <p><i>Questions</i></p> <p>Is 5 working days a reasonable definition of a short-term contract?</p> <p>Do you consider the period should be longer or shorter and if so why?</p> <p>Would the easing of information requirements be an improvement for your agency/hiring company?</p>	<p>The Government will amend Regulation 21 to exempt agencies from providing information requirements where the assignment is of less than 5 working days duration.</p> <p>In addition, the guidance on the information provisions will be clarified to help agencies comply and help workers understand their rights.</p>

C. Drivers supplied by Agencies	
<p>The Government proposed 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.</p>	<p>The Government proposes to issue such guidance to drivers, driver agencies and hiring companies</p>
<p><i>Questions</i></p> <p>What do you consider would be the best way to communicate this additional guidance to agencies, Drivers and hiring companies?</p> <p>Would you or your organisation be willing to distribute information?</p>	
D. Services offered to entertainers and models	
<p>Ban taking fees (or a promise of fees) on the day or during a casting session</p> <p>The Government is considering banning the taking of fees on the day or during casting session, and extending this ban on taking fees or seeking fees for services for a further period of 7 days after the audition occurred.</p> <p><i>Questions</i></p> <p>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, individuals working in the entertainment/modelling industry?</p> <p>If we were to extend the ban on the taking of fees for services on the day/during the session to a ban</p>	<p>The Government will ban taking fees (or a promise of fees) on the day or during a casting session (and for a period of 7 days afterwards) for including details of a work –seeker in a publication</p>

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?

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

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.

The Government does not intend to clarify the costs, given that such a change was not supported by consultees. Instead, the protection for workers will be provided by extending the 7 day ban on taking fees (see above) so that a cooling off period will apply to all offers made to work-seekers to include their details in a publication.

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 and Awareness Raising

<p>The Government has produced the “Top Tips” information leaflet to help would be models/actors spot the rogues coupled with advice on getting into the entertainment industry. This information is available on the BERR website.</p> <p><i>Questions</i></p> <p>Would you or your organisation be willing to circulate this information so it would reach would be entertainers and models?</p> <p>What distribution channels for advice are most likely to reach would be models/actors?</p>	<p>The Government will distribute the information leaflet on other relevant websites and will be made available to the sort of magazines would be models and actors would read</p>
<p>E. Request for Further Information</p>	
<p>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:</p> <p>Remedy abuses not practiced by legitimate agencies, making a real difference to workers but without burdening legitimate agencies.</p> <p>Make it easier for agencies/hirer companies to comply with the agency legislation without reducing protections for workers</p>	<p>Responses received have already been passed to the Vulnerable Workers Forum</p>

F. Minor Miscellaneous Changes	
<p>We have identified three minor clarifications in the Conduct Regulations, which it would be desirable to address as part of this exercise.</p> <ul style="list-style-type: none"> 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. <p>Do you have any comments on either of these proposed amendments?</p>	<p>Government will make the proposed changes to the Conduct Regulations</p> <p>In addition, the Government proposes a minor clarification to make it clear that the obligation on agencies to inform the hirer if they receive information that suggests a worker that they have supplied may be unsuitable takes precedence over the general prohibition in the regulations against disclosing information regarding a work-seeker without the individual’s consent.</p>

Annex B

Impact Assessment

Summary: Intervention & Options

Department /Agency:
BERR

Title:
Impact Assessment of Protecting Vulnerable Agency Workers

Stage: Final

Version: draft v2

Date: 26 October 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-consultation/index.html>

Contact for enquiries: Tim Harrison/John Thorpe

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 advantage at the expense of reputable agencies.

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:

.....Date:

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	Y	
	£ 0.123m	1	
	Average Annual Cost		
	£ 0.375m		
Total Cost (PV)			£ 3.0m
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 to £0.375m/year.
	One-off	Y	
	£ 0	0	
	Average Annual Benefit		
	£ 6.375m		
Total Benefit (PV)			£ 53.0m
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	Time Period	Net Benefit Range (NPV) £	NET BENEFIT (NPV Best estimate) £ 50.0m
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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 organisations?	£ 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 year?	£ 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)	Micr o Sm all Me diu Lar ge
Are any of these organisations exempt?	No No N/ N/

Impact on Admin Burdens Baseline (2005 Prices)				(Increase)	-
Incre	£	Decr	£ 6.0m	Net	£ (5.877)

Key:

Annual costs and benefits:

(Net)

Purpose and intended effect

Objective

The private recruitment industry² 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.

² 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 leaving 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 £11.44³. 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.

³ 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.

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 legislation⁴). 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.

(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.

⁴ 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".

- 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 workers⁵.

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*

⁵ 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.

2006 suggests there are 1.08 million agency workers in the UK⁶. 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 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.

⁶ REC *Recruitment Industry 'Census' 2006*, Executive Summary - Key Industry Metrics.

(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 large⁷ 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 drivers⁸. 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.

⁷ 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.

⁸ REC *Recruitment Industry 'Census' 2006*, Appendix 1 – Summary Tables.

(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 even in the former instance where it would not be a legal requirement since the Regulations did not apply⁹.

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

⁹ 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.

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 £123,000.

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

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	£0.123m (one-off)	None
Total	£0.498m (of which £0.123m is one off)	£6.375m

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.
- Providing a cooling off period for models and entertainers would provide benefits to individuals (i.e. those who sign up, but on reflection decide not to pursue the contract) totalling an estimated £375,000.

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.

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	No	Yes/No
Small Firms Impact Test	No	Yes/No
Legal Aid	No	Yes/No
Sustainable Development	No	Yes/No
Carbon Assessment	No	Yes/No
Other Environment	No	Yes/No
Health Impact Assessment	No	Yes/No
Race Equality	No	Yes/No
Disability Equality	No	Yes/No
Gender Equality	No	Yes/No
Human Rights	No	Yes/No
Rural Proofing	No	Yes/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. The BERR has consulted fully with the Small Business Service and 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, age or gender. However statistics provided from the *Recruitment Industry Census 2006* suggest that a higher proportion of women, people from ethnic minorities, younger and older people work through agencies than in the general population.

