

**PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND
OF THE COUNCIL ON WORKING CONDITIONS FOR TEMPORARY
AGENCY WORKERS-
REGULATORY IMPACT ASSESSMENT**

1. Title

This Regulatory Impact Assessment (RIA) considers the potential impact of the proposal for a Directive of the European Parliament and of the Council concerning the working conditions of temporary agency workers (hereafter referred to as “the Directive”), which the Commission agreed and published on 20 March 2002.

2. Objectives, Purpose and Intended Effect

The aim of this Directive is twofold:

- to improve the quality of temporary agency work by applying the principle of non-discrimination.
- to establish a suitable framework for the use of temporary agency work to contribute to the smooth functioning of the labour market¹.

As a whole, the Directive aims to lay the foundations for further development of the temporary agency work sector, and also aims to promote job creation and to make agency work more attractive, to better meet firms’ needs for flexibility.

Definitions

Article 1.1 of the Directive states that the Directive “applies to the contract of employment or employment relationship between a temporary agency, which is the employer, and the worker, who is posted to a user undertaking to work under its supervision.”

Article 1 of the Directive includes the concept of ‘temporary working relationships’ as defined in the Directive of 25 June 1991, which supplements the measures to encourage improvements in the safety and health at work of workers with a fixed-term or temporary employment relationship².

The Employment Agency Act 1973 says that temporary agency workers are ‘in employment’. This is a deliberately broad term to cover agency employees and those that are not employees. Many individuals who are in temporary employment are viewed by agencies as workers who are not employees (and therefore are only

¹ Interinstitutional File 2002/0072 (COD), Proposal for a Directive, Article 2.

² Directive 91/383/EEC. OJ L No 206/19, 29.7.91. ‘Temporary employment relationships’ are between a temporary employment business which is the employer and the worker, where the latter is assigned to work for and under the control of an undertaking and/or establishment making use of his services’.

covered by certain employment legislation). This Directive will cover agency workers, whether or not they are employees.

The Directive applies a principle of non-discrimination to agency workers as compared to workers in the user enterprise who do the same or similar work. This means that an agency worker assigned to work under the control of a client company should not be given less favourable basic employment conditions than a similar permanent worker in that client company, unless this is objectively justified. The Directive contains limited derogations from this principle. It would not allow a permanent worker in a user company to make a comparison with an agency worker who was placed there.

Article 3.2 of the Directive states that a “*comparable worker* means a worker in the user enterprise occupying an identical or similar post to that occupied by the worker posted by the temporary agency, account being taken of seniority, qualifications and skills.” This suggests that the comparator can probably have either an open-ended or a fixed-term contract.

For the purposes of this RIA, the phrase ‘employment agency’ or ‘agency’ will be used to refer to employment businesses.

Risk assessment

The Commission proposal arises from concerns that the temporary agency work sector in the EU may include individuals who are vulnerable, in that they have limited opportunities³. Problems identified include:

- Some agency workers have fewer benefits⁴ than both their colleagues with open-ended contracts and those with fixed-term contracts⁵ at the user enterprise, or may be treated differently in some other way (e.g. reduced access to the social services of the user enterprise).
- Agency workers may not be informed of or permitted to apply for permanent jobs at their current user enterprise.
- Agency workers may not be able to improve their skills due to reduced access to training; this could lead to labour market inefficiency.
- Agency workers may not have access to the social services in the user enterprise.
- Agency workers may feel less secure in their jobs than workers on permanent contracts⁶.

³ Note that for some agency workers, temping is a matter of positive choice. See the section on ‘Reasons to Work’ for more details.

⁴ See Annex Four for an estimate of the number of beneficiaries of the proposed Directive.

⁵ Note that agency workers were explicitly excluded from the regulations concerning the EC Directive on Fixed Term Work.

⁶ Cully, Woodland, O’Reilly & Dix (1999), *Britain at Work: as depicted by the 1998 Workplace Employee Relations Survey*, p.168. 36% of temporary workers felt secure compared with 61% of permanent employees.

It is possible that the proposed Directive may have the effect of reducing choice for individuals who choose to work as temporary agency workers, if user enterprises reduce their demand for agency workers in the light of higher costs.

Proposed remedy

The purpose of the Directive is to establish a general principle of non-discrimination between temporary agency workers and comparable workers in the user enterprise, taking into account seniority, qualifications and skills, in terms of basic working conditions (Article 3).

This requires both agencies and user enterprises to ensure that agency workers do not receive less favourable basic working conditions than a comparator at the user enterprise.

Additional rules ensure that:

- Existing restrictions and prohibitions on temporary agency work are reviewed periodically in order to verify whether the specific conditions underlying them still obtain. (Article 4). Note that none such restrictions exist in the UK.
- Temporary agency workers are informed of any vacant posts in the user enterprise and are not prevented from forming a contract with the user enterprise after their posting. (Article 6).
- Temporary agency workers are given access to the social services of the user enterprise. (Article 6)
- Dialogue between the social partners is promoted to improve temporary agency workers' access to training in temporary agencies and in user enterprises (Article 6)
- Temporary agency workers count for the purposes of calculating the threshold above which bodies representing workers are formed at the temporary agency (Article 7).
- The user enterprise provides suitable information on the use of temporary agency workers to the workers' representatives (Article 8).

3. Options

The Commission takes the view that extending the equal treatment principle to agency workers at EU level and creating a common framework for their use will promote agency work in the EU. Its proposal would harmonise the position for agency workers posted at a national level as well as those posted transnationally. The proposal also follows directives on part-time and fixed term work, agreed in 1997 and 1999 respectively and supplements both this and directive 91/383/EC on the health and safety of temporary workers, in developing a framework of protection for those in non-standard employment relationships.

The proposed Directive is at an early stage and it is possible that the text could be amended either by the European Parliament or Council. This RIA will be updated in

the light of any such changes, once the different options for changes to the proposal are identified.

Whatever practices are adopted in the UK if the Directive is agreed will need to comply with the minimum requirements. The following analysis is based on the form described by the Directive, which includes a six-week derogation from the equal treatment requirement. That is, if an employment agency expects a worker's posting to be less than six weeks in duration, the Directive will not apply.

There are doubts that the Directive could cover pay. This RIA includes pay for completeness but if pay is excluded, this would reduce costs both for agencies and user enterprises and would reduce benefit for agency workers.

4. Groups, and numbers of agency workers, covered by the proposed Directive

A triangular relationship exists between agency workers, employment agencies and user enterprises, compared to the usual bilateral relationship between worker and employer in many other situations. A user enterprise pays a fee to an agency for the agency to provide the enterprise with an agency worker. Agency workers generally receive their wages from the agency, from money paid to the agency by the user enterprise. All three groups will be considered in this RIA.

This RIA uses Labour Force Survey (LFS) data to assess the number of temporary agency workers who would be covered by the proposed Directive. The information available is taken from the LFS, which is based on self-assessment. One question asks whether the job held is permanent and if not in which way is it not. In the latter case, the LFS categorises non-permanent workers as those working for a fixed period or project, casual, seasonal, agency workers and those whose job was temporary in some other way. The proposed Directive only covers agency workers. Therefore, the other non-permanent categories have not been included in our calculations.

The LFS classifies all those in temporary employment as 'employees' although it is recognised that many who are in temporary employment are viewed by agencies as 'workers' (and therefore are not covered by all employment rights legislation)

We estimate that about **700,000** people are working as temporary agency workers in the UK at any particular time (based on the LFS, and a survey by the Bostock Marketing Group (BMG), commissioned by the DTI, carried out in 1999). See Annex One for details on how this estimate is reached. Calculations on the number of agency workers affected by the Directive can be found under the 'Expected Benefits' section and a more detailed explanation can be found in Annex Four.

The tables in Annex Two show the division of agency work across industrial sector and occupational category in Spring 2001. Looking at agency work by sector, notable features are the relatively high percentages of agency work in real estate, renting & business activities, manufacturing, transport and health, each of which have more than 10% of all agency workers, compared to the proportion of all employees in these sectors. The transport and health sectors also all contain a higher percentage of agency

workers than percentage of all employees. This suggests that the proposed Directive may have a proportionately greater impact on these sectors.

Turning to agency employment by occupation, administrative, secretarial, elementary and plant operative categories all contain more than 10% of all agency workers, and also a higher percentage of agency workers than all employees. The smallest percentage of agency workers are employed as managers and senior officials. This data suggests the relatively low skilled occupations that agency workers tend to be in. Given that skill levels have implications for average wages, we might expect that all employees are relatively low paid in such sectors and therefore agency workers might not earn that much less than permanent workers. Indeed, the LFS estimates that agency worker pay is about 70% of permanent workers' pay across all occupations, but is 85% of permanent worker pay in administrative and secretarial occupations. See Annex Five for more details.

5. Issues of Equity or Fairness

Annex Two includes information on agency work by gender and ethnic group. The share of female agency workers (49%) is almost equal to that of men (51%). This is higher than for all employees (where the female/male split is 47%/53%), but the difference is so small that there will be no disproportionate effect on women from the Directive, and therefore it seems likely that it will have no effect on the gender pay gap. Another notable feature of this data is the higher percentage of non-white agency employees (15.4%), compared to all non-white employees (5.3%). This suggests that non-white employees are more likely to benefit from this Directive.

6. Reasons to Work As and to Use Temporary Agency Workers

For many workers temping is a matter of positive choice – suiting their current circumstances. According to the LFS, 56% of agency temps either do not want a permanent job or chose to temp for other reasons.⁷ However, temporary agency work is often a means of gaining access to or returning to the labour market (with a view to moving to permanent work in the medium term), especially for young people. The LFS suggests that 44% of agency temps are temping because they could not get a permanent job.

Some user enterprises do not want to recruit staff permanently, and use temporary agency staff to maintain workplace flexibility. According to the 1998 Workplace Employment Relations Survey (WERS98), the most commonly cited reasons for using agency workers were short term cover (59%) and adjusting the size of the labour force in line with demand (40%)⁸. The survey also indicates that about 28% of establishments with 25 or more employees made use of temps, most commonly used to meet clerical and secretarial needs⁹. The proportion is lower for smaller

⁷ Labour Force Survey, Spring 2001; Question asks the respondent's reason for taking a non-permanent job; Choice of four answers (contract including period of training/could not find a permanent job/did not want a permanent job/some other reason).

⁸ Cully, Woodland, O'Reilly & Dix (1999), *Britain at Work: as depicted by the 1998 Workplace Employee Relations Survey*, p.37. Note that respondents could give more than one answer.

⁹ Cully, Woodland, O'Reilly & Dix (1999), *Britain at Work: as depicted by the 1998 Workplace Employee Relations Survey*, p.8.

establishments. There is a detailed analysis of the potential impact of the Directive on small businesses in a later section.

7. The Labour Market Effects of the Directive

It is important to point out that improving the conditions of agency workers will affect *both* the demand side and the supply side of this part of the labour market. Improved employment conditions for agency workers may lead to more people entering the labour market via this channel, thereby increasing the supply of agency temps. This will increase the pool of temps that a potential user enterprise can choose from. Some of these new agency workers may have previously been inactive or unemployed. Indeed, there is some evidence that suggests that 40% of first time agency workers were previously 'outsiders' to the labour market¹⁰. The Directive may therefore have a positive effect on total employment.

Below, we analyse the impact of the main areas of the Directive:

(i) Pay

The Directive as proposed will require user enterprises to pay agency workers the same as their comparators. According to the LFS (Spring 2001), the average gross weekly pay for an agency employee was £230, compared to £340 for a permanent employee. Annex Five outlines the components that make up this pay gap. We estimate that about £15 of the average gap may be wage discrimination. Therefore, we need to examine the labour market effects of raising the average agency worker wage to mitigate this wage discrimination¹¹. Note that there is anecdotal evidence of examples of agency workers earning more than their comparator. This is discussed further in Annex Three.

A higher wage rate might encourage some unemployed people to seek work through agencies, as discussed above. However, it is possible that faced with the prospect of having to pay agency workers a higher wage rate than previously and/or the agency a higher fee, user enterprises could decrease their demand for agency workers. This may also reduce choice for individuals who choose to temp as a matter of positive choice. But it is also worth bearing in mind that 40% of user enterprises make an active choice to use temporary agency workers to maintain workplace flexibility¹². This may dampen the decrease in demand. These demand and supply side effects may have flexibility implications. However, we cannot quantify these effects and therefore cannot predict the overall effect on the labour market for agency workers.

¹⁰ REC survey, 2001

¹¹ Note that it is not certain whether the Directive could cover pay.

¹² Cully, Woodland, O'Reilly & Dix (1999), *Britain at Work: as depicted by the 1998 Workplace Employee Relations Survey*, p.37. Note that respondents could give more than one answer.

(ii) Other non-discrimination provisions

The Directive further prohibits non-wage discrimination in certain other employment conditions¹³ against all agency workers who have comparators and who are on postings of at least six weeks. The most important areas in this respect will be discussions on equal access to training and the lifting of practices that prevent agency workers moving to permanent positions at the user enterprise.

Training has a positive effect on an individual's productivity and employability. It is therefore in the interests of the user enterprise and of the agency to ensure that a worker is trained for the job. Workers themselves also gain by improving their prospects of finding permanent jobs in the future. It is possible that there may be some motivational issues concerning the training of agency worker on shorter assignments. Also, a user enterprise that invests in an agency worker on a short assignment may not be in a position to capture the returns on the human capital of that worker. Overall, though, training is likely to be of benefit both to user enterprises and to agency workers, as well as to agencies.

(iii) Overall effect

Improved access to training, equal employment conditions and equal pay (assuming the existence of a comparator) may lead to an increased supply of more productive agency workers. This implies a positive effect for some of the 58% of employers in the UK that have problems filling vacancies¹⁴.

There will be cost implications. Some agency workers will find that their pay increases. This implies higher costs for user enterprises and possibly for employment agencies if they are not able to pass their higher wage bill on in the form of fees charged to user enterprises for their services. Training is also a costly investment in human capital. Agencies who provide training may increase the fee they charge for their services. These cost increases may lead to a reduction in the demand for agency workers.

As noted above, we cannot quantify these separate demand and supply side effects and therefore cannot predict the overall effect on the labour market for agency workers.

8. Quantifying the Impact of the Directive

For most of the measures proposed in the Directive, it is not possible to quantify costs and benefits. The statistical information that would be necessary is not available. Information on the economic position of the sector is relatively limited, and data on comparable workers hardly exists. Indeed, the Commission has made no attempt to quantify any of the benefits or costs in its own RIA of the proposed Directive.

¹³ Article 3.1d of the proposed Directive defines these other employment conditions to be the duration of working time, rest periods, night work, paid holidays and public holidays; work done by pregnant women and nursing mothers, children and young people; and action taken to combat discrimination on the grounds of sex, race or ethnic origin, religion or beliefs, disabilities, age or sexual orientation.

¹⁴ IPD survey, June 2001

However, on the basis of the limited information that is available, we have carried out a qualitative, and partially quantitative, analysis of the potential impact of the Directive. This analysis mainly relies on information provided by the LFS.

9. Expected Benefits

The following paragraphs consider the likely beneficiaries of the more significant new measures.

Agency workers

(i) *The number of agency worker beneficiaries*

The Directive allows for a number of important derogations from the general principle of non-discrimination with respect to agency workers:

- Where temporary agency workers have a permanent contract of employment with a temporary agency, and therefore continue to be paid in the interim between postings.

However, anecdotal evidence suggests that this covers a negligible amount of agency workers in the UK¹⁵.

- Where temporary agency workers are already covered by collective agreements (either at the employment agency or at the user enterprise), which provide an adequate level of protection.

Anecdotal evidence suggests that a negligible amount of agency workers are already covered by collective agreements.

- Where the agency expects the worker's posting at the user enterprise to be less than six weeks in duration.

There is conflicting evidence on length of postings¹⁶. Nevertheless, the evidence does suggest that at least a large minority of postings are under three months in duration. A more detailed estimate of the number of agency workers who could be excluded by this derogation can be found in Annex Four.

¹⁵ We know of two examples of employment agencies that provide their agency workers with permanent contracts. One is Manpower, but it does not pay its workers between postings and therefore these workers would not be excluded from the Directive. The second example is May Day, a specialist catering agency that pays its workers on a different rate when they're not on assignment. This covers at most 30 people across the UK, and probably less now as May Day has been struggling to afford it recently.

¹⁶ 'Temporary Employment in Great Britain', 1999, IPSOS-RSL Social Research Ltd., commissioned by DfEE; p.33 table 3.8; Question asked for the first quarter of 1998: "How long did you work in your last main temporary job?"; 53% of temporary agency workers said "over three months" i.e. 47% of postings were under three months. But an REC Survey of Autumn 2001 (based on a sample of 132 agencies) suggests that 58% of posting were under 3 months in duration.

- Where a comparable worker cannot be identified, and, in addition, no appropriate collective agreement exists at the user enterprise, nor at the agency.

Calculations for agency workers who have no comparator but do work at a user enterprise with an appropriate collective agreement (and who will therefore count as beneficiaries) can be found in Annex Four.

Note that if either of the latter two cases applies, the employment conditions of temporary agency workers will be determined by national legislation and practices.

In addition, not all agency workers are treated less favourably than similar permanent workers. There is also anecdotal evidence of examples where agency workers earn more than comparable workers. In these cases, no wage increases will result from the Directive (although, with a term-by-term approach, such agency workers may still receive the non wage improvements of the Directive). Higher paid agency workers only represent a relatively small proportion of total temporary agency workers, compared to agency workers paid less than their comparator. See Annex Three for more details.

To estimate the number of agency workers covered by the Directive, we need to identify those who have a comparator, and then add in those who do not have a comparator but work at a user enterprise where a collective agreement at an appropriate pay range is applicable¹⁷. We estimate that between **210,000** and **290,000** agency workers could potentially benefit from the Directive¹⁸. See Annex Four for more details.

Note that Article 6.4 of the Directive stipulates that all agency workers should be given access to the social services of the user enterprise that are used by all permanent staff. The Directive does not, however, consider the action required if collective facilities are only available to some permanent staff.

(ii) Wage benefits

The inclusion of pay in the Directive has the effect that agency workers with comparators who are currently paid less than their comparators will experience a wage increase.

Annex Five details the gross weekly pay of agency employees and of permanent employees across occupation (from LFS) and calculates weighted average gross

¹⁷ We assume that the other exceptions to coverage by the Directive, namely collective agreements at the employment agency, agency workers already covered by a collective agreement at the user enterprise, and permanent contracts where the worker is paid between postings, apply to a negligible amount of agency workers, as discussed in the main text. For the sake of simplicity, we assume that those collective agreements that contain an appropriate pay range for the agency worker will increase the agency worker's wage by the same amount as if they had a comparator.

¹⁸ This assumes that all agency employees who qualify to be considered under the Directive receive inferior employment conditions to their comparator.

weekly pay for both. At £230, agency gross weekly pay is 68% of permanent employee pay (which is £340).

Assuming an average weekly pay disparity of £15 after taking into account agency fees and the lesser experience of agency workers, we estimate that the annual wage benefits to agency workers will be between **£164m** and **£226m**. See Annex Five for details. However, note that it is not certain that pay can be included in the Directive¹⁹

(iii) Increased employability from productivity improvements

In its present form, the Directive does not require equal access to training, it is worth providing an illustrative example of the employability benefits of training if the proposed Directive's effect, in practice, were that agency workers received the same amount of training as their comparator. Employability benefits should be reflected in training costs.

Anecdotal evidence suggests that few agency workers receive equal access to training. For the sake of simplicity, let us assume that, as a result of the Directive, every agency employee who stands to benefit from the Directive in some way receives an extra day of training per year (either from the employment agency, the user enterprise, or a combination of both). We assume that a day of training costs £100²⁰. We further assume that this is equal to the value to the worker. This will diminish over time at a constant rate.

Therefore, in total, the financial value of training benefits to agency employees would be between **£21m** and **£29m**²¹. This figure also represents the cost to employment agencies/user enterprises, as detailed in the 'Policy Costs' section below.

A number of other provisions contained in the Directive could have a positive impact on temporary agency workers' productivity. Firstly, the Commission argues that 'agency work will become more attractive for better-qualified workers'²². We do not expect this effect to be large, however, as some agency workers might come from the pool of the unemployed, and might therefore have lost skills during this time.

Secondly, it will become possible to match temporary agency workers' profiles more closely to the specific needs of user firms. Thirdly, non-discrimination and other measures aimed at improving the integration of temporary agency workers in the user firms, such as the information of workers' representatives on the use of agency work

¹⁹ The proposal, as it stands, would probably require pension comparability as between agency workers and workers in the user enterprise. We have not been able to estimate the costs to agencies and user enterprises or the benefits to agency workers that would arise, due to an absence of data on pension comparisons.

The proposed Directive is also very unclear on the issue of maternity rights. Most agency workers in the UK are already likely to receive statutory maternity pay from their employment agency (subject to the normal qualifications), irrespective of the situation at the user enterprise. Therefore, a right to statutory maternity pay would have a negligible impact. However, if, in its final form, the Directive contains an equal treatment proposal with respect to the contractual maternity pay of comparators in the user enterprise, then this could have cost implications both for user enterprises and for agencies.

²⁰ Training childcare nurses cost £77 in 1989 for a 12 hour course. *Source: RIA on National standard for under eights day care.* Quite a low estimate for average training costs (£100) has been used as agency worker training is likely to be in large groups and therefore could be quite cheap. It is possible that training costs may be greater than this for small businesses, who may be more likely than larger businesses to need to contract out their training needs as they do not have the appropriate resources internally.

Similarly, larger firms may find that training costs are smaller.

²¹ 210,000*£100=£21m; 290,000*£100= £29m.

²² Paragraph 4 of p.32 of Commission RIA.

or the access to social facilities, could have positive impact on their motivation and help to avoid possible conflicts with permanent staff (though note the section on ‘Job Insecurity’ under ‘Policy Costs’).

For example, notification of job offers will be welcomed by some agency workers: the LFS suggests that only 31% of agency employees do not want a permanent job. 44% of agency employees work for employment agencies because they could not find a permanent job. The latter group will benefit directly from the Directive. We cannot quantify this benefit.

(iv) Increase in paid holidays

Currently agency workers are covered by the Working Time Directive. They are therefore entitled to 4 weeks’ paid holiday a year²³ excluding bank holidays, and to the rights concerning working time and rest breaks. The Directive will ensure that agency temps are not discriminated against in terms of holiday compared to a comparator’s statutory holiday entitlement.

Agency workers are on average entitled to 20 days paid annual leave. This corresponds directly with their statutory rights. All employees are on average entitled to 25 days paid annual leave.²⁴ Every agency worker with a comparator (or else covered as described in the Directive) who currently only has 4 weeks’ paid holiday a year would therefore gain, on average, an additional 5 days.

(v) Job security

Workers can presently find themselves unemployed because an employment agency has no work to offer them whilst a user enterprise, to whom they have previously been supplied, is reluctant to engage the worker direct either in a permanent capacity because of the liability to pay the employment agency a transfer fee. This has the effect of locking agency workers into temporary work, so that they are unable to build a career.

If the Directive requires that these so-called ‘temp-to-perm’ fees²⁵ be prohibited or limited (see section on policy costs for employment agencies for more details), this will have the effect of increasing the pool of potential permanent staff for the user enterprise by people who already know the firm and therefore may be more eligible. Agency workers will therefore be more likely to move into permanent positions, increasing their job security, though note that this might have a ‘crowding-out’ effect on other applicants.

²³ *Pro rata* according to the length of the working week e.g. if an agency workers works 4 days a week then their annual paid leave allowance under the Working Time Directive is 16 days.

²⁴ *Source: LFS Autumn 2001.* The data provided includes only full time employees for reasons of simplicity. The figure of 25 suggests that on average, contractual leave is above the 4 weeks minimum stipulated in the Working Time Directive.

²⁵ This is where there is a transfer fee payable in the event of a user enterprise taking on a temp previously supplied after the contract for hire has ceased.

(vi) Increased supply of agency workers

Overall, the package of proposals should make temporary agency work more attractive so some people may be less keen to leave, while other work-seekers, who are deterred at present, may now consider temporary agency work a better option. However, referring back to the section above on the potential labour market effects of the Directive, more people may only join agencies if there are more jobs on offer, which may not be the case if user enterprises decrease their demand for agency workers. To the extent that the supply of agency workers does increase, these workers will have increased income and an improved standard of living, if they obtain jobs through employment agencies.

User Enterprises

For user enterprises the overriding motive to employ temporary agency workers is their need for greater flexibility in dealing with fluctuations in demand or the absence of regular staff. They should therefore have a major interest in being able to recruit well-qualified, motivated and adaptable workers through agencies, who can be rapidly and easily integrated into the enterprise. Specific benefits are detailed below.

(i) Productivity

As mentioned above, although the Directive, in its present form, does not require equal access to training, it is worth considering the productivity benefits of an equal training provision.

Wage premiums are one measure of the benefit of training to the user enterprise. We assume a range of premiums between 3% and 6%²⁶. We further have to assume that the return to a specific training course will diminish over time. On the other hand, the additional training provided for in the proposed Directive would lead to a continuous flow of training. To keep the analysis simple, we assume that the loss of skills due to time and the additional skills of future training are identical. We can therefore assume a constant flow of benefits from training. Thus, assuming that the marginal product of an agency worker equals the wage they pay, training will lead to improved productivity at a value of between **£98m** and **£272m**²⁷. We estimate these to add 30% to the wage premium bill for the user enterprise.

Increased training opportunities may also increase the probability that a user enterprise will offer an agency worker a permanent contract.

As mentioned above, many of the provisions contained in the proposal have the potential to improve the productivity of agency workers and to ease their integration

²⁶ This range reflects the possibility that agency workers on relatively shorter contracts may be subject to motivational problems concerning training, therefore productivity gains may be lower and wage premiums for such workers will be at the lower end of the suggested spectrum of 3%-6%. The lower end of the range also reflects the possibility that for user enterprises that invest in workers on short assignments, they may not be in a position to capture the return on the human capital of the worker, if the worker were to move to a new assignment.

²⁷ Average gross weekly agency pay is £231 (LFS Spring 2001); $231 * 0.03 * 52 * 1.3 * 210,000 = £98,378,280$; $231 * 0.06 * 52 * 1.3 * 290,000 = £271,711,440$. Note that this figure includes non wage labour costs e.g. additional national insurance employer contributions, financing annual leave.

into the user enterprise. One such provision is that agency workers gaining an increased amount of paid annual leave may be more motivated. In addition, informing agency workers about vacancies in the enterprises might improve the integration, motivation and productivity of agency workers, thus increasing the pool of potential staff members for the user enterprise.

(ii) *Filling vacancies*

To the extent that the Directive increases the attractiveness of agency work, it will become easier for user enterprises to recruit workers that match their particular needs, due to a wider selection pool.

Enterprises will be able to use agencies more systematically as a device for recruiting permanent staff, which can help to save costs normally spent on finding, screening and recruiting candidates.

Similarly, the abolition of practices which impede agency workers from taking up permanent employment will further benefit user enterprises by enabling them to recruit temporary agency workers into permanent employment more easily and cheaply.

58%, i.e. 680,000²⁸, of all employers have difficulty in filling vacancies²⁹. As an illustrative example of the cost savings for user enterprises easier vacancy filling could provide, let us assume that the Directive has the effect of increasing the supply³⁰ of agency workers by 14,000, which is 0.05% of total employment³¹. Therefore we can suppose that the increase in agency workers helps 335 potential user enterprises fill their vacancies³², assuming that agency workers are cheaper to recruit than permanent staff (else the user enterprise would choose to recruit a permanent staff member). We estimate that 335 user enterprises could make savings in total of about **£2.8m**³³.

(iii) *Savings on 'temp-to-perm' fees*

It is possible that Article 6.2 of the Directive might prohibit or limit the use of 'temp-to-perm' fees³⁴. This could save user enterprises between **£35m** and **£70m**. However, this saving could be more than offset by the higher search and select fees enterprises are charged by agencies that lose 'temp-to-perm' fee revenue. See Annex Six for more details.

²⁸ There are 1,171,282 employers in the economy. 58% of 1.2 m is 680,000 enterprises. *Source: Small Business Service, 2000.*

²⁹ IPD survey, June 2001.

³⁰ Note that this says nothing about the effect of the Directive on the demand for agency workers. For user enterprises whom have problems filling vacancies, the implication is that the demand is already there (which is why there is a vacancy).

³¹ Employment of all over the age of 16 was 28.42m in the three months Dec-Feb 2002; $(14,000/28,419,000)*100=0.05$

³² $680,000 * 0.0005 = 335$ enterprises.

³³ Assume average cost of recruiting a permanent worker is £4000 (*Source: CIPD survey, June 2001*).

Assume agency charges 25%-35% of the agency worker's gross weekly wage (£231, LFS) as a fee. This is £3000-£4200 over a year ($0.25*52*231=3003$; $0.35*52*231=4204.2$). Assume additionally that a user enterprise faces a one off cost of £200 of finding an agency worker, therefore total cost is £3200-£4400; average is £3800. Therefore average saving per vacancy is £200. For 14,000 agency workers, this is £2.8m ($14000*200$).

³⁴ At present in the UK, domestic regulations are in the process of being drafted³⁴ which will offer user enterprises an alternative to transfer fees. Refer to <http://www2.dti.gov.uk/er/regs.pdf> for more details.

Employment Agencies

(i) *Revenue from Filling Vacancies*

The agency sector faces the challenge of expanding into new areas and offering its clients more diversified and specialised, tailor-made services. This will require the availability of highly qualified, motivated and flexible workers with diversified skills. The Directive might make agency work more attractive for more groups of workers and allow agencies to recruit their personnel from a larger pool of candidates.

As detailed in the section of user enterprises above, more vacancies at user enterprises might be filled with agency workers. Assuming that agencies charge between £3000-£4200 as a fee each year on an agency worker, and that they face a one-off cost of £1000-£1500 to recruit the agency worker, this means they receive gross profits in between £1500 and £3200 per year on each additional agency worker placed. Total profit increase on all additional agency workers is therefore estimated to be between **£21m** and **£45m**³⁵.

Benefits to the Taxpayer/ National Insurance Fund

Higher agency employee pay from non-discrimination leads to higher tax income and National Insurance Contributions. About 25% of the net income would be paid in taxes and NIC³⁶. Therefore, estimated benefits to the taxpayer are between **£41m** and **£57m**³⁷.

10. Estimated Policy Costs

The Commission has made no quantitative estimate of the costs of the Directive. But it argues that... 'on the whole, the actual changes required by the Directive will be very limited, because for the most part it codified rules which are already common practice and are enshrined in national legislation, collective agreements or codes of conduct. Moreover, even in cases where some changes may be required, the actual effects will be mitigated by the substantial flexibility offered by the Directive'³⁸. However, the impact is likely to be greater in those member states like the UK which do not currently have national systems in place requiring equal treatment between agency workers and workers in the user enterprise.

For most of the measures in the Directive, it is not possible to identify quantifiable costs, and even where this can be done there is not the statistical information available to make an estimate. Some of the measures affect *where* the burden of costs fall-shifting some costs from employment agencies to user enterprises. Although it has not been possible to quantify all the changes, the following paragraphs consider the likely behavioural responses for the more significant new measures.

³⁵ £1500*14000=£21,000,000; £3200*14000=£44,800,000.

³⁶ This is a slight underestimate of the average percentage contribution, to account for potentially lower incomes in the group of agency employees compared to the group of all employees.

³⁷ £164m*0.25= £41m; £226m*0.25=£56.5m.

³⁸ Paragraph 3 p. 29 of Commission Impact Assessment.

Employment agencies³⁹*(i) Wage costs*

The wage benefits to agency workers represent a wage cost to employment agencies. Agencies must either pass these increased costs on in the form of higher fees charged to the user enterprise, or take a cut in their profit margin, or both. The decision as to the extent to which each of these methods will be used will be affected by the economic climate at the time. We estimate that agencies may be able to pass on between 60% and 80% of their higher costs as fees to user enterprises⁴⁰.

Agencies will also face non wage labour costs on top of these wage cost, which include things such as additional national insurance employer contributions, financing annual leave and sick pay. We estimate these to add 30% to the wage bill.

Taking these two points into consideration, we estimate that the cost to agencies of paying agency workers the same as their comparators will be between **£43m** and **£118m**⁴¹.

(ii) Cost of training

The financial benefit of training to agency workers has already been estimated above to be between £21m and £29m; this also represents the combined cost to agencies and user enterprises.

We assume that the extra day of training p.a. is made up of half a day with the employment agency and half a day with the user enterprise. However, it is likely that agencies will be able to pass some of their additional cost over to user enterprises in the form of higher fees. As above, we estimate that agencies are able to pass on between 60% and 80% of their higher costs as fees to user enterprises. The increase in training costs facing the agencies might therefore be between **£2m** and **£6m**⁴².

(iii) Prohibition of 'temp-to-perm' fees

At present in the UK, domestic regulations are in the process of being drafted which will offer user enterprises an alternative to transfer fees. This alternative would be to extend an agency worker's employment through the agency, leaving the user enterprise free to take on the worker permanently afterwards.

³⁹ Note that there will be no additional costs to agencies of agency workers taking an additional five days of paid holiday a year.

⁴⁰ Agencies are likely to pass on more than half their higher costs as fees because they only receive about a third of an agency worker's wage as a fee from the user enterprise; if they then also have to pay half their increased costs themselves, they would be likely to make a loss. Equally though, agencies are unlikely to be able to pass on 100% of their increased costs as they operate in quite a competitive market and also there would be an impact on the demand for agency workers by user enterprises. Therefore, we estimate that agencies may be able to pass on over 50% and under 100% of their higher costs as fees e.g. 60%-80%.

⁴¹ We assume that the total wage cost to employment agencies are 1.3 times the wage benefit to agency employees and also that agencies are able to pass on between 60-80% of their higher costs onto employers in the form of higher fees. Therefore, agencies' costs will be between £164m*1.3*0.2=£42.64m and £226m *1.3*0.4=£117.52m.

⁴² £21m*0.5*0.2= £2.1m; £29m*0.5*0.4=£5.8m.

However, it is possible that the proposed Directive could necessitate a more radical overhaul of the system, and could result in the prohibition of ‘temp-to-perm’ fees.

It is possible that Article 6.2⁴³ could make ‘temp-to-perm’ fees unenforceable if such fees are taken to have ‘the effect of preventing the conclusion of a contract of employment...’, as stipulated in Article 6.2. We argue that such fees could prevent a transfer of an agency worker onto a permanent contract with a user enterprise if the additional cost of doing so is more than the cost to the user enterprise of searching and selecting a permanent worker from another source.

The ‘temp-to-perm’ fee has the potential to restrict workers’ opportunities and to block or discourage transfers of agency workers to permanent positions with user enterprises. *A priori*, this leads to labour market rigidity. This could have a negative impact on business, workers and the economy. If employment agencies were willing to provide their temporary staff with a guarantee of work, some of the problems for workers would be mitigated. Such problems include being locked into temporary work and therefore being unable to build a career. However in the absence of such a commitment, the Directive seeks to widen choice for user enterprises and workers.

An illustrative example of the impact of the prohibition of ‘temp-to-perm’ fees on employment agency income is contained in Annex Six. The example suggests that employment agencies could lose between **£35m** and **£70m** in ‘temp-to-perm’ fee revenue, or between about **0.1%** and **0.3%** of industry turnover.

However, several caveats should be borne in mind. There is little convincing evidence to suggest that ‘temp-to-perm’ fees are a significant part of employment agencies’ revenue. In the BMG survey, more than a fifth of operators supplying temps did not charge user enterprises transfer fees in the event of workers being taken on permanently. It would also appear many employers are unwilling to pay such fees and are presently deterred from taking on temps permanently because of the high level of the fees. Many employers negotiate terms which provide that a worker can be transferred without further charge once they have hired the worker for a reasonable length of time.

Also, by the Recruitment Employment Confederation’s (REC)⁴⁴ own estimates, one fifth of temps per year are recruited into permanent positions. This means that the majority of temps (80%) do not go ‘temp-to-perm’. Therefore, for most workers, an employment agency’s costs, including those relating to recruitment and screening, must already be included in the hourly charge out rate. No extra service is provided when a temp is ‘permed’. The ‘temp-to-perm’ fee therefore represents a cash windfall for the employment agency and is entirely contingent on the action of user enterprises. In this sense, it is not a guaranteed revenue stream.

The above is provided as an illustrative example only, since there is no guarantee of how the market will react to the proposal. In addition, it is not entirely clear that the Directive aims to prohibit ‘temp-to-perm’ fees. It may be that they will only be

⁴³ ‘Member States shall take any action required to ensure that any clauses banning or having the effect of preventing the conclusion of a contract of employment or an employment relationship between the user undertaking and the temporary agency worker after his posting are null and void or may be declared null and void’.

⁴⁴ REC (2000) Annual Recruitment Industry Survey 1999/2000.

allowed under more limited circumstances than at present, and therefore the potential lost of income to agencies could be a lot less.

(iv) *Increased Turnover of Workers*

Reducing the scope of measures which prevent agency workers being taken on permanently will mean that more agency workers may have the opportunity to move, thus increasing the turnover of temps, which could raise costs for employment agencies. The increase in turnover and the cost of recruiting replacements will vary between sectors, and agencies might be able to pass on some of this cost to user enterprises.

However, as pointed out in the section on benefits to agencies above, it may be easier for employment agencies to recruit if temporary agency work becomes a more attractive option. This could increase agencies' revenue by filling additional vacancies in user enterprises.

Also, employment agencies will be able to take steps to mitigate the potential for increased staff turnover by establishing a more stable workforce, for instance:

- a) by employing their workforce (or part of it) on contracts that require workers to give notice of quitting in return for a commitment by the employment agency to provide paid work to the worker or pay them when none is available – like any other employer, or
- b) by providing competitive terms and conditions, which attract and retain workers.

Alternatively employment agencies might seek to get user enterprises to be more specific about hiring lengths from the outset and price accordingly.

User enterprises

(i) *Higher fees charged by agencies*

User enterprises may face certain costs⁴⁵, especially to the extent that agencies may pass cost increases on to them through higher fees. Carrying through our assumption that agencies may be able to pass between 60-80% of their higher costs onto user enterprises as higher fees (depending on the economic climate of the time), this means that user enterprises will face total higher fees of between **£239m** and **£387m**⁴⁶, although savings from the prohibition or limitation of 'temp-to-perm' fees may offset these increased fees to an extent.

⁴⁵ Note that higher costs may cause user enterprises to decrease their demand for agency workers.

⁴⁶ Fee increase from agency wage costs: $£164m * 1.3 * 0.6 = £127.92m$; $£226m * 1.3 * 0.8 = £235.04m$.

Fee increase from agency training costs: $£21m * 0.5 * 0.6 = £6.3m$; $£29m * 0.5 * 0.8 = £11.6m$

Fee increase from prohibition of 'temp-to-perm' fees: $£175m * 0.6 = £105m$; $£175m * 0.8 = £140m$.

Total cost from fee increase: $127.92 + 6.3 + 105 = £239.22m$; $235.04 + 11.6 + 140 = £386.64m$

(ii) *Costs of training*

The financial benefit of training to agency workers has already been estimated above to be between £21m and £29m; this also represents the combined cost to agencies and user enterprises. We assume that the extra day of training p.a. is made up of half a day with the employment agency and half a day with the user enterprise. Therefore, the cost of training to the user enterprise is between **£11m** and **£15m**⁴⁷. However, note that the user enterprise may simply include agency workers in their existing training programmes for permanent staff, making the cost substantially lower.

(iii) *Access to social services*

Providing access to the social services of the user enterprise is an important factor in fully integrating temporary staff into the enterprise. The Commission argues that in most cases this is going to cause little or no extra cost. We agree with this because most social facilities (such as canteens, welfare support) are likely to involve a certain amount of fixed set-up costs. But the marginal costs in making these facilities available to more workers will tend to be negligible. Note also that the proposed Directive says that if a comparable worker only receives certain benefits after spending a certain length of time with the user enterprise, then the same qualifying periods would apply to the agency worker, which would cut costs for user enterprises.

(iv) *Other costs*

The provision to inform workers' representatives on the use of agency work by the user enterprise will involve little or no extra costs. Similarly, the provision that temporary agency workers should count for the purposes of calculating the threshold⁴⁸ above which workers' representative bodies should be formed at the temporary agency, and, at a Member State's discretion, at the user enterprise, should involve little or no extra costs.

Looking at increased paid holidays for agency workers, most enterprises are already accustomed to the Working Time Directive. Most of them have given their employees extended periods of annual leave compared to the Working Time Directive. We can therefore assume that there are no significant additional costs in covering for the additional five days absence of a temporary agency worker.

⁴⁷ £21m*0.5=£10.5m; £29m*0.5=£14.5m.

⁴⁸ If an enterprise has more than 20 employees, then it can be considered under the scope for statutory union recognition (*Statutory Recognition Procedure in Schedule A1 of the Trade Union and Labour Relations (Consolidation) Act 1992*). Given that the procedure on the consideration of statutory recognition only involves about 170 cases in total at any time, the additional number of cases that may occur as a result of this provision (which would require e.g. an enterprise to have 18 employees plus 3 agency workers) and the corresponding process costs, would be minimal.

Non-Agency Workers

(i) *Increased job insecurity for permanent staff*

If the Directive makes temporary agency work more attractive to user enterprises and therefore they take on more agency staff, we might see a heightened sense of job insecurity among permanent staff. WERS98⁴⁹ found that among permanent employees in workplaces which used temporary agency workers, 56% felt that their job was secure. This compared with two-thirds (66%) of permanent employees in workplaces where no temps were used.

(ii) *Crowding out of job opportunities*

The potential prohibition or limitation of ‘temp-to-perm’ fees and other measures that limit the movement of agency workers into permanent employment will increase the pool of potential permanent staff for the user enterprise, and therefore could have a ‘crowding-out’ effect on other potential job applicants.

Charity and voluntary sector

The impact on this sector is likely to be minimal since agency temps are rarely used by these organisations. The Labour Force Survey for Spring 2001 shows that of 61,000 temporary workers in this sector, a negligible amount were employed through agencies.

11. Impact on Small Businesses

(i) *Employment agencies*

The private employment agency industry in the UK is made up predominantly of small firms, which is in contrast to most of Europe, where a few large firms dominate. For example, in the UK, the market share of the five largest agencies was 16% in 1998, compared to figures of 68% for Spain and 80% for France⁵⁰. There are large firms in the UK but they are less dominant than in many other sectors. The ONS estimates annual turnover to be about £23.5 billion in 2001.

It is possible that the Directive may affect smaller agencies to a relatively greater extent than larger agencies, particularly with regard to the prohibition or limitation of ‘temp-to-perm’ fees in the proposed Directive (smaller agencies rely more heavily than larger agencies on temp-to-perm fees to protect their investment into highly skilled workers). However, small agencies only make up about 1.5% of small businesses in the UK, therefore the effect on the small business sector as a whole will not be large⁵¹.

⁴⁹ Cully, Woodland, O’Reilly & Dix (1999), *Britain at Work: as depicted by the 1998 Workplace Employee Relations Survey*, p.168.

⁵⁰ Source: European Foundation, 2002

⁵¹ There are 1,135,809 small businesses (less than 50 employees) in the UK (Source: Small Business Service, 2000). We estimate that there are about 17,000 employment agencies in the UK (Source: REC); $(17,000/1,135,809)*100=1.5\%$.

(ii) *User enterprises*

The users of the recruitment services are disproportionately larger employers, as is the general pattern across Europe. WERS 1998 found that use declined with establishment size⁵². WERS98 also found that only 9% of small business workplaces who have a full-time working owner use temporary agency employees⁵³. It is large firms that have their recruitment field limited by practices such as ‘temp-to-perm’ fees: they are more likely to have used temps, to have used a large number of temps, and more likely to recruit large numbers. However, where small firms have used temps the fees are likely to have been more prohibitive and they may have had less leverage in negotiating with their suppliers.

Increased ability to offer jobs to agency workers may make smaller organisations more willing to use agencies so that they are better able to meet short term needs. It is possible, though, that small user enterprises would face a heavier burden than larger user enterprises in terms of the cost of additional agency workers. It may also be the case that smaller firms could face higher training costs per worker, due to a lack of internal training resources and therefore a need to contract out training.

In general, for small and medium-sized enterprises, temporary agency work represents an ideal means of adjusting their labour force to market conditions. A number of benefits already mentioned, such as the availability of workers with a wide range of experience, may be particularly relevant for small and medium sized user enterprises, including start-up firms, enabling them even better in the future to meet their needs for flexibility through employing agency workers.

Large firms are likely to be affected to a relatively greater extent by any cost increases. In addition, where smaller user enterprises do use agency workers, they are less likely than larger enterprises to have comparators for these agency workers and therefore are less likely to be affected by the Directive. The Directive will not have a disproportionate impact on small user enterprises.

12. Competition Assessment

We have considered the issue of competition for employment agencies, the labour market and for consumers. There are numerous firms in the employment agency market, and low barriers to entry. The proposed Directive is not likely to raise barriers to entry since agencies will not face additional set-up costs. Competition in the labour market should remain. Consumers will not be adversely affected. Therefore, a detailed competition assessment is not considered to be necessary.

⁵² Cully, Woodland, O’Reilly & Dix (1999), *Britain at Work: as depicted by the 1998 Workplace Employee Relations Survey*, p.37.

⁵³ Cully, Woodland, O’Reilly & Dix (1999), *Britain at Work: as depicted by the 1998 Workplace Employee Relations Survey*, p.255. ‘Small business’ defined as having between 10 and 99 employees.

13. Summary of Policy Costs and Benefits

The table below summarises the quantifiable policy costs and benefits. This RIA has also explored the less quantifiable costs and benefits.

Table: Policy Cost and Benefits

<i>Group</i>	<i>Benefits</i>	<i>Costs</i>
Agency workers	Wage £164m-£226m	
	Training £21m-£29m	
User enterprises	Increased productivity of agency workers £98m-£272m	Training £11m-£15m
	Savings on temp-to-perm fees £35m-£70m ⁵⁴	Higher fees charged by agencies £239m-£387m ⁵⁵
	Improved vacancy filling £2.8m	
Agencies	Improved vacancy filling £21m-£45m	Wage £43m-£118m
		Reduced revenue on temp-to-perm fees £35m-£70m
		Training £2m-£6m
Taxpayer/National Insurance fund	£21m-£45m	

In addition, this RIA has analysed the possible labour supply and demand effects of the proposed Directive. Improved employment conditions for agency workers may lead to more people entering the labour market via this channel, thereby increasing the supply of agency temps. It is possible that faced with the prospect of having to pay agency workers a higher wage rate than previously and/or the agency a higher search and select fee, user enterprises could decrease their demand for agency workers. But some user enterprises make an active choice to use temporary agency workers to maintain workplace flexibility, which may dampen the decrease in demand. These demand and supply side effects may have flexibility implications. However, we cannot quantify these effects and therefore cannot predict the overall effect on the labour market for agency workers.

⁵⁴ This could be offset by the higher search fees agencies charge as a result of temp-to-perm fee limitation/prohibition.

⁵⁵ This includes £105m-£140m of higher search fees due to loss of temp-to-perm fee revenue by agencies.

14. Enforcement Costs

As with any anti-discrimination legislation this is likely to give rise to applications to Employment Tribunals. This means that there will be some additional costs for the Employment Tribunal Service (ETS) and ACAS.

We use the number of applications resulting from the part-time workers regulation as a benchmark. There have on average been 280 cases per month since the introduction of the part-time workers regulation in July 2000. The number peaked in January this year. There are only about 700,000 temporary agency workers in the economy. We therefore estimate that about 400 additional ET applications will be made per year under the Directive⁵⁶. These additional claims would cost **employers** about **£800,000** and the **ETS** about **£200,000**⁵⁷.

The proposed Directive is unlikely to have a large impact on either ETS or ACAS. The legislation is also likely to create demand for advice leading to extra calls to the ACAS helpline.

15. Administrative Costs

(i) *To user enterprises*

Informing agency workers about vacancies in the user enterprise may involve some administrative costs in ensuring that agency workers are systematically and regularly informed about vacancies e.g. displaying information on notice boards and/or notification via email. There may be some complication where different entry standards are applied to agency and permanent recruits (where agency workers would have to compete with external candidates), but overall, extending vacancy information to agency workers should incur negligible additional costs for the user enterprise. There may be small administrative costs involved in revealing comparator pay to agencies.

(ii) *To agencies*

The need to determine the relevant wage levels for comparable workers in user enterprises could impose an administrative burden on agencies. In many cases however, this information will be readily available, either through relevant collective agreements at the user enterprise which could serve as a reference point, or through information from the user enterprise itself, which may have been gathered anyway in the process of arranging particular assignments. Such arrangements are more likely to be in place already at larger agencies.

⁵⁶ 277 applications per month on the part-time workers regulation. This is 3,324 per year. There are 6 million part-timers compared to 700,000 agency workers. The proportionate number of agency worker tribunal applications is therefore about 400 per year.

⁵⁷ 400 applications * £2,000 (average costs per ET application to ET) = £800,000 per year. *Source: SETA 98.* Costs to ETS are £540 per case. Total costs are therefore 400 * £ 540 = £ 216,000 per year. *Source: ETS Management Info.*

Agencies will also have a duty to ensure that user enterprises are following the equal treatment proposal e.g. allowing them access to social services, training. Again, it is likely that some larger agencies may already have an informal monitoring mechanism including, for example, feedback from their agency workers.

In addition, there may be some small administrative costs involved in altering the employment conditions that are written down in agency workers' contracts.

For illustrative purposes, we assume that these administrative changes require, on average, the attention of a member of staff at each agency establishment for one to two working days⁵⁸. Using the National Earnings Survey (2001), the average gross hourly wage of a numerical clerk was £8.79. The total cost of the employee's time is therefore between **£80** and **£160**⁵⁹ and the total one-off cost to the private recruitment industry is estimated to be between **£1.4m** and **£3.2m**⁶⁰.

16. Results of Consultation

No formal consultation has been held. Officials have held initial discussions with groups representing agencies, users of agency workers and workers, including the Trades Union Congress, Confederation of British Industry, Local Government Employers' Organisation, British Chamber of Commerce and Engineering Employers' Federation. The Unions welcome the Commission proposal, but the organisations representing user enterprises and employment agencies have serious concerns about it.

17. Enforcement, Sanctions, Monitoring and Evaluation

Enforcement and Sanctions

The proposed Directive on agency work will allow individuals to seek a remedy for any infringement of their rights through an Employment Tribunal provided they have used the appropriate grievance or disciplinary procedure first⁶¹.

Monitoring

The DTI and ONS are taking steps to improve data on the private recruitment industry so will be able to monitor the effect on numbers and turnover. The BMG survey helps establish a baseline against which change can be monitored. The DTI will consider the case for a repeat of this survey. The Government made a manifesto commitment to review any legislation three years after its implementation. There will only be a need for legislation if the proposed Directive is agreed.

⁵⁸ This estimate is intended to balance out the longer amount of time it is likely to take staff at smaller agencies that do not have appropriate arrangements in place already, and are not able to take advantage of the economies of scale that larger agencies are able to (e.g. central monitoring system across several establishments of one firm- this shares fixed costs across more than one establishment).

⁵⁹ 7 hours at £8.79 per hour, and including 30% non wage labour costs: £8.79*7*1.3*1(day)=£79.99; £8.79*7*1.3*2 (days)=£159.98

⁶⁰ There are between 17,000 and 20,000 private recruitment agency establishments in the UK (*DTI estimate, 2002*). Therefore, total cost to the industry is between £80*17,000= £1,360,000 and £160*20,000=£3,200,000.

⁶¹ Compulsory disciplinary and grievance procedures within user enterprises have been introduced in the 2001 Employment Bill.

REGULATORY QUALITY DECLARATION

I have read the Regulatory Impact Assessment and I am satisfied that the balance between costs and benefits is the right one in the circumstances.

Signed by the Responsible Minister: Alan Johnson

Date: 29 April 2002

Contact:

**Alex Steward
Employment Relations Directorate 4a
Department of Trade & Industry
Room UG96
1 Victoria Street
London SW1H 0ET**

Direct Line:020 7215 3945

ANNEX ONE: SOURCES OF DATA ON TEMPORARY AGENCY WORKERS

With regard to the number of temporary agency workers, the leading industry organisation, the Recruitment Employment Confederation (REC), produces figures that are often cited, but these are not considered very reliable as they are extrapolated from a survey with a very low response rate (about 7%). Their figure of 1,130,000 temps working in a given week (in November 1999) almost certainly exaggerates the size of this sector of the industry⁶².

On the other hand, figures from the main official source of labour market statistics, the Labour Force Survey (LFS), almost certainly underestimates the number of people supplied by employment agencies. It has a measure of temporary agency employees of about 290,000 in Spring 2001 in the UK. Some of the shortfall may be explained by the use of different definitions – with some workers who are supplied by employment agencies being classed in the LFS as “fixed term” workers or “self employed”. The LFS may also miss those temps supplied by agencies but paid by user enterprises and also those individuals who self-assess themselves as employees of a user enterprise when in fact they are employees of the agency (e.g. a nurse from an agency may mistakenly believe she is employed by the NHS).

Note that the LFS classifies all those in temporary employment as ‘employees’ although it is recognised that many who are in temporary employment are viewed by agencies as ‘workers’ (and therefore are not covered by all employment rights legislation). Note also that the LFS definition of ‘employee’ is not necessarily the same as the legal definition.

In order to get more reliable figures, the DTI commissioned a survey, carried out by Bostock Marketing Group (BMG) during 1999. Estimates based on the BMG survey suggest that the number of people working in temporary jobs through agencies and employment agencies was about 557,000 in 1999. Given that the agency sector is expanding rapidly, this figure was likely to be close to 700,000 in 2001, and this is the figure we have used in our calculations throughout this RIA.

We have calculated this figure as follows. In Spring 2001, there were 40,000 more agency temps (LFS measure) than in Spring 1999. This is an increase of 16%. Inflating the BMG figure of 560,000 (to the nearest 10,000) by the same rate gives 650,000. A sensible assumption is that growth is still accelerating in the agency sector, therefore this figure is likely to be closer to 700,000.

The LFS classifies all those in temporary employment as ‘employees’ although it is recognised that many who are in temporary employment are viewed by agencies as ‘workers’ (and therefore are not covered by all employment rights legislation)

⁶² REC (2000) *Annual Recruitment Industry Survey 1999/2000*

**ANNEX TWO- TEMPORARY AGENCY WORKERS BY SECTOR,
OCCUPATION, GENDER AND ETHNICITY**

Work by Sector

	Agency Employees	All Employees
Real estate, renting and business activities	26.10%	10.60%
Manufacturing	17.50%	17.80%
Transport, storage and communication	12.40%	7.20%
Health & social work	12.00%	11.60%
Wholesale, retail & motor trade	7.60%	15.10%
Financial intermediation	6.40%	4.70%
Public administration & defence	5.10%	7.50%
Education	4.30%	8.70%
Construction	*	5.00%
Other community, social & personal	*	4.70%
Hotels & restaurants	*	4.30%
Agriculture, hunting & forestry	*	*
Mining, quarrying	*	*
Electricity, gas & water supply	*	*
Private households with employed persons	*	*
Workplace outside UK	*	*

Work by Occupation

	Agency Employees	All Employees
Administrative, secretarial	34.60%	14.60%
Elementary	18.70%	13.10%
Process, plant & machine operatives	13.40%	8.70%
Associate professional and technical	8.60%	13.20%
Professional	7.40%	11.70%
Personal service	7.00%	7.40%
Sales and customer service	5.40%	8.50%
Skilled trades	3.90%	9.60%
Managers and senior officials	*	13.20%

Work by Gender

	Agency Employees	All Employees
Male	51.20%	52.70%
Female	48.80%	47.30%

** denotes categories containing less than 10,000 individuals*

Work by Ethnic Group

	Agency Employees	All Employees
White	84.6%	94.70%
Non-white ⁶³	15.4%	5.3%

Source: Labour Force Survey, Spring 2001

⁶³ 'Non-white' includes the categories of Mixed, Asian or Asian British, Black or Black British, Chinese, and Other Ethnic Group. These categories have been added together because the numbers in most of the individual categories are not suitably reliable for publication due to small sample size.

ANNEX THREE: HIGH EARNING AGENCY WORKERS

There is anecdotal evidence of examples where agency workers already earn more than their comparator. In particular, cases of nurse and teacher shortages leading to agency workers receiving very large wages are highly publicised by the media. Although these cases represent only a relatively small percentage of temporary agency workers (compared to those who are paid less than their comparator), they could potentially be affected by some of the provisions of the Directive and therefore should be borne in mind.

We often find higher-paid agency workers in the health and education sectors. For example, the 2001 REC survey estimates that on any given day there are 19,700 supply teachers in England and Wales; and about 10% of the nursing population are agency nurses. For some occupations, workers are paid a premium because the skills they offer are scarce, such as top level management, and nursing. Indeed, Annex five indicates that the LFS estimates of *average* gross weekly pay for agency employees is higher than that for permanent employees in both personal service and skilled trade occupations.

ANNEX FOUR: THE NUMBER OF AGENCY WORKERS WHO COULD BENEFIT FROM THE DIRECTIVE

According to Article 5 of the Directive, in general, a temporary agency worker will benefit from the proposed changes if a comparable worker exists⁶⁴. If no comparable worker exists, then the collective agreement applicable to the user-enterprise is referred to. If this does not exist, then the collective agreement at the employment agency is referred to. If no collective agreement is applicable, the basic employment conditions of temporary agency workers will be determined by national legislation and practices i.e. the *status quo*.

Therefore, the beneficiaries will be comprised of:

- (i) those agency workers with a comparator
- (ii) those agency workers with no comparator but who work at a user enterprise with an applicable collective agreement at an appropriate pay range⁶⁵.

Note that Article 3.2 says that a “*comparable worker* means a worker in the user enterprise occupying an identical or similar post to that occupied by the worker posted by the temporary agency, account being taken of seniority, qualifications and skills.”

- (iii) from this pool of workers, an estimate for the number of agency workers who are on postings of less than six weeks duration should be subtracted.

Numbers involved

- (i) The best estimate we have for agency workers with a comparator is from a survey commissioned by the DTI in 1998 and carried out by BMRB, which investigated differences in the terms and conditions of employees with fixed term contracts and comparable workers⁶⁶. The survey found that approximately 50%-63% of employees working for a fixed period of time are doing the same job as a permanent member of staff.

Note that a further consultation on the agency work sector is in its initial planning stages, and may give a better estimate as to the number of agency workers with a comparator. At present, we assume that less agency employees than fixed term employees are likely to have comparators, since many agency employees lack the experience (from moving jobs frequently) that a fixed term employee may have. We estimate that between 25%-35% of agency employees have comparators.

⁶⁴ Note that this comparable worker can either be on an open-ended or a fixed-term contract.

⁶⁵ We assume that the other exceptions to coverage by the Directive, namely collective agreements at the employment agency, agency workers already covered by a collective agreement at the user enterprise, and permanent contracts where the worker is paid between postings, apply to a negligible amount of agency workers, as discussed in the main document. For the sake of simplicity, we assume that those collective agreements that contain an appropriate pay range for the agency worker will increase the agency worker's wage by the same amount as if they had a comparator.

⁶⁶ ‘The Same But Different: A Survey of Employers’; DTI, forthcoming.

- (ii) According to WERS98, collective bargaining at the user enterprise covered 41% of employees in 1998⁶⁷. However, agency workers are likely to be used disproportionately in the service sector, where coverage is lower. For example, the coverage of collective bargaining in private sector services was 22% in 1998⁶⁸. Thus we might estimate that between 25-35% of agency workers work at user enterprises that have collective agreements.

However, using our figure from (i), we assume that 25-35% of these agency workers have a comparator; therefore between 19-23% of agency workers who work at a user enterprise with a collective agreement do not have a comparator. Bearing in mind that the collective agreement may not cover the type of work that the agency worker does (we estimate half of the agreement do), this means that between 10-12% of agency workers work at a user enterprise with an appropriate collective agreement and no comparator.

- (iii) There is conflicting evidence on the length of agency worker posting. A report called 'Temporary Employment in Great Britain' (1999, IPSOS-RSL Social Research Ltd., commissioned by DfEE)⁶⁹ claims that 47% of postings were under three months in duration. However, an REC Survey of Autumn 2001 (based on a sample of 132 agencies) suggests that 58% of posting were under 3 months in duration.

Nevertheless, the evidence does suggest that at least a large minority of postings are under three months in duration. Using this information, we estimate that between 10-15% of agency workers at any particular time are on postings of less than six weeks in duration. This gives a total range of between about 30% and 42% of agency workers who could potentially benefit from the proposed Directive⁷⁰.

Applying this range to our estimate of 700,000 agency workers in the economy, this means that between **210,000** and **290,000** agency workers stand to benefit from the Directive⁷¹.

⁶⁷ Cully, Woodland, O'Reilly & Dix (1999), *Britain at Work: as depicted by the 1998 Workplace Employee Relations Survey*, p.242.

⁶⁸ as above.

⁶⁹ Question asked for the first quarter of 1998: "How long did you work in your last main temporary job?"; 53% of temporary agency workers said "over three months".

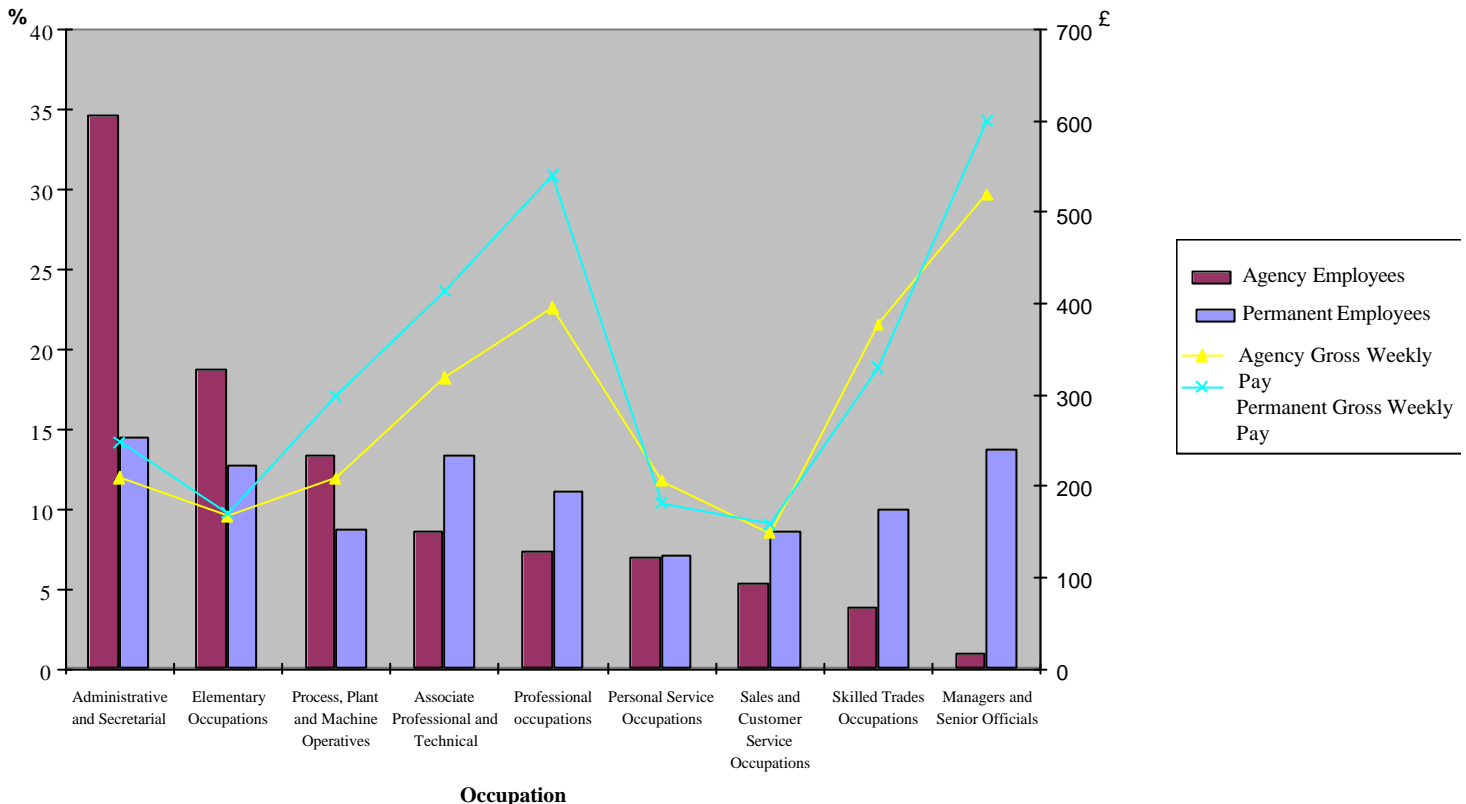
⁷⁰ 25%-35% of agency employees have a comparator + 10%-12% of agency workers do not have a comparator but work at a user enterprise that has an appropriate collective agreement = 35%-47%. Of these, 10%-15% are on postings of less than six weeks in duration (i.e. between 4.7% and 5.25% of all agency workers). Therefore, we deduct between 4.7% and 5.25% from our 35%-47% range, giving an overall estimate that between 30% and 42% of all agency workers could potentially benefit from the Directive.

⁷¹ $700,000 \times 0.3 = 210,000$; $700,000 \times 0.42 = 294,000$.

ANNEX FIVE: THE WAGE BENEFIT TO AGENCY WORKERS

The LFS can give us information about employment and pay distribution by occupation, both for agency employees and permanent employees, as shown in the graph below.

Agency and Permanent Employment and Pay



Source: Labour Force Survey, Spring 2001

As can be seen in the graph above, the pay differential between a permanent employee and an agency employee is greatest for professional, associate professional, machine operative occupations, where differences in employment distribution between permanent and agency occupations are quite small. On the other hand, the largest differences in distribution are for administrative & secretarial and managers & senior officials, where the pay differentials are not so large.

This graph suggests that it is important to take into account both the employment and pay distributions by occupation when calculating the average disparity between agency and permanent employee gross weekly pay. In order to do this, we have calculated a weighted average pay figure for both a typical agency and a typical permanent employee. The figures used in this calculation are shown in the table below.

Table: Average pay of agency employees and permanent employees by occupation

Occupation	% Agency Employees	Gross Weekly Pay (£) in Main Job	Weighted Pay (£)
Administrative and Secretarial	34.6	210	72.7
Elementary Occupations	18.7	167	31.2
Process, Plant and Machine Operatives	13.4	209	28.0
Associate Professional and Technical	8.6	319	27.4
Professional occupations	7.4	396	29.3
Personal Service Occupations	7	206	14.4
Sales and Customer Service Occupations	5.4	149	8.0
Skilled Trades Occupations	3.9	377	14.7
Managers and Senior Officials	1	520	5.2
			Sum of weighted pay (£)
			231
Occupation	% Permanent Employees	Gross Weekly Pay (£) in Main Job	Weighted Pay (£)
Administrative and Secretarial	14.5	248	36.0
Managers and Senior Officials	13.7	600	82.2
Associate Professional and Technical	13.4	414	55.5
Elementary Occupations	12.8	171	21.9
Professional occupations	11.1	540	59.9
Skilled Trades Occupations	10	330	33.0
Process, Plant and Machine Operatives	8.8	299	26.3
Sales and Customer Service Occupations	8.6	159	13.7
Personal Service Occupations	7.1	182	12.9
			Sum of weighted pay (£)
			341

Source: Labour Force Survey, Spring 2001

Thus we estimate that the weighted average gross pay for an agency employee is £230 per week, compared to £340 per week for a permanent employee. This is equivalent to a pay gap of £110; in other words, agency employee pay is approximately 68% of permanent employee pay.

However, this wage gap is made up of several components:

- We assume that the agency charges the user enterprise a weekly fee of approximately a third of agency pay i.e. £70.
- Some of the average remaining gap of £40 can be attributed to the lack of experience an agency worker has compared to their comparator, as agency workers tend to move jobs more frequently than permanent workers and

receive less training to improve their skills. We assume this explains a further £25 of the gap

- This leaves an average of £15 per week wage discrimination.

Using the estimated number of beneficiaries of the non-discrimination proposal, as calculated in Annex Five, of between 210,000 and 290,000⁷², this is equivalent to an annual wage benefit to agency workers of **£164m** and **£226m**⁷³. Therefore, an individual agency worker would benefit by an average of **£780** per year⁷⁴.

⁷² Note that the number of agency workers who receive a pay increase as a result of the Directive will be less than our beneficiaries estimate of 210,000-290,000, as some agency workers may already be earning more than their comparator. However, given that the average pay figure also considers those who are paid more than permanent employees, they have been included to calculate the total financial benefit.

⁷³ $210,000 * 15 * 52 = £163,800,000$; $290,000 * 15 * 52 = £226,200,000$.

⁷⁴ $£163,800,000 / 210,000 = £780$; $£226,200,000 / 290,000 = £780$.

ANNEX SIX- POTENTIAL PROHIBITION OF TEMP-TO-PERM FEES- IMPACT ON EMPLOYMENT AGENCY INCOME

According to the REC⁷⁵, 20% of temps are ‘permed’ each year. If we apply this ratio to the BMG/DTI updated estimate of the number of agency workers, this means that 140,000 (20% of 700,000) workers adopt the temp-to-perm route each year.

We know from the BMG survey that only 69% of agencies charge temp-to-perm fees. If we assume, for simplicity, that each agency handles a similar number of temp-to-perm moves, this suggests that 96,600 (140,000 * 0.69) workers transferred incur temp to perm fees of some sort⁷⁶.

The BMG survey demonstrated that 58% of charging agencies charge commission on temp-to-perm moves at an average rate of 15% of workers’ pay. However, given that the labour market has become tighter since the survey was conducted, suggesting labour demand is greater than labour supply, the fee is likely to be a higher proportion of worker’s pay now; we estimate 20%. This suggests an average commission based fee of £2,400⁷⁷.

The remainder of charging agencies(42%) charge a mixture of flat fees and commission, at an average rate of £860. We estimate this figure was likely to be closer to £950 in 2001⁷⁸. If we weight these figures to arrive at an estimate of the average temp to perm fee, we get £1,800⁷⁹. If we assume the worst case scenario i.e. where there are no ‘free’ or discounted transfers, we estimate that employment agencies could lose £175m in ‘temp-to-perm’ fees p.a. However, we also assume that agencies are able to recover between 60% and 80% of this lost revenue by charging user enterprises higher search and select fees, therefore we estimate that agencies could lose between **£35m** and **£70m** in ‘temp-to-perm’ fee revenue, or between about 0.1% and 0.3% of industry turnover⁸⁰. Consequently, user enterprises save this amount in temp-to-perm fees. But this must be set against the additional search and select fees they would face from the agencies, which could be between **£105m** and **£140m**⁸¹.

⁷⁵ REC (2000) Annual Recruitment Industry Survey 1999/2000.

⁷⁶ It is not known, of those operators who state they charge fees, how many will charge fees in all circumstances. As we have noted earlier, in many cases the user enterprise will negotiate with their supplier either to allow the worker to be transferred at a discounted fee or without further charge when they have hired the worker for a reasonable length of time. Where the user enterprise also provides the temporary staff hire supplier with ‘regular business’ discounts may be negotiated. There is no clear evidence from the industry of the number of charged versus number of free transfers.

⁷⁷ Mean agency worker gross weekly pay in main job is £233 (LFS Spring 2001). $52 * 233 * 0.20 = £2400$

⁷⁸ Assuming a 10% increase in the fee.

⁷⁹ $(2,400 * 0.58) + (950 * 0.42) = £1,800$ (to the nearest £100)

⁸⁰ $96600 * 1,800 = £175m$ (to the nearest £5m); $175 * 0.4 = £70m$; $175 * 0.2 = £35m$

Percentage of industry turnover calculated using 2001 ONS turnover figure of £23.5 billion.

⁸¹ Overall, £175 of temp-to-perm fees could be lost. £35-£70 of this is lost by the agencies; this also represent a saving to user enterprises; the remaining £105-£140 is passed on to user enterprises in the form of higher fees.