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Department for  
**Employment  
and Learning**  
[www.delni.gov.uk](http://www.delni.gov.uk)

# Employment Agencies and Businesses: Proposed Changes to Investigation Powers and Penalty Regime - A Consultation

(June 2008)



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# Introduction

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## ***WHAT IS THE PURPOSE OF THIS CONSULTATION DOCUMENT?***

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This consultation document seeks views on proposals to amend employment agency legislation in relation to enforcement. Details of how you can respond with your comments are set out below.

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## ***RESPONDING TO THE CONSULTATION***

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### ***Closing date***

The consultation period will run for 17 weeks. Responses should be with the Department no later than **30 September 2008**.

### ***Contact details***

If you wish to respond to this consultation, please write to us at the address below. You can also fax or e-mail your response.

**Post:** Valerie Reilly  
Employment Rights Policy and Legislation Branch  
Room 203  
39-49 Adelaide Street  
BELFAST  
BT2 8FD

**E-mail:** [employment.rights@delni.gov.uk](mailto:employment.rights@delni.gov.uk)

**Telephone:** 028 902 57560

**Fax:** 028 902 57555

**Textphone:** 028 902 57458

If you have any specific questions about the detail surrounding any of the issues raised in the consultation and impact assessments, please contact:

Andrew Dawson or Julie Ryan at the address above or by telephoning 028 9025 7493.

### ***Consultee information***

A list of those who have received copies of the consultation and those who are being consulted informally is attached at **Annex A**.

If you think that there are any other organisations or individuals who are likely to have an interest in this consultation, please let us know their contact details.

Please indicate in your response whether the views you are expressing are your own individual views or those of the organisation you represent.

### **Alternative formats**

This consultation document and other Departmental publications may be made available in alternative formats upon request.

### **Confidentiality**

The Department will publish a summary of responses following completion of the consultation process. Your response, and all other responses to the consultation, may be disclosed on request. The Department can only refuse to disclose information in exceptional circumstances. Any automatic confidentiality disclaimer generated by your IT system will be taken to apply only to information in your response for which confidentiality has been specifically requested. **Before** you submit your response, please read the paragraphs below on the confidentiality of consultations and they will give you guidance on the legal position about any information given by you in response to this consultation. The Department will handle any personal data you provide appropriately in accordance with the Data Protection Act 1998.

The Freedom of Information Act gives the public a right of access to any information held by a public authority, namely, the Department in this case. This right of access to information includes information provided in response to a consultation. The Department cannot automatically consider as confidential information supplied to it in response to a consultation. However, it does have the responsibility to decide whether any information provided by you in response to this consultation, including information about your identity, should be made public or treated as confidential.

This means that information provided by you in response to the consultation is unlikely to be treated as confidential, except in very particular circumstances. The Lord Chancellor's Code of Practice on the Freedom of Information Act provides that:

- *the Department should only accept information from third parties in confidence if it is necessary to obtain that information in connection with the exercise of any of the Department's functions and it would not otherwise be provided;*
- *the Department should not agree to hold information received from third parties "in confidence" which is not confidential in nature; and*

For further information about confidentiality of responses please contact the Information Commissioner's Office or see the website at

[www.informationcommissioner.gov.uk](http://www.informationcommissioner.gov.uk). For further information about this particular consultation please contact the consulting branch as above.

### *Summary of responses*

Following the close of the consultation, Departmental officials will analyse the responses received and publish its response.

# CONSULTATION DOCUMENT

## *Employment Agencies and Businesses: Proposed Changes to Investigation Powers and Penalty Regime*

# 1. Executive Summary

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## ***FOREWORD***

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- 1.1 The Northern Ireland (NI) recruitment industry is an important feature of the local labour market and over the last ten years has experienced significant growth.
- 1.2 The sector is governed by the Employment (Miscellaneous Provisions) (Northern Ireland) Order 1981 (“the 1981 Order”) and the Conduct of Employment Agencies and Employment Businesses Regulations (Northern Ireland) 2005 (“the Conduct Regulations”). The Department for Employment and Learning (“the Department”) is responsible for maintaining the legislation and ensuring compliance with its requirements. It works closely with other enforcement bodies which operate in the sector, such as the Gangmasters Licensing Authority, which is responsible for regulation of labour providers in the areas of agriculture, horticulture, shell-fishing and food processing.
- 1.3 Following the introduction of new entry and inspection powers in January 2006, the Department initiated a program of routine inspections – 35 of which took place in 2006/07. So far in 2007/08, 53 inspections have taken place. The Department also investigates all complaints regarding alleged breaches of the legislation.
- 1.4 The Employment Agency Standards Inspectorate (EAS), part of the Department for Business, Enterprise and Regulatory Reform (BERR), enforces equivalent legislation in Great Britain (GB). The EAS has operated since 1976 and has significant experience in investigating complaints, including prosecuting those committing serious offences. NI officials regularly liaise with their GB counterparts to share information, experience and best practice. BERR recently consulted on proposals to ensure a more effective enforcement regime by allowing very serious offences to be tried in the Crown Court and to enhance its ability to obtain necessary financial information to prosecute offenders. This Department considers that these measures are also appropriate for NI. Due to this Department’s more limited experience of inspecting employment agencies and businesses here in NI, the reasoning behind the proposals in this consultation, and the examples given, are largely based upon the experience of the EAS in GB.
- 1.5 However we consider that as the Department develops its enforcement role, there will be a need to possess the powers outlined in this part of the consultation. Essentially, the Department wishes to ensure that the NI legislative framework provides an effective and fit-for-purpose enforcement regime that is capable of deterring or prosecuting those who are determined to abuse the industry’s users and undermine the vast majority of legitimate businesses that operate in the sector.

- 1.6 In considering these proposals, the Department is particularly keen to hear the views of all those affected by the recruitment sector, especially individual hirers, work-seekers and recruitment agencies, as well as those that represent their interests.

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### ***EMPLOYMENT AGENCY / BUSINESS ENFORCEMENT REGIME***

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- 1.7 At present, under Article 6(3) of the 1981 Order, any breach of the Conduct Regulations governing employment agencies is a criminal offence, summarily triable in a Magistrates' Court. The EAS's experience has been that, while the present approach has proved effective for the great majority of agencies that wish to comply, it has not proved effective for those (relatively few) who seek to avoid their legal responsibilities. In particular there are difficulties relating to the limitations of prosecuting for summary offences, both in terms of adequacy of penalties and the relative lack of investigative and prosecution powers where criminal offences are summary only. In the short space of time that this Department has had powers of inspection, the majority of breaches have been minor, therefore we have not had any reason to bring any agency before the Magistrates' Court. As the Department develops its enforcement role, we estimate that we will take up to 5 prosecutions in the Magistrates' Court per year.
- 1.8 The most significant problem in terms of adequacy of penalties occurs where an individual who has been prohibited from running an agency (because of their unsuitability on account of misconduct) ignores the ban. The maximum penalty for breach of a prohibition order is a fine of £5,000. This may not be an effective deterrent where the agency is highly profitable.
- 1.9 When investigating serious complaints, the Department needs to find out what payments have been made to rogue agencies that have been seeking illegal payments (or otherwise breaching the Conduct Regulations to their financial advantage) to identify the scale of the problem. At present the Department does not have the power to obtain "production orders" to get financial information from third parties where agencies are suspected of obtaining money unlawfully. In addition, there is no scope for the Department to prosecute those "attempting" to commit offences, which means we must rely on witnesses, some of whom may fear they may not get future work from agencies if they give evidence.
- 1.10 We are, therefore, considering amending the 1981 Order so that these offences can be either indictable (i.e. tried in the Crown Court) or summary (i.e. tried in a Magistrates' Court).
- 1.11 This consultation seeks views on whether the offences should be capable of being tried in the Crown Court as part of ensuring an effective enforcement regime, and whether the Department should be



given clearer investigative powers in order to obtain financial information regarding those suspected of offences under the 1981 Order. These changes should not add burdens to legitimate agencies since they are targeted at the small number of rogue agencies who seek to mistreat workers and ignore their legal obligations. By making it more difficult for rogue agencies to cut corners at the expense of the reputable side of the industry, these changes should in fact benefit most agencies.

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### ***WHO IS BEING CONSULTED?***

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- 1.12 Views on these proposals are being sought from individuals, businesses, trade unions, representative bodies and other interested parties.

## 2. Employment Agency / Business Penalties

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### *INTRODUCTION*

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- 2.1 The great majority of employment agencies are reputable and seek to comply with the relevant legislation. However these consultation proposals seek to address the non-compliant minority that do not. It should have no detrimental implications for reputable agencies, and indeed should benefit them by improving enforcement against rogue agencies who seek to illegally undercut them.
- 2.2 The Department is fully committed to providing effective legislation and enforcement to protect those using the services provided by the recruitment sector and to put an end to abuses by rogue agencies. The Conduct Regulations are enforced by the Department and all complaints alleging breaches of the legislation are investigated. In 2006, the Department began a programme of routine inspections with a view to raising awareness of statutory requirements and assisting legitimate business to comply with the law. Once the initial awareness phase is complete, the Department currently intends to place greater focus on a risk-based approach to enforcement, targeting sectors where workers / hirers may be more vulnerable to abuse.
- 2.3 It is important that the enforcement powers available to the Department are effective from the outset since we need firm mechanisms to deal with any disreputable agencies who mistreat workers or seek to deprive them of their rights. Prosecution is therefore reserved for the most serious cases where the agency is not prepared or willing to comply with the relevant legislation or where the offence is so serious that prosecution is warranted. It has become clear in GB that the penalties currently available have not proven adequate to achieve effective enforcement, and in the Department's more limited experience that may also be true in NI. While any breach of the Conduct Regulations is a criminal offence, all criminal offences under the 1981 Order are summary offences (i.e. tried in a Magistrates' Court) which hold a maximum fine not exceeding level 5 on the standard scale (currently £5,000).
- 2.4 In GB, the EAS has found it difficult to prosecute the small minority of determinedly non-compliant agencies who seek to exploit every possible loophole. Key difficulties relate to the limitations of prosecuting for summary offences, both in terms of adequacy of penalties and the relative lack of investigative and prosecution powers where criminal offences are summary only.

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## ***INADEQUACY OF PENALTIES***

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- 2.5 This problem is most acute in terms of the penalty for contravening a prohibition order, i.e. when an individual who has been prohibited from running an agency ignores the ban and carries on in business. While the Department has powers to seek the prohibition of unsuitable individuals from running an agency for up to 10 years, the maximum sentence for breaching a prohibition order is a level 5 fine (i.e. a maximum of £5,000). This may not be an effective deterrent where the agency is generating a lot of money.
- 2.6 While in some circumstances, it will be possible for the EAS or the Department to obtain a confiscation order under the Proceeds of Crime Act 2002, which could make the effective financial penalty much greater and therefore more effective, this will not always be the case. In order to be able to seek an order under the Proceeds of Crime Act, there must be proof of one or more of the following: that the agency has committed 4 or more offences; the agency or principal offender has previous “qualifying offences”, one of which was for a period in excess of 6 months; or the net value of the proceeds from the offence must be in excess of £5,000. At present no offence under the 1981 Order or the Conduct Regulations is a qualifying offence. In addition, such an order would only be made where it could be shown that the defendant had identifiable assets. This inevitably involves a lengthy investigation into personal means and requires the case to be committed to the Crown Court as there is currently no power to deal with it in the Magistrates' Courts. An order under the Proceeds of Crime Act, while a valuable tool in terms of penalties (it was used in the EAS's most recent prosecution), cannot therefore be considered a substitute for an adequate penalty for the most serious breaches of the 1981 Order or the Conduct Regulations.

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## ***LACK OF INVESTIGATIVE POWERS***

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- 2.7 Article 7B(1) of the 1981 Order already gives the Department the right to enter any relevant business premises, to inspect any records or documents kept in pursuance of employment agency legislation and to remove those records from the premises and copy any material part of them. Even with these powers, it is possible for an agency to obstruct the Department's inspectors. While it is a criminal offence to obstruct the Department in the course of its duties, and the vast majority of agencies readily co-operate with the Department, seeking a prosecution for obstruction is of itself a time-consuming and labour intensive process.
- 2.8 In an investigation, where it appears agency workers may have been denied money that is owed to them, it is crucial for the Department to discover what payments have been made to an agency to identify what monies have been received and the identities of those making the payments. In a number of cases in GB, the EAS has received

complaints from one or two workers who may have lost money as a result of bad practices of rogue agencies (such as agencies making illegal charges for work-finding services or not paying workers money that they have earned). But there may be a substantial number of other workers who have been similarly mistreated by that agency but who (for a variety of reasons) have not complained. Unless the Department can examine the agency's financial records, it is not possible to determine in such cases whether this is a generally compliant agency that has made a few mistakes or a rogue operation systematically cheating agency workers out of their money. The Department's policy is to concentrate enforcement resources on the latter type of activity.

- 2.9 At present the Department does not have clearly defined powers to examine an agency's financial records. Therefore, the Department cannot obtain financial information from third parties such as banks or other financial institutions regarding agencies suspected of obtaining money unlawfully.

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### ***LACK OF PROSECUTION POWERS***

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- 2.10 As offences under employment agency legislation are summary offences, the Department must have evidence that an actual offence has taken place before charges can be brought – there is no scope to prosecute for “attempting” to commit offences under the legislation (e.g. attempting to obtain money for work-finding services). In effect this means that the Department needs to identify witnesses to come forward to give evidence that the offence was committed. In the main, such witnesses will be agency workers who have been victims of these offences. Getting such victims prepared to stand up in court and give evidence against an agency that has refused to correct their illegal practices has proved to be a problem on a number of occasions. In addition, some potential witnesses may fear intimidation or that they will be seen as potential trouble-makers and not get future work. In GB, there have been cases where the EAS has evidence that the agency concerned has mistreated a number of workers and that such mistreatment warrants prosecution, but where there is a lack of witnesses prepared to come forward a prosecution cannot be brought.

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### ***PROPOSED SOLUTION***

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- 2.11 The Department is proposing that offences under the 1981 Order and the Conduct Regulations should be triable either as summary offences in a Magistrates' Court or as indictable offences in the Crown Court. The penalties and powers of prosecution would depend on which court the case came before.
- 2.12 Making the criminal offences capable of being indictable would have benefits in terms of penalties. While we would not expect any but the

most serious cases to warrant treatment as an indictable offence in the Crown Court, these are the very offences where the current £5,000 limit on fines appears potentially most inappropriate. The usual practice in the case of indictable offences is that the maximum fine level should be unlimited on indictment rather than setting any particular amount. This would enable a court to set a fine level on conviction appropriate to the circumstances of each case and would have the added advantage that inflation cannot erode the relative amount of a maximum fine set down in legislation.

- 2.13 There would also be advantages in terms of investigative and prosecution powers. Making the offences triable either in a Magistrates' Court or in the Crown Court would enable the Department to:
- (a) take documents away for specified periods of time;
  - (b) prosecute individuals where there is evidence they have "attempted" to commit offences under the 1981 Order (e.g. attempting to obtain money for job finding services) without necessarily having to rely on witnesses being prepared to appear in court.
- 2.14 Based on current experience, it is anticipated that the Department would need to seek to try only one or two cases in the Crown Court each year. We do not anticipate that taking these additional powers would have any impact upon law-abiding agencies or indeed upon those agencies who swiftly put right any small and/or inadvertent breaches of the law when these are brought to their attention. Indeed, we would anticipate that such new powers would benefit the law-abiding agencies by making the Department better equipped to deal with those who deliberately break the law and provide unfair competition to other agencies as well as mistreating workers.
- 2.15 Making the offences triable either by Magistrates' Court or Crown Court would not of itself give the Department clear and specific powers to obtain production orders for documents, e.g. bank statements and other financial records.
- 2.16 However, the Department is aware of a number of cases in GB where rogue agencies have sought to use the physical absence of normal financial records as a mechanism to block the investigations of the EAS e.g., where the EAS has evidence that workers have been deprived of money owed to them and has reason to believe other workers may also have been cheated and wishes to check the extent of the wrong-doing. To ensure that rogue agencies can no longer evade investigations in this way, the Department also proposes to amend Article 7B of the 1981 Order to clarify powers available to the Department to be able to demand and secure copies of financial information from an agency or an individual directly or from third parties such as banks or financial authorities.

2.17 To ensure this power is used appropriately, limits would be placed on the circumstances in which it could be used to enable a proper balance to be achieved between the needs of the Department to establish the amount of money received from unlawful practices and the needs for confidentiality and privacy of information. We consider that such a power should only be available where the agency is suspected of serious offences under the legislation and is asked for, but does not provide, the necessary financial information. The Department considers that the use of this power should only be authorised by a senior officer of the Department (at least Director level).

## 3. Questions

**Q1** – Do you consider that prosecutions under employment agency legislation should be capable of being tried in the Crown Court in the most serious cases?

RESPONSE

**Q2** – Do you agree that the maximum penalty for such serious offences should be an unlimited fine?

RESPONSE

**Q3** – Do you consider that enabling such prosecutions to be tried in the Crown Court would have any implications for reputable agencies, and if so, what do you consider these implications would be?

RESPONSE

**Q4** – Do you agree the Department should have powers to seek financial information from third parties such as banks and / or financial authorities where an agency or individual is suspected of a serious offence under the 1981 Order?

RESPONSE

**Q5** – Do you consider that the level of authorising officer (Director) for the use of this power is appropriate?

RESPONSE

**Q6** – What, if any, implications do you consider the proposals would have for reputable agencies?

RESPONSE

**Q7** – Do you agree with the assessment of the costs and benefits made in the partial Regulatory Impact Assessment (see Part 4)? If not, please specify your reasons and provide additional information to assist the assessment.

RESPONSE

**Q8** – Do you agree with the outcome of the Department’s preliminary Equality Impact Assessment (see Part 4)? If not, please specify your reasons and provide additional information to assist the assessment.

RESPONSE

**Q9** – Do you agree with the outcome of the Department’s Human Rights Impact Assessment (see Part 4)? If not, please specify your reasons and provide additional information to assist the assessment.

RESPONSE



# 4. Impact Assessments

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## ***PARTIAL REGULATORY IMPACT ASSESSMENT***

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### ***Policy Objectives***

- 4.1 The Department for Employment and Learning (“the Department”) is proposing measures to enhance the enforcement of the Employment (Miscellaneous Provisions) (NI) Order 1981 (“the 1981 Order”) and Conduct of Employment Agencies and Employment Businesses Regulations (NI) 2005 (“the Conduct Regulations”).

### ***Background***

- 4.2 The Conduct Regulations, which came into operation in September 2005, are enforced by the Department. The Department follows up every relevant complaint it receives which indicates a possible breach of the legislation, and will undertake spot checks on the basis of risk.
- 4.3 Powers of inspection were introduced in NI in January 2006. Since then approximately 70 inspections of employment agencies and businesses have been carried out.
- 4.4 The Employment Agency Inspectorate (EAS), part of the Department for Business, Enterprise and Regulatory Reform (BERR), enforces equivalent legislation in GB. The EAS has been in operation since 1976 and has a vast amount of experience in investigating complaints and, in some instances, prosecuting those agencies who severely breach the legislation.
- 4.5 Due to the Department’s relatively limited experience in inspecting employment agencies and businesses, the reasoning behind the proposals, and the examples given, are largely based upon the experience of the EAS in GB.

### ***Prosecution***

- 4.6 While the Department will seek in the first instance to achieve compliance through advice and persuasion, it can take prosecution action, where appropriate, in a Magistrates’ Court against an agency found to be in breach of the legislation. If the prosecution is successful, the agency may be fined up to £5,000 for each offence. In the most serious cases, the Department can also apply to an Industrial Tribunal for a prohibition order to prevent persons, who are considered to be unsuitable, from operating an agency for up to 10 years.

- 4.7 While any breach of the regulations governing employment agencies is a criminal offence, these are tried summarily (in a Magistrates' Court). In GB the EAS experience has been that it has proved difficult to prosecute the small minority of determinedly non compliant agencies who seek to exploit every possible loophole. Some of the difficulties relate to the limitations of prosecuting for summary offences, both in terms of adequacy of penalties and the relative lack of investigative and prosecution powers where criminal offences are summary only.
- 4.8 This problem is most acute in terms of the penalty for contravening a prohibition order, i.e. when an individual who has been prohibited from running an agency ignores the ban and carries on in business, thus rendering the prohibition ineffectual. The maximum sentence for breaching a prohibition order is a level 5 fine (i.e. a maximum of £5,000). This may not be an effective deterrent where the agency is generating a lot of money.
- 4.9 Article 7B(1) of the 1981 Order already gives the Department the right to enter any relevant business premises, to inspect any records or documents kept in pursuance of employment agency legislation and to remove those records from the premises and copy any material part of them. Even with these powers, it is possible for an agency to obstruct the Department's inspectors. While it is a criminal offence to obstruct the Department in the course of its duties, and the vast majority of agencies readily co-operate with the Department, seeking a prosecution for obstruction is of itself a time-consuming and labour intensive process.
- 4.10 As offences under employment agency legislation are summary offences, an actual offence has to take place before charges can be made. In effect this means that the Department needs to identify witnesses to come forward to give evidence that the offence was committed. In the main, such witnesses will be agency workers who have been victims of these offences. In GB the EAS has found it difficult to persuade those workers to stand up in court and give evidence against an agency that has refused the EAS inspectorate's requests to correct their illegal practices. There is a fear that such individuals will be seen as potential trouble-makers and not get future work from other agencies. In addition, some potential witnesses may fear intimidation where highly disreputable agencies are involved.
- 4.11 In an investigation where it appears workers may have been denied money that is owed to them, it is crucial for the Department to discover what payments have been made to an agency; to identify what monies have been received; and the identities of those making payment. In a number of cases in GB, the EAS has received complaints from one or two workers who may have lost money as a result of bad practices of rogue agencies. There may be a substantial number of other workers who have been similarly mistreated by an agency but who (for a variety of reasons) have not complained. Unless the Department can examine

the agency's financial records (at present the Department do not have specific powers to do so), it is not possible to determine in such cases whether this is a generally compliant agency or a rogue operation systematically cheating agency workers out of their money. The Department's policy is to concentrate enforcement resources on the latter type of agency.

### *Rationale for Intervention*

- 4.12 In the absence of the Department intervening, there may be continued abuses of agency workers and hirers by rogue agencies who are not prepared to put right their procedures when problems are brought to their attention.

### *Consultation*

- 4.13 The Department is now undertaking a 17-week public consultation on this proposed approach.

### *Options*

- 4.14 **Option 1: Do nothing.**
- Option 2: Make offences under the 1981 Order and the Conduct Regulations triable either as summary offences in a Magistrates' Court or as indictable offences in the Crown Court. The penalties and powers of prosecution would depend on which court the case came before.**
- Option 3: As Option 2, plus amend Article 7 of the 1981 Order to clarify powers available to the Department to be able to demand and secure copies of financial information from an agency or an individual directly or from their bank or building society.**
- 4.15 Under **Option 2**, making the offences triable either in a Magistrates' Court or the Crown Court would enable the Department to take documents away for specified periods of time, and also to prosecute individuals for "attempting" to commit the various offences under the 1981 Order (e.g. attempting to obtain money for work-finding services) without having to rely on witnesses being prepared to appear in court.
- 4.16 To ensure the power available under **Option 3** is used appropriately, limits would be placed on the circumstances in which it could be used to enable a proper balance to be achieved between the needs of the Department to establish the amount of money received from unlawful practices and the needs for confidentiality and privacy of information. It is considered that such a power should only be available where the agency is suspected of serious offences under the legislation and is asked for, but does not provide, the necessary financial information.

The Department considers that the use of this power should only be authorised by a senior officer of the Department (at least Director level).

## **Costs and Benefits**

### **Sectors and groups affected**

- 4.17 Obtaining an accurate picture of the numbers of agency workers in the labour market has always proven difficult. The Office of National Statistics (ONS) Labour Force Survey reports a UK-wide figure of nearly 260,000 agency workers in the fourth quarter of 2006. However, this is likely to underestimate the numbers of agency workers, partly because of definitional problems<sup>1</sup>. In NI, the Department of Enterprise, Trade and Investment Census of Employment in September 2005<sup>2</sup> listed 15,445 persons as being employed under the heading of “Labour recruitment and retention of personnel”. However, this definition includes all agency workers and employees of the agencies themselves, and no statistical information is collected to distinguish between these two types of employees. The leading industry organisation, the Recruitment Employment Confederation (REC) suggests there are over a million agency workers in the UK, but the REC survey has a fairly low response. In addition, the situation is further confused by the fact that many agency workers may have more than one job and work with more than one agency, so double counting is frequent.
- 4.18 In order to get more reliable figures, the Department for Business, Enterprise and Regulatory Reform<sup>3</sup> (“BERR”) in GB commissioned a survey of agencies during 1999. Based on this data it estimated the number of agency workers at 550,000. Updating this figure for the growth in agency workers stated by the LFS since then would imply a figure of 560,000 in 2006. The BERR survey found there were around 10,000 agencies in 1999. This figure is likely to have grown since then: the ONS Annual Business Inquiry indicates there were around 17,000 enterprises involved in labour recruitment and provision in 2005, with a turnover of £27bn. The BERR survey found that most agencies have less than 10 employees. Some 37% of those directly employed work in single site establishments. Agencies with over 100 direct employees account for approximately 15% of the industry.

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<sup>1</sup> The LFS asks respondents whether their work is not permanent in some way and if so whether they are in seasonal work, working on a contract for a fixed period or on a fixed task, doing agency work, casual work, or not permanent in some other way. Some workers who are supplied by employment agencies will be classed as fixed-term workers or self-employed rather than as agency workers. The LFS will also miss those temps who are supplied by agencies but paid by the user and also those individuals who self-assess as employees of a user enterprise when they are in fact agency workers.

<sup>2</sup> The Census of Employment is carried out every two years. Whilst the last survey took place in September 2007, no updated statistics have been published as yet.

<sup>3</sup> Formerly the Department of Trade and Industry.

- 4.19 Even when an allowance is made for the difference in scale of the two economies, the recruitment industry in NI appears to be much smaller than that in GB. There is a difference in the size of firms in NI compared to GB with NI firms generally being smaller. Therefore, as the use of temporary workers is shown to be related to establishment size there would seem to be less demand for these types of workers amongst NI firms as a whole.
- 4.20 NI firms generally see lower staff turnover and it is probable this creates some bias towards permanent recruitment in contrast to businesses in GB that experience higher staff turnover. Another significant factor may be NI fair employment legislation which requires employers to comply with certain open recruitment standards.
- 4.21 In NI, information available to the Department indicates there are in excess of 300 employment agencies/businesses, although the actual figure may be significantly higher as, like in the rest of the UK, there is no licensing or registration system.
- 4.22 The proposals in this RIA are mainly targeted at agencies which do not comply with the Conduct Regulations. We do not anticipate that taking these additional powers would have any impact upon law-abiding agencies or indeed upon those agencies who swiftly put right any small and/or inadvertent breaches of the law when these are brought to their attention.
- 4.23 While more effective enforcement could feasibly raise the number of successful prosecutions, the number of cases considered for prosecution would still be expected to be very low in comparison to the total number of agencies.

#### *Analysis of benefits*

- 4.24 The purpose of the proposals is to tighten the enforcement and compliance of the Conduct Regulations. If these were to be effective, and potentially rogue agencies were to face a greater chance of being prosecuted effectively, and receive higher fines from being found guilty, then this should lead to benefits to agency workers in terms of facing fewer practices that contravene the Conduct Regulations. Although we anticipate only a small number of prosecutions each year, the improved deterrent effect could lead to a larger number of agencies complying with the Conduct Regulations. It may also benefit the vast majority of agencies that abide by the Conduct Regulations, as they will not face unfair competition from those breaking the law.
- 4.25 It is not possible to quantify these benefits at this stage. Responses to the consultation may help establish the size of the benefits more accurately.

### *Analysis of costs*

- 4.26 Under the proposals non-compliant firms facing prosecution may face higher costs, owing to the greater costs involved in Crown Court cases than Magistrates' Court cases. However, these costs are avoidable if firms comply with their legal obligations and are therefore not regulatory costs.
- 4.27 The Department may face higher costs as a result of some prosecutions taking place in the Crown Court. It is anticipated that no more than 1-2 Crown Court cases per year will be taken at an estimated cost of £20,000.
- 4.28 **Option 3** may in principle affect a larger number of agencies than just those who are prosecuted by the Department. But it is considered that any costs are avoidable as such a power should only be available where a serious offence is suspected and where the agency has already been asked but has refused to provide the necessary information. On the basis of current experience and practice, this might occur in perhaps 1-2 occasions per year. For these firms, the costs of inspection may be higher if they were required to provide information to the Department. These costs are likely to be low, although exact quantification is not possible at this stage. The overwhelming majority of agencies would, however, be unaffected. Responses to the consultation should provide the basis for a more accurate assessment.

### *Small Firms Impact Test*

- 4.29 The measures discussed above are likely to have a greater impact on smaller firms, as these dominate the agency sector. However, the highly targeted nature of the proposals means the impact on small agency firms in general will be minimal.

### *Competition assessment*

- 4.30 To the extent that these measures require a small minority of agencies to reach the same standards of performance as the majority, this could lead to competition benefits in the sense that a more level playing field is created. The Department will liaise with GB counterparts to ascertain any potential competition issues.

### *Enforcement and Monitoring*

- 4.31 Enforcement of these provisions will be the responsibility of the Department's Employment Relations Policy and Legislation Branch. The effectiveness of the measures will be monitored by the Department.
- 4.32 You can comment on the content of the partial Regulatory Impact Assessment in section 3 of this document.

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## ***PRELIMINARY EQUALITY IMPACT ASSESSMENT***

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- 4.33 The Department has agreed with the Equality Commission that it will carry out a preliminary Equality Impact Assessment (EQIA) on all policy proposals with a view to determining whether a full EQIA is necessary. The Department carried out a preliminary EQIA on these proposals. The overall aim of these proposals is to provide additional protections for vulnerable workers, including migrant workers. The preliminary EQIA did not identify any negative differential impact on Section 75 groups, and therefore a full EQIA is not considered necessary at present.
- 4.34 Should respondents disagree with the findings of the preliminary EQIA, this should be drawn to the attention of the Department in your consultation response. It would also be helpful if you could specify your reasons for your disagreement and provide additional information to assist the assessment.
- 4.35 The Department will revisit the need for a full EQIA after the consultation closes. Should you wish to obtain a copy of the preliminary EQIA, please contact the Department (contact details on page 2) in the first instance.
- 4.36 You can comment on the outcome of the preliminary Equality Impact Assessment in section 3 of this document.

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## ***HUMAN RIGHTS IMPACT ASSESSMENT***

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- 4.37 The Department has carried out an assessment of the human rights implications of these proposals and has concluded there is no interference or limitation on Convention rights.
- 4.38 You can comment on the outcome of the Department's human rights assessment in section 3 of this document.



## 5. Annex – List of Consultees

All NI MLAs	All NI Political Parties
Community Relations Council	Participation & Practice of Rights Project
Confederation of British Industry	Federation of Small Businesses
Executive Council of the Inn of Court of NI	Belfast Solicitors Association
Human Rights Commission	Equality Commission for NI
Institute of Professional Legal Studies, QUB	Law Centre (NI)
Law Society of NI	School of Law, QUB
Ministry of Defence	HMRC
NI Chamber of Commerce and Industry	NI Association of Citizens Advice Bureaux
NI Chamber of Trade	Food Standards Agency
NI Council for Voluntary Action	NIC.ICTU
NI Judicial Appointments Commission	Catholic Bishops of Ireland
NI Law Commission	NI Resident Magistrates' Association
NI Local Government Association	Society of Local Authority Chief Executives
NI Ombudsman	General Consumer Council for NI
Northern Ireland Bankers' Association	South Tyrone Empowerment Programme – Migrant Workers Unit
Northern Ireland Court Service	Lord Chief Justice's Office
Recruitment and Employment Confederation	Gangmasters Licensing Authority
School of Law, UUU	Laganside Courts
Northern Ireland Office	



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