

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

Summary

Issue The economic impact of the revised proposal for an EU Directive on working conditions for temporary agency workers. This Regulatory Impact Assessment estimates the costs and benefits of the amended proposal published on 28 November 2002.

Objectives The Commission's proposal is motivated by a concern that temporary agency workers may be less favourably treated than they would have been, had they been employed by the user undertaking.

The specific aims of the proposal are twofold:

- to ensure the protection of temporary agency workers and to improve the quality of temporary agency work by ensuring that the principle of non-discrimination is applied to temporary agency workers and recognising temporary agencies as employers
- to establish a suitable framework for the use of temporary agency work to contribute to the smooth functioning of the labour market.

Numbers Affected We estimate that about **600,000** people are working as temporary agency workers at any particular time in the UK.

Potential Labour Market Effects of the Directive

- The proposed Directive may result in better pay and working time conditions for agency workers, depending on their individual circumstances.
- Therefore, more people may enter the labour market as agency workers, due to improved employment conditions.
- But user enterprises could decrease their demand for agency workers, if agencies pass some of their higher costs onto user enterprises in the form of higher fees, reducing choice for workers.
- However, some user enterprises make an active choice to use temporary agency workers to maintain workplace flexibility, which may dampen the decrease in demand despite the higher cost of agency workers.
- These demand and supply side effects may have flexibility implications.
- We cannot quantify these effects and therefore cannot predict the overall effect on the labour market for agency workers.

Benefits¹ We estimate that agency workers could benefit from the Directive through the following:

- Non-discrimination in pay could benefit agency workers by **£366 million** per year².

¹ For most of the measures proposed in the Directive, it is not possible to quantify costs and benefits. Those calculated will be approximate.

² This assumes that the Directive can cover pay. There is a question as to whether this is permitted by the Treaty (see Article 137(6)).

- Agency workers will also benefit from increased holiday pay and annual leave by **£118 million**
- Improved training could lead to improved productivity for user enterprises, improved skills for agency workers and better rates for agencies; however, these benefits cannot be quantified and will depend on the outcome of social dialogue.
- There are benefits to the taxpayer of **£92 million** per year from higher tax incomes and national insurance contributions on higher agency worker pay and leave.

There may be other benefits, such as greater job security for agency workers and an increase in the attractiveness of agency work, that are difficult to quantify.

Costs We estimate the total costs of the Directive as follows:

- Non-discrimination in pay would cost agencies **£95 million** per year³. Non-discrimination in paid annual leave would cost them **£31 million**.
- It is estimated that user enterprises would face higher fees due to cost pass-on from agencies of **£504 million** per year.
- Employers would face a total of **£2.1 million** from additional Employment Tribunal applications.
- The Employment Tribunal Service would face an additional **£0.6 million** from applications.
- Agencies would face administrative costs of between **£1.4m** and **£3.2m**.

There may be other costs that are difficult to quantify, such as an increased turnover of agency workers, the crowding-out of permanent job opportunities, and greater job insecurity for permanent workers who work alongside agency workers.

Small businesses The private employment agency industry in the UK includes many small firms, therefore it is possible that the Directive may affect smaller agencies to a relatively greater extent than larger agencies. Small agencies only make up about 1.5 % of small firms in the UK, therefore the effect on the small business sector as a whole may not be large. The users of agencies are disproportionately larger firms, therefore small user firms would be affected to a relatively lesser extent by any cost increases. The revised proposal for a directive is likely to be better for small user companies, since it only requires that equal treatment is applied to agency workers where there is a pay scale, collective agreement or legal provision on pay levels. Many small businesses are unlikely to have such arrangements.

Consultation The Government conducted a public consultation on the Directive from July to October 2002. Following consultation, the methodology used to calculate the impact of equal pay for agency workers has been revisited and improved. This RIA also calculates the costs and benefits of increased annual leave for agency workers likely to result from the Directive.

³ We estimate that 20% of agencies' higher costs are not passed on to user enterprises.

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 adopted and published on 20 March 2002.

2. Objectives, Purpose and Intended Effect

The aims of this Directive are twofold:

- To ensure the protection of temporary agency workers and to improve the quality of temporary work by ensuring that the principle of non-discrimination is applied to temporary agency workers and recognising temporary agencies as employers.
- To establish a suitable framework for the use of temporary agency work to contribute to creating jobs and the smooth functioning of the labour market⁴.

As a whole, the Directive aims to ensure that temporary agency work should meet need of undertakings for flexibility and employees’ needs to reconcile their working and private lives. It should also contribute to job creation and to participation and integration in the labour market.

Definitions

Article 1.1 of the Directive states that the Directive “applies to workers with a contract of employment or employment relationship with a temporary agency with a view to being posted to a user undertaking to work under its supervision.”

The RIA will refer to such workers as ‘temporary agency workers’. The phrase ‘temporary agency’ will be used to refer to employment businesses, as defined in the 1973 Employment

⁴ Inter-institutional File 2002/0072 (COD), Proposal for a Directive, Article 2.

Agencies Act (working people introduced to clients by Employment Agencies are not covered by the Directive). ‘User undertaking’ will be used to refer to individuals or firms for whom and under the supervision of whom a temporary agency worker works.

Many temporary agency workers are viewed by agencies as workers who are not employees (and therefore are only covered by certain employment legislation). This Directive will cover agency workers, whether or not they are ‘employees’ as defined by section 230 of the Employment Rights Act 1996⁵.

The Directive applies a principle of non-discrimination stating that the basic working and employment conditions of temporary agency workers shall be, for the duration of their posting at a user undertaking, at least those that would apply if they had been recruited directly by that undertaking to occupy the same job.

The pay⁶ and working time conditions of temporary agency workers must comply with the rules in force in the user undertaking “as established by legislation, regulations, administrative provisions, collective agreements and/or any other general provisions”.

For the purposes of the RIA we interpret this to mean that statutory requirements, formal company policies, collective agreements and other generally applicable provisions used to determine pay and working time conditions in the user undertaking for workers employed by that undertaking should also apply to temporary agency workers. Where the user undertaking has no formal policies, collective agreements or generally applicable provisions on pay and / or working time, then legal minimum provisions would apply. These are the National Minimum Wage and the provisions of the Working Time Regulations, which apply to agency workers already.

Risk assessment

The Directive arises from concerns that the temporary work sector in the EU may include individuals who are vulnerable, in that they have limited opportunities⁷. Problems identified by the Commission include:

⁵ Section 230 (1) defines an ‘employee’ as ‘an individual who has entered into or works under (or where the employment has ceased, worked under) a contract of employment’. Section 230(2) defines a ‘contract of employment’ as ‘a contract of service or apprenticeship, whether express or implied and (if it is express) whether oral or in writing’, for the purposes of the Act. Many agency workers are employed on contracts *for* services and fall outside this definition.

⁶ It is questionable that the directive can cover pay, on account of its legal base and the exclusion in Article 137(6) of the Treaty.

- Temporary agency workers may have fewer benefits, in particular lower pay,⁸ than both their colleagues with open-ended contracts and those with fixed-term contracts⁹ at the user undertaking, or may be treated differently in some other way (e.g. reduced access to the collective services of the user undertaking).
- Temporary agency workers may not be informed of or permitted to apply for permanent jobs at their current user undertaking.
- Temporary agency workers may not be able to improve their skills due to reduced access to training; this could lead to labour market inefficiency.
- Temporary agency workers may not have access to the collective services in the user undertaking.
- Temporary agency workers may feel less secure in their jobs than workers on permanent contracts¹⁰.

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

Proposed remedy

The main purpose of the Directive is to ensure that agency workers do not have less favourable wages and working time conditions than they would have done, had they been taken on as employees by the user undertakings they work for. (Articles 2, 3 and 5). However, this requirement need not apply where there agency workers' terms and conditions are determined by a collective agreement derogating from this requirement. Agency workers' pay levels need not be the same as those in the user undertaking where agency workers have a permanent contract of employment with the agency or where assignments are expected to last 6 weeks or less.

⁷ Note that for some agency workers, temping is a matter of positive choice. See the section on 'Reasons to Work' for more details.

⁸ See Annex Four for an estimate of the number of beneficiaries of the proposed Directive.

⁹ Note that agency workers were explicitly excluded from the regulations concerning the EC Directive on Fixed Term Work.

¹⁰ Cully, Woodland, O'Reilly & Dix (1999), *Britain at Work: as depicted by the 1998 Workplace Employee Relations Survey*, p.168. 36 per cent of temporary agency workers felt secure compared with 61 per cent of permanent employees.

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 no such restrictions exist in the UK.
- Temporary agency workers should be informed of any vacant posts in the user undertaking and must not be prevented from forming a contract with the user undertaking after their posting (although reasonable temp-to-perm fees may still be charged). (Article 6).
- Temporary agency workers are given access to the collective services of the user undertaking, in particular transport, childcare and canteen facilities. (Article 6)
- Dialogue between the social partners is promoted to improve temporary agency workers' access to training in temporary agencies and in user undertakings (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 undertaking 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 harmonize the position for agency workers posted at a national level as well as those posted trans-nationally. 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 agency workers, in developing a framework of protection for those in non-standard employment relationships.

Whatever practices are adopted in the UK, if the Directive is agreed, it 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 in respect of pay.

4. Numbers of temporary agency workers covered by the proposed Directive

A triangular relationship exists between temporary agency workers, employment agencies and user undertakings, compared to the usual bilateral relationship between worker and employer

in many other situations. A user undertaking pays a fee to an agency for the agency to provide the undertaking with an agency worker. Agency workers generally receive their wages from the agency, from money paid to the agency by the user undertaking. This RIA considers the impact of the proposed Directive on agency workers, user undertakings and agencies.

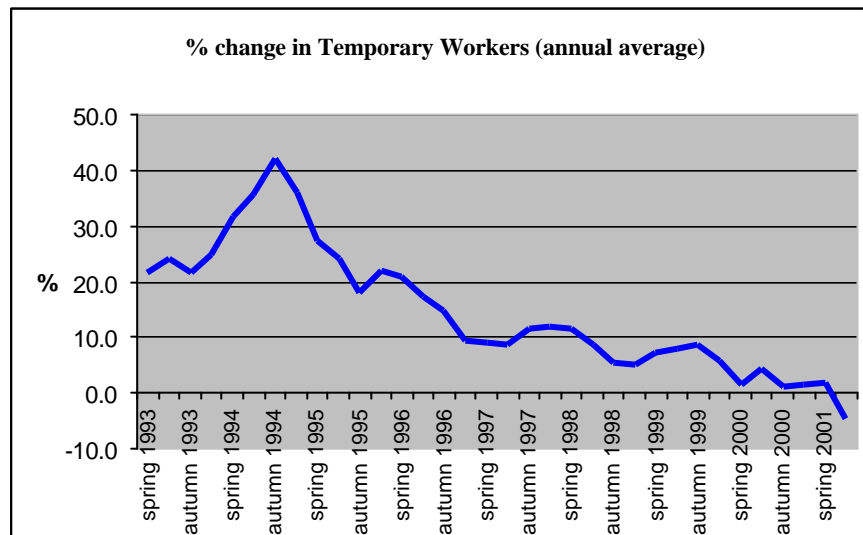
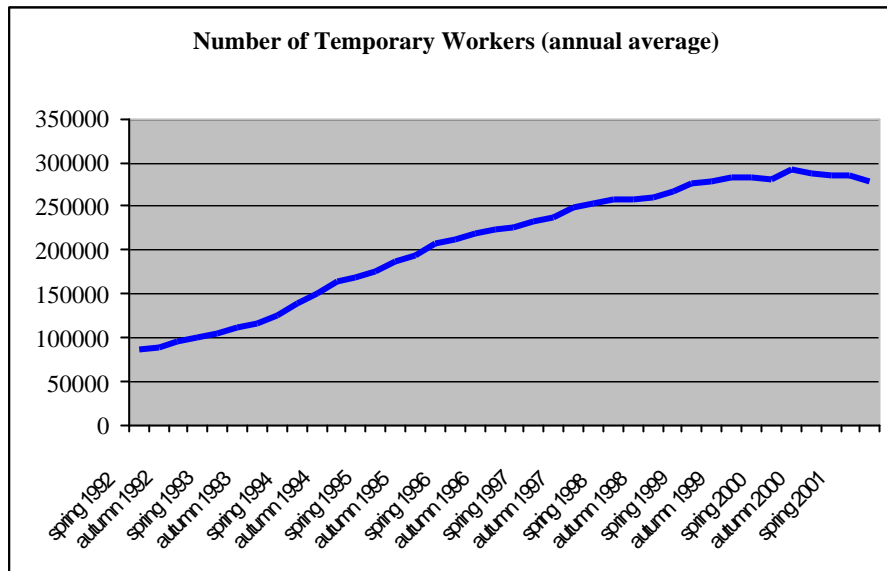
Reliable estimation of the number of temporary agency workers is obviously of crucial importance in any assessment of the costs and benefits of the Directive.

However, figures from the main official source of labour market statistics, the Labour Force Survey (LFS), almost certainly underestimate the number of people supplied by temporary agencies. It has a measure of temporary agency workers of about 275,000 in Spring 2002 in the UK, based on workers' self-assessment of their status. Some of the shortfall may be explained by the use of different definitions – with some workers who are supplied by temporary agencies being classed in the LFS as “fixed term” workers or “self employed”. The LFS may also include those individuals who self-assess themselves as employees of a user undertaking 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).

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). Also, the LFS definition of ‘employee’ does not correspond exactly to the legal definition (see footnote 3 for 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, this figure was likely to be close to 600,000 in 2002, and this is the figure we have used in our calculations throughout this RIA.

We have calculated this figure as follows. In Spring 2002, there were 20,000 more temporary agency workers (LFS measure) than in Spring 1999. This is an increase of 8 per cent (although the rate of growth has been decreasing for a number of years, as shown by the graphs below). Inflating the BMG figure of 557,000 by the same rate gives 600,000.



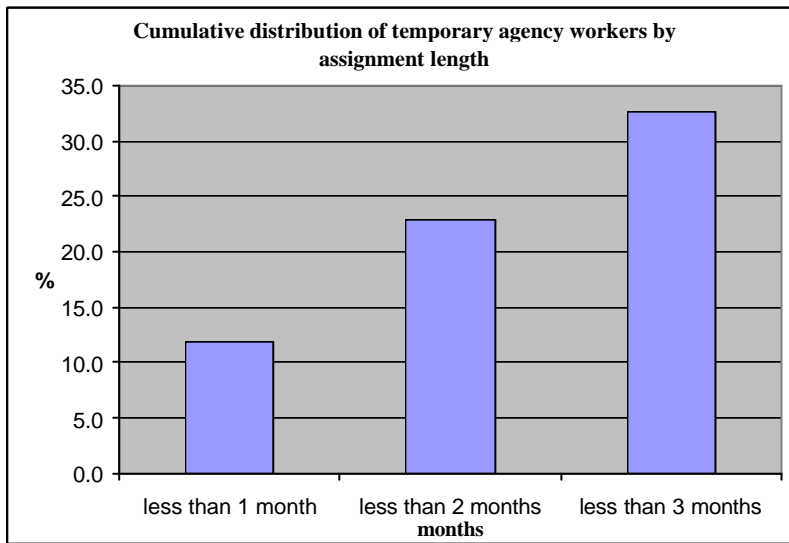
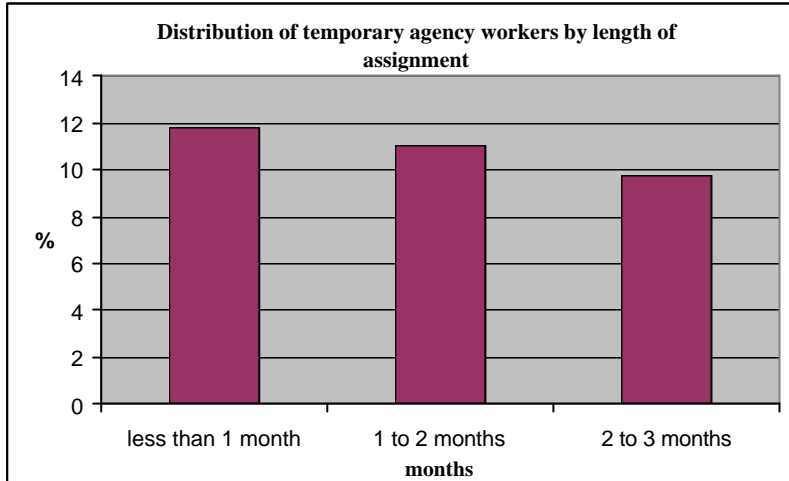
Source: Labour Force Survey spring 2002

In contrast to the estimate of temporary agency workers derived from the BMG and LFS surveys, the leading industry organisation, the Recruitment Employment Confederation (REC), has produced a figure of 1,336,699 temps working in 2001/2002. Although this figure is often cited it should be regarded with some caution as it was extrapolated from a survey with a response rate of around 16 per cent, whose respondents were self-selected and may not be representative. The REC estimate probably exaggerates the size of this sector of the industry¹¹.

¹¹ REC (2002) *Annual Recruitment Industry Survey 2001/2002*.

Distribution by assignment length – the six week derogation

We also require an estimate of the distribution of temporary agency workers by assignment length in order that we can allow for the derogation applying to temporary agency worker pay for workers on assignments of six weeks and less which has been included in the Directive. The Labour Force Survey reports that the distribution of agency worker assignments follows the pattern in the graphs below.



Source: Labour Force Survey spring 2002

Other evidence conflicts somewhat with that reported in the LFS with other surveys suggesting a greater proportion of temporary agency workers on short assignments. The LFS reports that 33 per cent of temporary agency workers are on assignments of less than three months. A report called ‘Temporary Employment in Great Britain’ (1999, IPSOS-RSL Social Research Ltd., commissioned by DfEE)¹² claims that 47 per cent of postings were under three

¹² Question asked for the first quarter of 1998: “How long did you work in your last main temporary job?”; 53per cent of temporary agency workers said “over three months”.

months in duration while an REC Survey suggests that 39-58 per cent of postings were under 3 months in duration¹³.

The derogation period in the Directive is for six weeks and it is only the REC and the Blue Arrow surveys which actually have data on assignments of this length. They report that 30 per cent and 50 per cent of temporary agency workers respectively are on assignments of less than six weeks.

The LFS, on the other hand, reports that 12 per cent of temporary agency workers are on assignments of less than one month and 23 per cent on assignments of less than 2 months. From this, and from the shape of the distribution as illustrated in the above graphs, we can extrapolate that around 20 per cent would be on assignments of less than six weeks.

Because of the small sample size of the REC survey, we have chosen to use the information from the LFS as the most reliable available source. However, it is worth noting that if this method does underestimate the numbers covered by the derogation and the REC and Blue Arrow works are more accurate then both the costs and the benefits of the Directive could potentially be much lower than those outlined in the sections below.

In addition to those falling within the six week derogation period, also excluded from the provisions of the Directive are those temporary agency workers supplied by an agency as part of Government supported training and employment programmes. It is likely that the numbers involved are very small. Indeed, if the proportion of temporary agency workers among those on government supported training and employment programmes is the same as among the employed overall, then we could expect this to exclude not more than 3,000 people.¹⁴ A small number of agency workers who have permanent contracts with their agencies or who are covered by collective agreements can also be excluded. However, it seems unlikely that these numbers are substantial

5. Distribution of temporary agency workers

The tables below show the division of temporary agency work across industrial sector and occupational category in Spring 2002 as reported by the Labour Force Survey.

¹³ Source: REC survey, November – December 2001. The figure of 58% is based on 132 responses to the REC annual survey, in which respondents provided actual details of agency workers' assignment lengths. Including the 342 responses that give estimates of assignment lengths suggests that 39% of assignments lasted less than 3 months.

¹⁴ Temporary agency workers are around 2.5% of the employed. There are 113,000 people on government supported training and employment programmes. $2.5\% \times 113,000 = 2,825$. (Labour Force Survey spring 2002).

Distribution by industrial sector

	% of temporary agency	
	workers	% of all employees
Manufacturing	22.9	17.1
Real estate, renting & business activities.	21.1	10.8
Health & social work	10.8	11.6
Transport, storage & communication	9.1	7.3
Financial intermediation	6.9	5.0
Construction	6.8	5.4
Public administration & defence	6.0	7.4
Education	4.5	8.2
Other	11.9	27.2

Source: Labour Force Survey spring 2002

Notable features in the above distribution are the relatively high percentages of temporary agency workers in manufacturing and in real estate, renting & business activities, when compared to the proportion of all employees in these sectors. The transport and health sectors also contain a high percentage of agency workers, suggesting that the Directive may have a proportionately greater impact on these sectors. However, there is significant evidence that agency nurses earn more than counterparts employed by the NHS, which suggests that the cost burden on the NHS will not be substantial.

Distribution by occupational sector

	% of temporary agency	
	workers	% of all employees
Administrative and Secretarial	23.0	14.3
Elementary Occupations	18.9	13.0
Process, Plant and Machine Operatives	17.4	8.5
Personal Service Occupations	11.9	7.0
Sales and Customer Service Occupations	9.9	8.5
Managers and Senior Officials, professional occupations	7.7	25.6
Associate Professional and Technical	7.1	13.7
Skilled Trades Occupations	4.1	9.5

Source: Labour Force Survey spring 2002

Turning to agency employment by occupation, the administrative and secretarial, elementary occupations and plant operative categories all contain higher proportions of temporary agency workers than for all employees. In general, this data suggests that temporary agency workers tend to be in relatively low skilled occupations.

Distribution by gender and race

In terms of gender, the distribution of temporary agency workers is very similar to that of all employees, according to the Labour Force Survey. Among temporary agency workers, 48 per cent are female and 52 per cent male. The split among all employees is 47 per cent female and 53 per cent male. It is not considered likely, therefore, that the Directive will have a significant effect on the gender pay gap.

In terms of ethnicity and race, however, the distribution of temporary agency workers is markedly different from that of all employees as is illustrated in the table below.

	% temporary agency workers	% all employees
White	86.8	94.1
Non-white	13.2	5.9

Source: Labour Force Survey spring 2002

The proportion of non-white temporary agency workers at 13 per cent is far higher than among employees as a whole where the figure is only 6 per cent. It is likely therefore that the

benefits from the Directive will provide greater benefits to non-white workers. However, it is equally likely that if the effect of the Directive were to reduce choice or employment opportunities for workers, this would affect non-white workers to a greater extent than white ones.

6. The role of Temporary agency workers

For many workers, temping is a work choice and suits their current circumstances. According to the LFS, 54 per cent of agency temps either do not want a permanent job or chose to temp for other reasons.¹⁵ However, temporary agency work can often be 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 45 per cent of agency temps are temping because they could not get a permanent job.

Some user undertakings 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 per cent) and adjusting the size of the labour force in line with demand (40 per cent)¹⁶. The survey also indicates that about 28 per cent of establishments with 25 or more employees made use of temps, most commonly used to meet clerical and secretarial needs¹⁷. The proportion is lower for smaller establishments. There is a detailed analysis of the potential impact of the Directive on small businesses in a later section (insert page number for ease of reference).

7. The effects of the Directive

(i) Pay

The principle of non-discrimination requires that temporary agency workers are paid the same as if they had been taken on by the user undertaking as permanent workers, according to company pay scales and collective agreements in force or any other general provisions.

¹⁵ Labour Force Survey, Spring 2002; 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).

¹⁶ 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.

¹⁷ Cully, Woodland, O'Reilly & Dix (1999), *Britain at Work: as depicted by the 1998 Workplace Employee Relations Survey*, p.8.

It is shown in a later section of this RIA (p.16) the extent to which temporary agency workers may currently suffer from what might be termed a form of discrimination in pay, although any such estimates are necessarily subject to a high degree of uncertainty.¹⁸ We estimate that more than half of all temporary agency workers could expect to receive enhanced pay as a result of the Directive. Obviously not all of the differential in pay between temporary and permanent workers can be ascribed to discrimination and the estimates which follow attempt to take account of such factors as seniority, which would affect how agency workers were paid in accordance with many pay scales or collective agreements. In some occupational groups it is also evident that, on average, temporary agency workers receive higher pay than permanent workers.

(ii) Paid holiday entitlement

Another effect of the Directive will be to increase the entitlement of temporary agency workers to paid holidays. It would seem likely that this would affect the great majority of temporary agency workers and the costs and benefits arising from this are calculated in a later part of the RIA (p.19).

(iii) Other non-discrimination provisions

The Directive further prohibits non-wage discrimination in certain other employment conditions. Where appropriate, the Directive requires the extension of rules in force in the user undertaking on i) the protection of pregnant women and nursing mothers and the protection of children and young people and ii) the equal treatment for men and women and any action to combat any discrimination based on sex, race or ethnic origin, religion, beliefs, disabilities, age or sexual orientation.

(iv) Other requirements

The Directive also requires that;

- There should be a promotion of dialogue to improved access to training

¹⁸ Because the proportion of temporary agency workers in the economy is so low it is often the case that surveys etc are unable to gather information from sufficient numbers of temporary agency workers to allow for reliable estimation. This RIA relies to a large extent on the Labour Force Survey, but, even though this is a very large survey, disaggregation of the data on temporary agency workers, for example by occupational category, can only be conducted to a very limited extent before the limits of reliability are reached. The result of this is that much of the analysis in this RIA is conducted at a level of detail which is far lower than the ideal.

- Temporary agencies and agency workers should be covered by requirements for workers information, consultation and representation
- Non-discrimination should be applied in allowing temporary agency workers access to collective facilities in the user undertaking
- Temporary agency workers should be informed about permanent vacancies in user undertakings

These issues are discussed more fully in the sections below.

(v) Overall effect

Improved access to training, equal employment conditions and equal pay may lead to an increased supply of more productive agency workers. This implies a positive effect for some of the 74 per cent of employers with vacancies who reported difficulties in finding suitable recruits¹⁹.

There will be cost implications. Some agency workers will find that their pay and their paid holiday entitlement increases. This may increase the attractiveness of agency work and therefore increase the pool of people wishing to work as agency workers. This implies higher costs for user undertakings and probably for employment agencies if they are not able to pass their higher wage bill on in the form of fees charged to user undertakings for their services. It is therefore conceivable that the Directive could reduce the demand for temporary agency workers, reducing opportunities for those wishing to work as temporary agency workers. User undertakings responding to the recent consultation on the directive indicate that they would not replace agency workers with permanently employed workers.

Where there is a need, either in temporary agencies or in user undertakings, to implement measures to meet other non-discrimination provisions, where there is additional training, or new consultation procedures then in all cases there will be additional costs. The implementation of the Directive will also entail additional administration costs for both temporary agencies and user undertakings.

While it should be acknowledged that all of the above-mentioned cost increases arising from the Directive, in particular the costs of additional pay and paid holiday entitlement, are likely to reduce demand for temporary agency workers it is also important to note that cost is by no

¹⁹ CIPD Recruitment and Retention survey report, May 2002. 97% of employers surveyed had vacancies in the last year and 76.7% of them had had difficulties in finding suitable recruits for at least some of these vacancies; ie $97\% \times 76.7\% = 74\%$

means the only or even the most important factor driving the use of temporary agency workers. It is reported in the Workplace Employment Relations Survey that 40 per cent of user undertakings make an active choice to use temporary agency workers to maintain workplace flexibility²⁰. This, and other factors mentioned in the previous section, may dampen any decrease in demand.

However, we cannot quantify these separate demand and supply side effects and therefore cannot predict the overall effect of the Directive 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 the Commission has made no attempt to quantify any of the benefits or costs in its own RIA of the proposed Directive. 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, the limitations of which have been noted above.

9. Expected Benefits

Agency workers

(i) Wage benefits

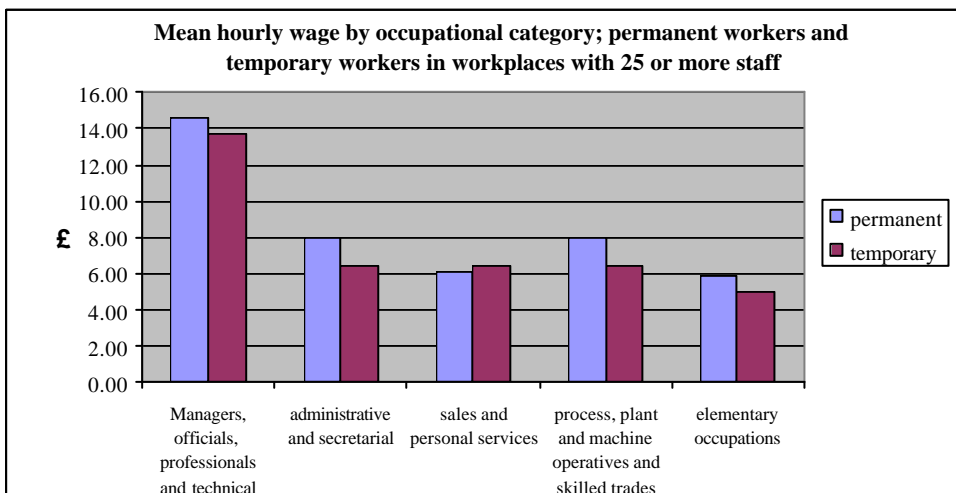
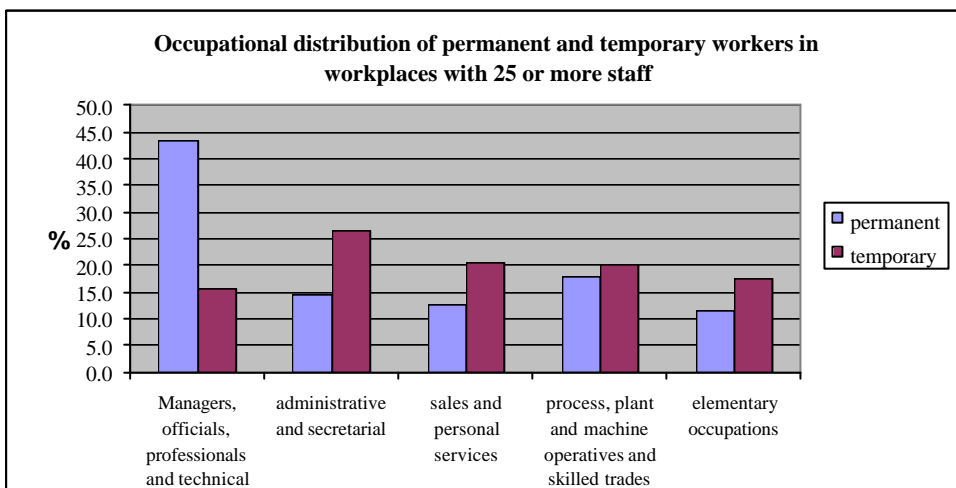
Article five of the Directive, which outlines the principle of non-discrimination, states that the basic working and employment conditions of temporary agency workers should be 'at least those that would apply if they had been recruited directly by the user undertaking to occupy the same job'. The effect of this is that the pay of temporary agency workers should comply with 'legislation, regulations, administrative provisions, collective agreements and/or any other general provisions'. We interpret this as meaning that where there exists in the user undertaking either a clear company pay scale or a collective agreement to determine pay and conditions then these should apply to any temporary agency workers working in that user undertaking.

²⁰ 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.

We have estimated the possible pay benefits to agency workers of the Directive, but would stress at the outset that this has been done on the basis of limited data and information and by using a number of simplifying assumptions.

The LFS gives us information about employment and pay distribution by occupation, both for agency employees and permanent employees. This is shown in the charts below. The information, and the following analysis, is based on workplaces with more than 25 staff. In the absence of more specific information, this is used as a proxy for firms where we expect the Directive to have an impact on pay. That is, those firms where there exists a company pay scale or where pay and conditions are agreed by collective bargaining. This covers nearly 80 per cent of all agency workers. Our assumptions are that company pay scales and collective bargaining are less common in smaller firms.

The information from the LFS has been divided into different categories in order to capture pay and distribution of permanent and temporary agency workers by occupation.²¹



²¹ The occupational categories are necessarily broad to ensure that the LFS data is sufficiently robust for reliable estimation.

As is shown in the chart above, with the exception of the sales and personal services category, permanent employees earn, on average, more than temporary agency workers in each category. This is particularly true for administrative and secretarial workers and for those working in process, plant and machine operatives and skilled trades where, in both cases, temporary agency workers earn 80 per cent of the average wage of permanent workers. The reason for this pay gap could be due in part to temporary agency workers and permanent workers doing different jobs in each occupational category or having varying levels of skills or seniority. However, this data may not be indicative of the differences between agency workers and directly employed workers in the same workplace and may not provide an accurate calculation of the effects of the Directive.

In order to estimate the approximate effect on pay of the Directive we have weighted the pay gap in the different occupational categories to take account of skills and seniority, as described above. For example, we assume that skills and seniority play a greater part in explaining the pay gap in the category 'managers, officials, professionals and technical' than it would in either elementary occupations or process, plant and machine operatives and skilled trades.

A full explanation of the calculation of the wage benefit of the Directive is included in **appendix I**. We estimate that up to 323,000 people, more than half of all temporary agency workers (54 per cent), could derive a pay benefit from the implementation of the Directive. The benefit of this in higher wages, we estimate, is an annual **£366.3** million.

It should be noted that all of the above figures are estimates and are based on a number of assumptions. In particular, the estimation of the hourly pay gaps has been based on very broad occupational categories, a factor which could lead to considerable variation between our estimates and what actually pertains. Also, as noted above, our estimation of the number of temporary agency workers covered by the six week derogation is considerably more conservative than the industry's own figures. Finally, the calculations assume that agency workers are on assignment throughout the year and do not have gaps or breaks between assignments.

It is also important to point out that the intention of the Directive in its effect on the entitlement of temporary agency workers to occupational pensions and occupational sick pay is unclear. In the event that the Directive were to include these additional requirements then there would obviously be a further impact both on the costs and the benefits of the Directive, but these have not been quantified. The intention seems to be that member states should be

free to define ‘pay’ for the purposes of the Directive, although this is not entirely clear from the current text.

(ii) Increased entitlement to paid holiday

In assessing the impact of the Directive on holiday entitlements for temporary agency workers we apply the principle of non-discrimination as outlined above and, as with pay, assume that agency workers should be covered by collective agreements or stated company policy in respect of holiday entitlements for permanent staff. We assume, in addition, that company policies on holiday entitlements would be almost universal and so assume that all agency workers will be affected. The six week derogation will not apply to holiday entitlement, but may obviously be a factor in the level of holiday pay.

In calculating how many extra paid days of leave might be awarded to temporary agency workers we assume that all agency workers currently receive the statutory minimum of 20 days. The calculations have been divided between full-time and part-time workers and have been categorised by broad occupational classification and are included in full in **appendix II**.

The estimated extra paid holiday entitlement is £111.4 million for full-time workers and £6.8 million for part-time workers, a total of **£118m**.

(iii) Training and productivity

A key concern about the effect of temporary work is that increases in the flexibility of the labour market in terms of employers’ ability quickly to change the size of their workforce may be at the expense of promoting workers’ flexibility through skills acquisition through formal and informal training.²² A failure to invest in training by either workers or employers may harm productivity and also diminish the future earnings potential of workers.

Analysis of the Labour Force Survey indicates that, while 57 per cent of permanent workers had received some work-related training during the preceding 13 weeks, this was the case for only 20 per cent of temporary agency workers.²³ This is perhaps not surprising as, because of the very nature of the work, temporary agencies and user undertakings are far less likely to capture the benefits of investment in training. Equally, temporary agency workers may be less inclined to take up training opportunities themselves when they may only see their work position as very short-term.

²² ie Arulampalam and Booth, ‘Training and labour market flexibility: is there a trade-off?’ British Journal of Industrial Relations December 1998 vol.36, no.4.

²³ Labour Force Survey spring 2002.

The Directive does not require that temporary agency workers receive the same access to training as they would were they taken on in a permanent capacity. Rather the Directive states that steps should be taken to promote dialogue in order to enhance temporary agency workers' access to training both within temporary agencies and within user undertakings.

In practical terms this suggests that temporary agency workers should be able to put themselves forward for training opportunities, both within temporary agencies and user undertakings, and have such propositions seriously considered. This might take place in a process of consultation as is discussed below.

Clearly, appropriate training, even for a very short period, can enhance a worker's productivity, bringing benefits to the user undertaking, to the temporary agency in potentially higher fees and to the temporary agency worker themselves who may be able to command higher wages and to improve their prospects of securing permanent employment, should that be what they want.

Obviously additional training will involve higher costs as well as the benefits outlined above, but the approach adopted by the Directive in this respect indicates that training of temporary agency workers should be promoted within a framework of workplace partnership and would only proceed where all parties felt it to be beneficial. Therefore, while we cannot estimate the costs and diverse benefits which may arise from this provision of the Directive, we would not anticipate that additional training would proceed as a result unless it was felt by all parties to offer a net benefit.

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'²⁴. 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.

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 or the access to social facilities, could have a positive impact on motivation and help to avoid possible conflicts with permanent staff.

²⁴ Paragraph 4 of p.32 of Commission RIA.

In particular, notification of vacancies in user undertakings may be welcomed by some agency workers: the LFS spring 2002 suggests that only 31 per cent of temporary agency workers do not want a permanent job. The same survey reports that 46 per cent of temporary agency workers 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.

(v) *Representation of temporary agency workers*

Temporary agency workers will need to count for the purposes of calculating the threshold above which bodies representing workers are to be formed at the temporary agency. This means that temporary agencies with more than 50 workers on assignment will have to establish procedures for informing and consulting with workers, once directive 2002/14 on information and consultation has been implemented, while those agencies with more than 1000 workers on assignment in the UK, or 150 or more workers on assignment in each of 2 or more EU member states would be required to set up a works council, if they do not already have one.

It is believed that the establishment of measures for the promotion and improvement of workplace consultation and partnership will bring benefits to both workers and employers. Temporary workers might gain, in particular, in having a forum in which to discuss and promote training and developmental issues.

(vi) *Increased supply of agency workers*

Overall, the package of proposals may 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 work a better option. To the extent that the supply of temporary agency workers does increase, these workers will have increased income and an improved standard of living, if they obtain jobs through temporary agencies. 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 undertakings decrease their demand for temporary agency workers.

User Undertakings

For user undertakings the overriding motive to employ temporary agency workers is their need for greater flexibility. For example, the use of temporary agency workers allows firms to meet seasonal peaks in demand without the need to keep surplus capacity idle during other parts of the year. Temporary agency workers are also an important resource in helping firms to deal with the absence of permanent staff members. It might be expected that this role will become ever more important as employers realise the benefits of family-friendly policies and work practices which promote work-life balance. Firms should therefore have a major interest in being able to recruit well-qualified, motivated and adaptable workers through temporary agencies, who can be rapidly and easily integrated into the undertaking. Specific benefits are detailed below.

(i) Productivity

As outlined above, one of the effects of the Directive could be to increase the productivity of temporary agency workers. This might arise firstly through any additional training which takes place as a result of improved workplace dialogue and enhanced understanding of the mutual benefits of developing workers' skills.

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

Implementation of the non-discrimination provisions of the Directive, for example in terms of enhanced pay and holiday entitlement, will also serve to increase the motivation and commitment of temporary agency workers. Where there are improvements in the consultation and involvement of temporary agency workers in the user undertaking then it is obviously more likely that those temporary agency workers will better understand the aims and objectives of the organisation and be better committed to helping achieve those goals.

In addition, informing agency workers about vacancies in the undertakings might improve the integration, motivation and productivity of agency workers, aiding staff retention in the user undertaking.

(ii) Filling vacancies

The issue of recruitment is an extremely significant one with 74 per cent, of employers reporting difficulty in filling vacancies²⁵. To the extent that the Directive might increase the attractiveness of agency work and thereby the supply of agency workers, there will be an increase in the pool of temporary agency workers and an increase in the quality of the workers available from that pool.

User undertakings will find it easier to recruit high quality temporary agency workers and workers that match their particular needs..

There could be a reduction in the length of time during which firms have unfilled vacancies, the average for which is currently over nine weeks²⁶. The ability rapidly to fill gaps in the workforce with high quality personnel can be an important factor, for example, in ensuring that orders are met and that quality standards are maintained.

Employment Agencies*(i) Representation of temporary agency workers*

The establishment of processes for worker information and consultation and, where appropriate, the creation of works councils may bring benefits to temporary agencies. Workplace partnership has been illustrated to improve productivity, reduce workplace disputes, improve worker commitment and motivation and to reduce labour turnover. As a result, temporary agencies may find it easier to place temporary agency workers with user undertakings and may be able to charge higher fees. Higher commitment and loyalty from temporary agency workers might also reduce turnover and so reduce the costs to agencies of recruiting workers.

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 per cent of the net income would be paid in taxes

²⁵ CIPD Recruitment and Retention survey report, May 2002. 97% of employers surveyed had vacancies in the last year and 76.7% of them had had difficulties in finding suitable recruits for at least some of these vacancies; ie $97\% \times 76.7\% = 74\%$

²⁶ CIPD Labour Turnover survey report October 2002; organisations took on average 9.5 weeks to fill a vacancy in the first six months of 2002.

and NIC²⁷. Therefore, estimated benefits to the taxpayer are **£92m**²⁸. This gain, however, could be offset to a certain extent because temporary agency workers working in the public sector might receive higher pay or increased entitlement to paid holiday. The LFS reports that 21 per cent of temporary agency workers work in the public sector.

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’²⁹. 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 temporary agency workers and workers in the user undertaking.

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 undertakings. 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.

Employment agencies

(i) *Wage costs*

The wage benefits to agency workers, estimated above as £366m, represent a wage cost to temporary agencies. Agencies must either pass these increased costs on in the form of higher fees charged to the user undertaking, or take a cut in their profit margin, or both. Because of the competitive nature of the temporary agency sector it is unlikely that profit margins are especially large and so firms would not feel able to reduce profits by more than a relatively

²⁷ 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.

²⁸ £366.3m x 0.25= £91.6m.

²⁹ Paragraph 3 p.29 of Commission Impact Assessment.

small amount. It is estimated therefore that 80 per cent of any cost are passed on to user undertakings.

Agencies will also face non wage labour costs on top of any additional wage costs, covering areas such as additional national insurance employer contributions, financing annual leave). It is estimated these to add up to 30 per cent to the wage bill.

Taking these two points into consideration, we estimate that the cost to agencies of paying temporary agency workers in line with the requirements of the Directive will be **£95m³⁰**.

(ii) Costs of extra entitlement to paid holiday

As in the case of wages, it is the temporary agency which will be responsible for any additional entitlement to paid holiday resulting from the Directive. We estimated above that temporary agency workers would benefit by £119m. As in the section on wage costs, we assume that there is an additional non-wage labour cost of 30 per cent and that temporary agencies are able to pass on 80 per cent of the extra cost to the user undertaking. From this we estimate that the cost to agencies will be **£31m³¹**.

(iii) Cost of training

As discussed above, although it should be hoped that the implementation of the Directive will result in improved access to training opportunities for temporary agency workers both within temporary agencies and user undertakings, this will clearly involve additional costs. However, as mentioned, it is not the case that the Directive requires additional or equal training per se, but that there should be a promotion of dialogue to allow a better understanding of where training will benefit all parties. Therefore, it is not expected that any additional training costs accruing to any one party will be in excess of that party's benefits.

(iv) Temp to perm fees

In the event that a temporary agency worker, assigned to a user undertaking, is subsequently recruited by that user undertaking on a permanent basis it is usual that the temporary agency charges a fee. The Directive accepts that this practice should continue provided that the fee reasonably reflects the temporary agency's costs, incurred, for example, in the recruitment, training and placement of the temporary worker. The fee, therefore, should not adversely

³⁰ Agencies' costs will be £456m x 1.3 x 0.2=£95.2m.

³¹ £118m x 1.3 x 0.2 = £30.7m.

affect the temporary agency worker's chances of finding a permanent position or otherwise harm their flexibility or mobility. As there is no evidence to suggest that such 'temp to perm' fees as charged at the moment are unreasonable in this respect it would seem unlikely that the Directive will have an effect.

(v) *Representation of temporary agency workers*

The provision that temporary agency workers should count for the purposes of calculating the threshold³² above which workers' representative bodies should be formed at the temporary agency should involve little extra cost. The Directive would require larger agencies to set up worker consultation bodies; those with more than 50 workers on assignment would probably have to inform and consult workers. Once Directive 2002/14 on Information and Consultation is implemented and those with more than 1000 workers on assignment (or 150 or more in 2 or more member states) would need to set up a Works Council.

User undertakings

(i) *Higher fees charged by agencies*

User undertakings may face certain costs, especially to the extent that agencies may pass cost increases on to them through higher fees. Carrying through the previous assumptions, that 80 per cent of cost increases are passed on, it is estimated that user undertakings will face total higher fees of **£381m.**³³

(ii) *Additional paid holiday entitlement*

It is assumed, as was the case for wage costs, that temporary agencies pass on 80 per cent of the cost of the additional entitlement to paid holiday to user undertakings. Using the calculations as set out above and the assumption that there are non-wage labour cost of 30 per cent, this means that user undertakings could expect higher holiday pay of **£123m.**³⁴

³² If an undertaking 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 undertaking to have 18 employees plus 3 agency workers) and the corresponding process costs, would be minimal.

³³ Fee increase from agency wage costs; £366m x 1.3 x 0.8 = £380.6m.

³⁴ Cost of additional paid holiday entitlement; £118m x 1.3 x 0.8 = £122.7m.

(iii) Costs of training

The costs of any additional training arising as a result of the Directive have been discussed above in the section on temporary agencies and that analysis applies equally to user undertakings.

(iv) Access to collective services

Providing access to the collective services of the user undertaking is an important factor in fully integrating temporary staff into the undertaking. The Commission argues that in most cases this is going to cause little or no extra cost. We agree with this because most collective facilities (such as canteens, transport) 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 (although the cost of providing access to child care facilities may be greater, since more staff would have to be recruited to crèches). 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 undertaking, then the same qualifying periods would apply to the temporary agency worker, which would cut costs for user undertakings.

(v) Other costs

The provision on informing workers' representatives on the use of agency work by the user undertaking will involve little or no extra costs. Similarly, the provision that temporary agency workers should count for the purposes of calculating the threshold above which workers' representative bodies should be formed at the temporary agency, and, at a Member State's discretion, at the user undertaking, should involve little or no extra cost. This is particularly the case as the majority of temporary agency workers work in large firms which would already be covered by such requirements.

Non-Agency Workers*(i) Increased job insecurity for permanent staff*

If the Directive makes temporary agency work more attractive to user undertakings and therefore they take on more agency staff, we might see a heightened sense of job insecurity

among permanent staff. WERS98³⁵ found that among permanent employees in workplaces which used temporary agency workers, 56 per cent felt that their job was secure. This compared with two-thirds (66 per cent) of permanent employees in workplaces where no temps were used.

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 2002 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 per cent in 1998, compared to figures of 68 per cent for Spain and 80 per cent for France³⁶. There are large firms in the UK but they are less dominant than in many other sectors. The ONS estimated 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. However, small agencies only make up about 1.5 per cent of small businesses in the UK, therefore the effect on the small business sector as a whole will not be large³⁷.

(ii) User undertakings

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 size³⁸. This is borne out by the Labour Force Survey spring 2002 which shows that 79 per cent of temporary agency workers work in workplaces with 25 or more employees. WERS 98 also found that

³⁵ Cully, Woodland, O'Reilly & Dix (1999), *Britain at Work: as depicted by the 1998 Workplace Employee Relations Survey*, p.168.

³⁶ Source: *European Foundation, 2002*.

³⁷ There are 1,189,215 small businesses (less than 50 employees) in the UK (Source: *Small Business Service, 2001*). We estimate that there are about 17,000 employment agencies in the UK (Source: *REC*); $(17,000/1,189,215) \times 100 = 1.5\%$.

³⁸ Cully, Woodland, O'Reilly & Dix (1999), *Britain at Work: as depicted by the 1998 Workplace Employee Relations Survey*, p.37.

only 9 per cent of small business workplaces who have a full-time working owner use temporary agency workers³⁹. However, while it is clear that temporary agency workers are used predominantly by larger firms, where small firms do use temporary agency workers fees may be higher where those firms have less leverage in negotiating with their suppliers, the temporary agencies.

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 undertakings would face a heavier burden than larger user undertakings 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 undertakings, 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 undertakings, 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 undertakings do use agency workers, they are less likely than larger undertakings to have collective agreements or company pay scales and are therefore much less likely to be affected by the Directive – where user undertakings do not have these agreements, the costs will be very low.

12. Competition Assessment

We have considered the issue of competition for temporary agencies, the labour market and for consumers. There are numerous firms in the temporary 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.

³⁹ 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 £366m	
	Holiday £118m	
User undertakings		Higher fees charged by agencies £381m
		Holiday £123
Agencies		Wage £95m
		Holiday £31
Taxpayer/National Insurance fund	£92m	

14. The Labour Market Effects of the Directive

The implementation of the Directive will affect conditions in this part of the labour market. The potential enhancement of pay and conditions for temporary agency workers may be expected to result in an increase in the supply of those workers. Some of the increase in supply may come from workers who were previously in permanent employment, but it is also possible that the effect of the Directive will be to draw into the workforce some people who were previously economically inactive. However, insofar as the implementation of the Directive results in increased costs for user undertakings, it is very likely that there will be a reduction in demand for temporary agency workers. If the overall result of the Directive is to increase the labour market participation of temporary agency workers and would-be temporary agency workers while at the same time reducing employment for those same workers then clearly part of the effect of the Directive may be to increase unemployment, unless user companies replaced agency workers with directly-recruited temporary or permanent staff.

Most user undertakings make an active choice to use temporary agency workers to maintain workplace flexibility, which may dampen any 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 temporary agency workers.

The main drivers of change in the supply and demand of temporary agency workers are likely to be the effects of the Directive on pay and paid holiday entitlement as these two areas represent, by far, the major benefits and costs of the Directive.

15. Administrative Costs

While the implementation of the provisions of the Directive will involve some cost for both user undertakings and temporary agencies it is not likely that these will be very high in themselves. The new Commission proposal replaces individual comparisons between agency workers and workers in user companies with a comparison with a pay rate; this should reduce the administration involved in applying the Directive, although some contacts between the agency and user will still be needed to establish rates. Where increased administration costs are likely to be more significant is in the event that the Directive results in an increase in the number of employment tribunal cases. This issue is discussed in the next section.

(i) To user undertakings

There may be small administrative costs involved in revealing company pay scales or details of collective agreements to temporary agencies and in assessing what the worker would be paid.

Informing agency workers about vacancies in the user undertaking 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 undertaking.

Additional training, consultation and implementation of other non-discrimination provisions may all require a small administrative input. In total, however, all the above-mentioned administration costs are not expected to be large and in many cases could be covered by simply extending existing administrative frameworks to cover temporary agency workers.

(ii) To agencies

The need to determine the relevant wage levels for permanent workers in user undertakings could impose an administrative burden on temporary agencies. In some cases however, this information will be readily available, either through relevant collective agreements at the user undertaking which could serve as a reference point, or through the user undertaking's company pay scale information. It is likely that such costs would be higher for ad hoc placements of temporary agency workers than for the regular placement of workers which might develop between a particular temporary agency and user undertaking over time.

In addition, there may be some small administrative costs involved in altering the employment conditions that are written down in temporary agency workers' contracts and in calculating annual leave allowances for agency workers on shorter assignments.

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 days⁴⁰. Using the New Earnings Survey (2002), the average gross hourly wage of a numerical clerk was £8.82. The total cost of the employee's time is therefore between **£80** and **£160**⁴¹ and the total one-off cost to the private recruitment industry is estimated to be between **£1.4m** and **£3.2m**⁴².

It is expected that a significant administration cost may arise to temporary agencies, and, to a lesser extent, for user undertakings, as a result of an increase in temporary workers taking cases to employment tribunals.

To quantify this cost, we use the number of applications resulting from the Part-Time Workers Regulations in its first year as a benchmark. It is assumed that proportionally there will be at least as many tribunal cases arising from the Temporary Agency Workers Directive as there was from the Part-Time Workers Regulations. We take the proportion of cases under the Part-Time Workers regulations as a minimum because the Temporary Agency Workers

⁴⁰ 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).

⁴¹ 7 hours at £8.82 per hour, and including 30% non wage labour costs: £8.79 x 7 x 1.3 x 1(day) = £80.26; £8.82 x 7 x 1.3 x 2 (days) = £160.52.

⁴² 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 x 17,000 = £1,360,000 and £160 x 20,000 = £3,200,000.

Directive, since the Temporary Agency Worker Directive is likely to require greater changes in existing practice than the Part-time Workers Directive. .

In the first year following the introduction of the Part-Time Workers Directive there were around 10,530 tribunal cases⁴³. This represents 0.18% of the six million part-time employees. Applying this proportion to the estimated 600,000 temporary agency workers gives an estimated 1050 cases each year⁴⁴. The average total cost to employers of an application to an employment tribunal are £2,000⁴⁵. The total estimated cost to employers is therefore about **£2.1m**⁴⁶.

16. 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.

In the above section we estimated that there may be an additional 1,050 applications to Employment Tribunals as a consequence of the Directive. Each application costs the Employment Tribunal Service, on average, £540. The total cost to the Employment Tribunal Service is therefore estimated to be about **£600,000**⁴⁷.

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.

17. Results of Consultation

The DTI held a public consultation on the TAW directive from 1 July to 18 October 2002. We received 98 responses, from user undertakings, unions, agencies, agency workers and others.

The consultation asked for views on and evidence of the impact of the proposals on the UK labour market as a whole. Some respondents argued that the directive could have a beneficial impact on the labour market, leading to more people in permanent employment and improved

⁴³ Source: *Employment Tribunal Service annual report*.

⁴⁴ $0.18\% \times 600,000 = 1,050$.

⁴⁵ Source: *Survey of Employment Tribunal Applications*

⁴⁶ $1050 \text{ applications} \times £2,000 \text{ (average costs per ET application to ET)} = £2,100,000 \text{ per year}$.

⁴⁷ Costs to ETS are £540 per case. Total costs are therefore $1050 \times £540 = £ 567,000 \text{ per year}$. Source: *ETS Management Info*.

training, but there was little evidence to support the Commission's argument that the directive would increase the supply of temps. Most respondents took the view indications were that the directive would reduce the demand for temps.

A Government Response has been published and copies are obtainable from <http://www.dti.gov.uk/er/agency/directive.htm>.

18. 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 first⁴⁸.

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.

⁴⁸ Compulsory disciplinary and grievance procedures within user undertakings have been introduced in the 2001 Employment Bill.

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Appendix I

Additional wage benefits of the Directive

In order to estimate the approximate effect on pay of the Directive we start by calculating the difference in the mean hourly wage in each occupational category. This is shown in the table below;

	mean hourly wage	mean hourly wage	hourly difference
	permanent, £	temporary, £	£
Managers, officials, professionals and technical	14.63	13.74	0.88
administrative and secretarial	7.93	6.37	1.56
sales and personal services	6.10	6.47	-0.38
process, plant and machine operatives and skilled trades	7.98	6.39	1.59
elementary occupations	5.84	4.96	0.88

Source: Labour Force Survey spring 2002

In all but one category, that of sales and personal services, there is a pay gap between permanent and temporary agency workers. The presence of such a pay differential can be explained, in part, by the difference in seniority that would exist between permanent and temporary agency workers; most agency workers would need to receive the rate of pay applying to someone newly recruited to a job, which would probably be less than that received by someone who had been doing the job for a number of years. It is likely that this differential would vary between occupations. For example, it is likely that seniority plays a greater part in the pay gap of workers in the category managers, officials, professionals and technical than it would in either elementary occupations or process, plant and machine operatives and skilled trades. For this reason, in each occupational category, we have assumed that the pay gap is explained by differing proportions of experience and discrimination. For example, in the category 'managers, officials, professionals and technical' we assume that 70 per cent of the pay gap is explained by seniority, whereas in elementary occupations we assume that only 10 per cent of the pay gap can be explained in this way.

Using the above-described weightings, the hourly pay differentials and information on the average weekly hours worked by temporary agency workers in each occupational category we can arrive at an estimate for the weekly pay discrimination. This is shown in the table below;

Mean hourly pay by occupation in workplaces with 25 or more employees

	hourly pay difference	mean wkly hrs temporary agency workers	proportion of discrimination	weekly pay difference explained as discrimination
	£			£
Managers, officials, professionals and technical	0.88	34.01	0.1	2.99
administrative and secretarial	1.56	33.62	0.4	20.95
sales and personal services	-0.38	27.62	n.a.	n.a.
process, plant and machine operatives and skilled trades	1.59	42.54	0.6	40.64
elementary occupations	0.88	37.61	0.7	23.28

Source: Labour Force Survey spring 2002

Estimates for sales and personal services are not included. The Labour Force Survey indicates that temporary agency workers in this category have a higher hourly wage than permanent workers and hence we do not expect that the Directive will have any wage effect on these workers.

To estimate the possible cost of bridging that part of the pay gap which cannot be explained by seniority, we annualise the weekly pay difference calculated above and multiply it by the number of agency workers estimated to be present in each of the occupational categories. This assumes that there are 600,000 temporary agency workers and is shown in the table below. The calculations also take account of the fact that an estimated 20 per cent of agency workers are on assignments of six weeks or less and hence are not covered by the Directive.

Estimate of the annual benefits to temporary agency workers in pay increases

	weekly pay difference explained as discrimination	annual pay difference per worker ⁴⁹	% of all temporary agency workers	no. of temporary agency workers benefiting ⁵⁰	total annual cost
	£	£	%		£m
Managers, officials, professionals and technical	2.99	155.7	15.9	76222	12
administrative and secretarial	20.95	1089.2	22.5	108208	118
sales and personal services	0.00	0.0	n.a.	n.a.	0
process, plant and machine operatives and skilled trades	40.64	2113.1	15.7	75211	159
elementary occupations	23.28	1210.6	13.4	64114	78
total				323,755	366

Source; Labour Force Survey spring 2002

Thus we estimate that up to 323,000 people, more than half of all temporary agency workers (54 per cent), could derive a pay benefit from the implementation of the Directive. The benefit of this in higher wages, we estimate, is an annual **£366.3** million.

⁴⁹ Weekly pay difference x 52.

⁵⁰ Number of temporary agency workers benefiting = (per cent of all temporary agency workers x 600,000) x 80 per cent ie to take account of 20 per cent of temporary agency workers on assignments of less than six weeks.

Appendix II

Additional paid holiday entitlement

The calculations used to derive estimates for the increased benefits from additional paid holiday entitlement are detailed below. The analysis has been separated between full-time and part-time temporary agency workers although the method used in each case is the same.

Full-time workers

The first table below shows what proportion of full-time temporary agency workers, split by occupational category, will receive a pay enhancement as a result of the Directive. As in the section on pay, we calculate that 80 per cent (ie those working on assignments of six weeks or more) of the 79 per cent working in workplaces employing more than 25 staff will receive a pay enhancement. The counterpart of this is that 21 per cent do not receive a pay enhancement because they are not covered by a company pay scale or appropriate collective agreement (proxied by those workers working in a workplace with less than 25 employees) along with a further 20 per cent of the 79 per cent who do not receive any pay enhancement because their assignment length is less than six weeks. This second group are assumed to earn according to the current average rate for all agency workers as reported in the table. The first group earn the enhanced pay, the calculation of which was illustrated in the section on pay.

Applying the proportions in the table to the total number of temporary agency workers (600,000) gives the total number of temps affected in each category.

Full-time workers	proportion of all temps	of whom earn average temp pay scale	of whom earn enhanced pay scale	Average temp pay scale	Enhanced pay scale	No. temps earning average	No. temps earning enhanced
	%	%	%	£	£		
Managers, senior officials and professionals	11.1	4.1	7.0	14.44	13.92	24760	41800
Administrative and secretarial	26.7	9.9	16.8	6.79	7.15	59589	100596
Sales and personal services	7.1	2.7	4.5	6.86	6.47	15913	26865
Process, plant and machine operatives and skilled trades	15.8	5.9	9.9	6.70	7.50	35295	59585
Elementary occupations	12.5	4.6	7.8	4.98	5.75	27824	46972

The next table shows the average paid holiday entitlement for permanent and temporary workers (using the assumption that temporary workers already receive the statutory minimum) and the difference between the two. The table also shows the average weekly hours for temps and the derived average daily hours, assuming a five day-week. Using these figures we can calculate the extra hours of paid holiday entitlement which a full-time temp could receive ie number of days holiday difference x average hours a day.

Full-time	Mean days holiday perm	Mean days holiday temp	holiday diff (days)	Mean weekly hours for temps	hours/day temps	holiday difference (hours)
Managers, senior officials and professionals	27	20	7	38.6	7.7	54.1
Administrative and secretarial	24	20	4	38.0	7.6	30.4
Sales and personal services	24	20	4	38.4	7.7	30.7
Process, plant and machine operatives and skilled trades	22	20	2	44.1	8.8	17.6
Elementary occupations	22	20	2	40.5	8.1	16.2

Using the information in the above two tables we can now calculate the total extra holiday pay in each occupational category;

	No. temps earning average	Average temp pay scale	holiday difference	total extra holiday pay	No. temps earning enhanced	enhanced pay scale	holiday difference	total extra holiday pay	all full-time total
		£	(hours)	£ m		£	(hours)	£ m	
Managers, senior officials and professionals	24760	14.44	54.1	19.3	41800	13.83	54.1	31.3	50.6
Administrative and secretarial	59589	6.79	30.4	12.3	100596	7.00	30.4	21.4	33.7
Sales and personal services	15913	6.86	30.7	3.4	26865	6.47	30.7	5.3	8.7
Process, plant and machine operatives and skilled trades	35295	6.70	17.6	4.2	59585	7.34	17.6	7.7	11.9
Elementary occupations	27824	4.98	16.2	2.2	46972	5.58	16.2	4.2	6.5
			total	41.4			total	70.0	111.4

Part-time

We now apply the same method as described above to calculate the extra paid holiday entitlement for part-time temporary agency workers. It has been necessary here to aggregate into only four occupational categories in order to ensure that estimation remains reliable.⁵¹

part time	proportion of all temps	of whom earn old pay scale	of whom earn new pay scale	Average temp pay scale	enhanced pay scale	No. temps earning average	No. temps earning enhanced
	%	%	%	£	£		
Managers, officials, professionals and technical	5.4	2.0	3.4	14.44	13.92	12105	20435
Administrative and secretarial	9.0	3.3	5.6	6.79	7.15	20017	33792
Sales and personal services	6.1	2.3	3.8	6.86	6.47	13679	23093
Process, plant and machine operatives, skilled trades and elementary occupations	6.3	2.3	3.9	5.92	6.86	14016	23662

part time	Mean days holiday perm	Mean days holiday temp	holiday diff	Mean weekly hours for temps	hours/day temps	holiday difference (hours)
Managers, officials, professionals and technical	23	20	3	20.8	4.2	12.5
Administrative and secretarial	20	20	0	22.3	4.5	0.0
Sales and personal services	20	20	0	17.5	3.5	0.0
Process, plant and machine operatives, skilled trades and elementary occupations	21	20	1	21.0	4.2	4.2

⁵¹ In addition, the calculations assume that part-time workers work a five day week. Where part-time workers work fewer days then their holiday entitlement will be correspondingly lower. In the absence of clearer data and because this consideration applies to both permanent and temporary agency workers, it is unclear how this might affect the result.

part time	No. temps earning average	Average temp pay scale	holiday difference	total extra holiday pay		No. temps earning enhanced	enhanced pay scale	holiday difference	total extra holiday pay		all part-time total
		£	(hours)	£ m			£	(hours)	£ m		
Managers, officials, professionals and technical	12105	14.44	12.5	2.2		20435	13.83	12.5	3.5		5.7
Administrative and secretarial	20017	6.79	0.0	0.0		33792	7.00	0.0	0.0		0.0
Sales and personal services	13679	6.86	0.0	0.0		23093	6.47	0.0	0.0		0.0
Process, plant and machine operatives, skilled trades and elementary occupations	14016	6.70	4.2	0.4		23662	6.64	4.2	0.7		1.1
			total	2.6				total	4.2		6.8

The estimated extra paid holiday entitlement, as shown above, is therefore £111.4 million for full-time workers and £6.8 million for part-time workers, a total of £118.2 million.