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Department for  
**Employment  
and Learning**  
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# An Amendment to The Conduct of Employment Agencies and Employment Businesses Regulations (Northern Ireland) 2005 - and a Partial Regulatory Impact Assessment - A Public Consultation 2009



July 2009

# An Amendment to The Conduct of Employment Agencies and Employment Businesses Regulations (Northern Ireland) 2005 - A Public Consultation 2009

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# INTRODUCTION

Northern Ireland is the only region of the United Kingdom where employment law is a devolved matter. The Department for Employment and Learning (*'the Department'*) is responsible for developing and maintaining an effective body of employment legislation and is responsible for policy, legislation and enforcement regulating the private recruitment sector in Northern Ireland under The Employment (Miscellaneous Provisions) (Northern Ireland) Order 1981<sup>1</sup> ("the 1981 Order") and the Conduct of Employment Agencies and Employment Businesses Regulations (Northern Ireland) 2005<sup>2</sup> (*'the Conduct Regulations'*).

In recent years the Department has been very active in developing its role in this area.

## *These developments have included:-*

- *the making of Regulations in 2005 to regulate the conduct of Employment Agencies and Employment Businesses in Northern Ireland;*
- *an amendment to primary legislation in 2005 which granted the Department powers to enter and inspect Employment Agencies and Employment Businesses to ensure compliance with the Regulations;*
- *the commencement of routine inspections in 2006;*
- *the making of amending Regulations to provide additional protections for vulnerable work-seekers; and*
- *the drafting of proposals to provide the Department with enhanced powers of investigation and enforcement which will shortly be introduced in the Assembly as part of the Employment Bill.*

As the Department's profile in the area of private recruitment sector regulation has increased, our experience has highlighted a number of issues in the current legislation which we believe require to be amended.

This consultation focuses on a package of proposed amendments to the Conduct Regulations and will address three areas of interest to three different audiences:-

- **Firstly:** to introduce greater clarity and lines of responsibility between Employment Agencies and Employment Businesses that use the

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<sup>1</sup> The Employment (Miscellaneous Provisions) (Northern Ireland) Order 1981 No. 839 (N.I. 20).

<sup>2</sup> The Conduct of Employment Agencies and Employment Businesses (Amendment) Regulations (Northern Ireland) 2005 SR No. 395.

Regulations (*particularly in respect of suitability checks for workers introduced for permanent recruitment*). This offers the potential to further reduce regulatory and administrative burdens on the recruitment industry sector to allow it to continue to grow and innovate without compromising appropriate protections for workers, employers and vulnerable groups.

- **Secondly:** to take practical steps to tackle the bad practices of some rogue agencies in the Modelling and Entertainment sector where, despite cooling off measures introduced last year in respect of upfront fees, abuse continues. To achieve this it is hoped to introduce a ban on the practice of taking upfront fees or to tighten the existing Regulations to address particular areas of concern.
- **Thirdly:** this consultation also offers the opportunity for the Department to restore the Post Graduate Medical Deanery in Northern Ireland (*The Northern Ireland Medical and Dental Training Agency*) to its previous position as a body exempt from Employment Agency legislation. This is the Northern Ireland body which is responsible for the recruitment and training programme for junior doctors and junior dentists to National Health Service employers.

The consultation also invites views on a number of additional areas that have been identified in the Conduct Regulations that it is thought offer scope for reducing the administrative burdens on Employment Agencies and Employment Businesses or where it is considered that measures may be necessary to offer greater protection for vulnerable agency workers. In consulting on these issues the Department is keen to hear the views of those affected.

*The Department wants to look in particular at the following key areas.*

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## **SUITABILITY CHECKS FOR PERMANENT RECRUITMENT**

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The Department wants to explore how we can encourage innovation and the development of new services with the potential to make the recruitment process more open and more efficient and reduce burdens on businesses whilst at the same time ensuring that essential protections remain in place for workers, employers and vulnerable groups.

In particular the Department wants to focus on how we can introduce greater clarity and eliminate unnecessary duplication in respect of suitability checks for workers introduced for permanent employment. The Department's view is that one area where we can achieve this is to **remove** the requirement for Employment Agencies which introduce workers for permanent employment to undertake suitability checks including those for: identity, experience, training, qualifications and any authorisations required by law.

This is because the burden for undertaking suitability checks in the vast majority of cases also rests with the hirer, as once a worker has been introduced for permanent employment the hirer is required by law to undertake suitability checks. Therefore even if we remove the requirement for Employment Agencies, essential protections for workers, employers and vulnerable groups would still remain.

**The requirement for Employment Businesses to undertake suitability checks for workers introduced for temporary work would remain unchanged.**

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## ***UPFRONT FEES CHARGED BY MODELLING AND ENTERTAINMENT AGENCIES***

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The Department wants to look again at the circumstances in which under the Conduct Regulations, Modelling and Entertainment Agencies are able to charge upfront fees. Our concern is that despite the introduction of a 7 day cooling off period in April 2008 there remains potential for significant abuse of the upfront fees provision in this sector.

*The Department would welcome views on two potential options for addressing this by:-*

- Option 1. banning the practice of taking upfront fees; or*
- Option 2. tightening the Conduct Regulations to address particular concerns that we are aware of (e.g. the taking of post-dated cheques or credit or debit card impressions, provisions for refunds if no publication is produced or circulated and the charging of 'assessment fees').*

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## ***OTHER AREAS***

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The Department would also welcome views on some additional areas in the Conduct Regulations that may offer scope for reducing the administrative burdens on Employment Agencies and Employment Businesses or where we consider measures may be necessary to offer greater protections for vulnerable agency workers.

Finally the Department is proposing to restore the position of the Post Graduate Medical Deanery (*NIMDTA*) to its previous position as a body exempt from Employment Agency legislation. This is the body responsible in Northern Ireland for the recruitment and training programme for junior doctors and junior dentists to National Health Service employers.

*The closing date for responses to this consultation will be:- 28 September 2009.*

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## **THE RECRUITMENT SECTOR**

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*The industry consists of approximately 16,000 agencies across the United Kingdom. The Department estimates there are approximately 300 Employment Agencies and Employment Businesses in Northern Ireland. The latest UK data for 2007/2008 shows the recruitment industry had a total turnover of £27 billion. Of this £4.3 billion was generated by permanent recruitment and £22.7 billion by temporary recruitment.*

*The industry across the UK employs over 100,000 people and has helped over 725,000 people to find permanent work and assisted in filling 1,220,000 temporary vacancies.*

*The most prominent sectors for which agencies supply workers are:*

*manufacturing;*

*transport; and*

*financial services.*

*According to recent Recruitment and Employment Confederation (REC) research, agency workers provide businesses with:*

- a flexible buffer that can be adjusted rapidly in the face of uncertain or fluctuating demand;*
- a replacement for workers on leave or to provide cover while firms attempt to recruit permanent workers;*
- a system which allow firms to 'try-out' potential permanent recruits at little or no risk; and*
- staff for short-term ad hoc tasks.*

*The e-recruitment market in the UK was worth approximately £0.5 billion in 2007 and has been growing at around 25% a year. The importance of this sub-sector is likely to continue to grow and take a larger share of the recruitment market.*

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## **FOR INFORMATION: DEFINITIONS OF AN EMPLOYMENT AGENCY AND AN EMPLOYMENT BUSINESS**

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### *Definitions of an Employment Agency and an Employment Business*

**There is often confusion about the differences between an Employment Agency and an Employment Business.**

**To clarify:-**

An **Employment Agency** introduces workers to hirers for **permanent** employment. The worker subsequently becomes the employee of the hirer and has no further contractual relationship with the Employment Agency. Work-seekers looking for **permanent** employment would therefore use the services of an Employment Agency.

An **Employment Business** introduces workers to hirers for **temporary** work only. The Employment Business (*also known as a 'Temp Agency'*) will place a worker with a hirer to work. The worker's contractual relationship is with the Employment Business and it is the Employment Business that is responsible for paying the worker and managing annual leave etc. These workers are often known as agency workers:- hence the confusion over the terms an Employment Agency and an Employment Business.

**Recruitment companies that do both** - some recruitment businesses offer both **temporary** and **permanent** vacancies. A work-seeker's relationship with this type of recruiter depends on the nature of the vacancy they are applying for.

For example if a work-seeker is looking for a job on an online jobs board<sup>(1)</sup> and applies for a **permanent** vacancy the recruiter must act as an Employment Agency in their dealings with the work-seeker. If the work-seeker was using the same recruiter and applied for a **temporary** job then that recruiter's relationship with the work-seeker is as an Employment Business and it must act accordingly.

<sup>(1)</sup> *An online jobs board is an Internet site where job vacancies are posted (vacancies could be **permanent** or **temporary**).*

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## **EUROPEAN AGENCY WORKERS DIRECTIVE**

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This consultation does not cover the implementation in Northern Ireland of the European Union Agency Workers Directive which was agreed last year. There will be a further detailed consultation on the Directive and it is intended to legislate to implement the Directive in the current Northern Ireland Assembly session. The Department will attempt to avoid unnecessary burdens and costs for business while ensuring agency workers receive the appropriate levels of protections. A separate consultation on this will be launched later in 2009.

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## ***HOW TO RESPOND TO THIS CONSULTATION***

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### ***Closing date***

The consultation period will run for 12 weeks. Responses should be with the Department for Employment and Learning no later than:-  
***28 September 2009.***

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## ***CONTACT DETAILS***

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***If you wish to respond to this consultation please write to the address below.***

***You can also fax or e-mail your response to:-***

***Valerie Reilly  
Department for Employment and Learning  
Employment Relations Policy and Legislation Branch  
Room 203  
Adelaide House  
39-49 Adelaide Street  
BELFAST  
BT2 8FD***

***E-mail:           employment.rights@delni.gov.uk***

***Telephone:   028 9025 7493***

***Fax:               028 9025 7555***

If you have any specific questions about the detail surrounding any of the issues raised in the consultation or the Partial Regulatory Impact Assessment please contact: Andrew Dawson or Kevin Myles at the address above or telephone: 028 9025 7493.

Please state whether you are responding as an individual or whether you are representing the views of an organisation. If you are responding on behalf of a company or an organisation please clarify who the organisation represents and where applicable how the views of the members were collected.

### ***Additional copies***

You may make copies of this document without seeking permission. Further printed copies can be obtained from the address above. Additional copies can be downloaded at:- <http://www.delni.gov.uk/index/consultation-zone.htm>

### ***Confidentiality***

Your response may be made public by the Department for Employment and Learning. If you do not want all, or part of, your response or your name to be made public please state this clearly in the response. Any confidentiality disclaimer that may be generated by your organisation's IT system or included as a general statement in your fax coversheet will be taken to apply only to the information in your response for which confidentiality has been requested.

***The Department will handle any personal data you provide appropriately in accordance with the Data Protection Act 1998.***

**Help with queries - questions about any policy issues raised in this document or any comments or complaints about the way in which this consultation has been conducted should be forwarded to the address given.**

# THE PROPOSALS

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## **CLARIFYING LINES OF RESPONSIBILITY AND REDUCING REGULATORY BURDENS**

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### **A) *Suitability checks for permanent recruitment***

Under the Conduct Regulations all Employment Agencies and Employment Businesses are required to undertake checks as to the suitability of workers being supplied for permanent and temporary recruitment. This includes checking their identity, experience, training, qualifications and any authorisation which the hirer considers necessary, or which are required by law, or any professional body in order to work in the position which the hirer seeks to fill. The legislation applies equally to all Employment Agencies and Employment Businesses including online recruiters and those Employment Agencies and Employment Businesses that have both online and offline facilities.

The Conduct Regulations place the burden for carrying out checks on Employment Agencies. However once a worker is introduced to a hirer for permanent employment by an Employment Agency and has been taken on by the hirer they become the hirer's employee and certain checks required to be carried out under the Conduct Regulations by an Employment Agency are also required by law to be carried out by the hirer. Legally Employment Agencies and hirers are therefore required to duplicate certain checks and in some cases this leads to confusion and uncertainty as to where responsibility lies. The Department's view is that this places unnecessary additional burdens on Employment Agencies.

The Department is also conscious that there has been huge growth in the range of services offered by Employment Agencies and Employment Businesses, particularly in the online sector. This increase in online recruitment has raised concerns about the extent to which online recruiters are able to check the identity and suitability of the individuals they introduce to hirers. While there is a wide variety of online recruitment models, at its simplest, this involves the swapping of lists of vacancies and lists of CVs together with some degree of filtering or refining by various criteria in order to match up vacancies with suitable individuals and vice versa. Currently the Conduct Regulations require both Employment Agencies and Employment Businesses to make these checks before introducing or supplying a worker but we are aware that a number of job board models do not involve such checks, or make such checks difficult to perform and that the services they offer could not be provided if these checks were undertaken. This position is unsatisfactory as non-compliance on this scale brings enforcement into disrepute while enforcing compliance of the present regime would increase costs to the point where a number of these services were no longer economic. This would be harmful to an industry that is dynamic in the Northern Ireland

economy, helps to reduce recruitment costs for businesses and makes it easier for work-seekers to find employment.

*The Department proposes to address these issues by amending the Conduct Regulations as follows:-*

1. **Amend Regulation 19(a) and (b) and Regulation 22(1)(a) in order to remove the requirement for Employment Agencies (*which introduce workers for permanent employment*) to undertake suitability checks.**

*This would mean removing the obligations for Employment Agencies to check:-*

- (a) the identity of the work-seeker; and
  - (b) that the work-seeker has the experience, training, qualifications and any authorisation which the hirer considers are necessary or which are required by law or by any professional body to work in the position which the hirer seeks to fill.
2. **Amend Regulation 22 in order to remove the requirement for Employment Agencies (where they supply or introduce a work-seeker to a hirer to work with or care for children or people vulnerable by reason of their age or infirmity) to obtain and provide to the hirer:**
    - (a) copies of those qualifications and authorisations; and
    - (b) two references.

The Department's view is that removing the requirement to carry out suitability checks will add clarity to who has responsibility for carrying out the checks. Essential protections will remain in place for workers, employers and vulnerable groups (e.g. employers hiring permanent staff through agencies are required to carry out security checks, while checks will still be required to be carried out by Employment Businesses who provide temporary workers) while encouraging the development of new services with the potential to make the recruitment process more open and more efficient and reducing the burdens on businesses.

In particular vulnerable groups will be protected under The Safeguarding Vulnerable Groups (Northern Ireland) Order 2007 (SR No. 1351) (N.I.11) with employers responsible for ensuring that workers have been appropriately vetted when working with vulnerable people. Guidance will also be developed for agencies to advise hirers on what checks should be carried out on workers and who will carry them out. However one area that has been identified where the removal of checks may have the potential to leave people vulnerable is around Employment Agencies which supply tutors, nannies and au pairs to private individuals. Therefore we propose to address this by a combination of maintaining some of the current checking regime for workers who are

engaged to work in the hirer's own home with children under 18 or vulnerable people and by providing guidance.

***The current checks that we would maintain are:-***

- *identity of the work-seeker where they will be supplied by an agency to work with or care for those under 18;*
- *experience, training and qualifications they hold;*
- *immigration status and whether they have a right to work in the country with a duty to inform the hirer of this information; and*
- *those required under Access NI.*

***The Department will also use guidance to further strengthen the protection by advising agencies to:-***

- *provide copies of any qualifications to the hirer (previously an obligation);*
- *obtain and provide two references to the hirer (previously an obligation); and*
- *check Independent Safeguarding Authority registration under The Safeguarding Vulnerable Groups (Northern Ireland) Order (previously no requirement).*

In addition and as a consequence of the proposals above we also want to explore whether Regulation 20(5) and (6) which requires Employment Agencies to inform hirers if they receive information that the worker is unsuitable within a 3 month period from the date of introduction could be removed or whether there is any benefit in shortening the current period.

***In summary the other obligations with which employers are required to comply to ensure that an adequate level of protection is in place and workers will remain, for example:-***

- (i) It is an offence for an employer to employ anybody who does not have authority to work in the UK.
- (ii) It is an offence under Articles 13 and 14 of The Safeguarding Vulnerable Groups (Northern Ireland) Order 2007 to employ anybody who has been barred or who is subject to monitoring and is not being monitored to work in a regulated activity. (*'regulated activities' have a wide definition but include working with children or those who by reason of age or infirmity require care or attention*). The checks required under this legislation are wider than those under the Conduct Regulations.

- (iii) Health and Safety legislation imposes obligations on employers.
- (iv) Professional bodies such as the General Medical Council and the Law Society require doctors and solicitors to check that new appointees hold professional requirements.
- (v) Under the Health and Personal Social Services Act (Northern Ireland) 2001 nursing and domiciliary care agencies are required to be registered with the Northern Ireland Social Care Council. Regulations made under that Act require nursing and care agencies to carry out checks on staff they supply.

**It is important to stress that none of these changes would affect the obligations on Employment Businesses.**

*The Department would welcome your views on these proposals and in particular your comments in response to the following questions:-*

- Q.1** *Would the removal of the requirement for permanent Employment Agencies to carry out certain suitability checks under Regulations 19 and 22 be of benefit to your Employment Agency?*
- Q.2** *If you represent an Employment Agency what level of savings would the removal of this requirement bring to your Employment Agency?*
- Q.3** *Should there be any exceptions or differences with respect to Employment Agencies supplying workers (e.g. those supplied to work with vulnerable individuals)?*
- Q.4** *What checks do you consider your Employment Agency would undertake and what would be the best way of communicating that information to the hirer?*
- Q.5 (a-c)**
  - (a)** *Do you think Regulation 20(5) and (6) (where Employment Agencies have to inform hirers if a worker is unsuitable within a 3 month period from the date of introduction) is necessary?*
  - (b)** *How often does your Employment Agency inform hirers about information that has come to light during the 3 month period set out in Regulation 20(5) and (6)?*
  - (c)** *Do you see any benefit in shortening or removing the 3 month requirement completely?*
- Q.6** *Do you agree that the other statutory provisions that currently exist in other legislation will ensure the same level of protection?*

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## **MEASURES TO PROTECT VULNERABLE AGENCY WORKERS**

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### **B) Upfront fees charged by Modelling and Entertainment Agencies**

Under the Conduct Regulations there are certain limited circumstances within the Modelling and Entertainment sector where the prohibition on charging fees to work-seekers for work-finding services does not apply.

**Fees can only be charged in two circumstances:-**

- (i) where agencies do not charge the hirer a fee they can charge fees out of earnings from work which the agency has found for the work-seeker; and
- (ii) for inclusion of information about a work-seeker in a publication which is a publication for the purpose of finding work-seekers employment or for providing hirers with information about work-seekers. The fees typically cover inclusion in model books or websites or entertainment industry publications. The taking of fees is a long established industry practice in this sector.

In 2008 the Department implemented a 7 day cooling off period in respect of these fees when The Conduct of Employment Agencies and Employment Businesses (Amendment) Regulations (Northern Ireland) 2008 came into operation on 6 April 2008. This gave work-seekers who are entitled to be charged these upfront fees a 7 day period during which they can cancel or withdraw from any contract to include their details in a publication without suffering any detriment or penalty by informing the agency that they have cancelled or withdrawn from the contract. During the 7 day cooling off period no upfront fees are payable by the worker.

This provision was introduced in response to concerns that some unscrupulous Employment Agencies in this sector were engaged in hard sell tactics to persuade vulnerable would-be entertainers or models to pay high fees for inclusion in a publication with unrealistic promises of work. These fees are sometimes portrayed as charges for photographic or show reel services. The purpose of the cooling off period is to allow individuals to better assess (*away from the audition or photographic session*) whether what they have been told is realistic and to consider whether or not they want to proceed. It is now a criminal offence for agencies to take fees from a work-seeker for including their details in a publication during the 7 day cooling off period or including their information in a publication. The cooling off period applies whether the work-seeker signed the contract at a casting session or approached the agency directly.

There is concern at the lack of a requirement on Modelling and Entertainment Agencies to give work-seekers written notice of their right to withdraw from the contract as well as the lack of specific provision to ban agencies from asking for post-dated cheques or credit or debit card impressions.

The Department is further aware that following a Judicial Review in GB it was concluded that a Magistrates' Court was correct to dismiss the Department for Business Enterprise and Regulatory Reform's (*BERR*) prosecution against a child model agency (*which charged upfront assessment fees*). The Magistrates' Court had decided that Regulation 26(5) of the Conduct Regulations did not preclude an agency from charging an advance fee where there was to be a future portfolio publication by an agency.

Some provisions of the Conduct Regulations therefore need to be amended to enable them to be enforced effectively. In particular Regulation 26(5) governing fees payable to Modelling and Entertainment Agencies for inclusion of a work-seeker's details in a publication does not provide for the situation in which an upfront fee is paid for inclusion in a publication but no publication is ever produced. The Conduct Regulations contain no time limits within which the publication has to be produced and no provisions for workers being refunded in the absence of any publication.

There are however also organisations that charge work-seekers upfront fees as a legitimate part of their business model. These tend to be casting directories in the entertainment industry which charge work-seekers a fee for including their details in online and hard copy databases that are used by casting directors to hire actors. The Department wants to establish a way forward that will balance our wish to close a loophole in respect of a small number of unscrupulous agents but which will meet the concerns of reputable businesses.

***The Department proposes to address these issues by using one of the following options:-***

## **Option 1**

### **Option 1a**

***Ban All Upfront Fees for Work-Finding Services:*** including photographic and show reel services provided by the Employment Agency (or a person connected with the Employment Agency). For the purposes of the Conduct Regulations the provision of photographic and show reel services by an agency would be defined as a work-finding service. This would mean that the only fees that Modelling and Entertainment Agencies would be able to charge would be from earnings from work that the agency has found for the work-seeker. This ban would not affect photographic and show reel services provided by businesses unconnected with an Employment Agency.

### **Option 1b**

***Ban Upfront Fees with Certain Exemptions:*** As **Option 1a**, a total ban but with exemptions that allow directories (e.g. industry casting directory 'Spotlight') to charge upfront fees in the entertainment sector to clients with a certain level of experience or training.

**For adults - the exemption from the ban on paying fees would apply if the client had:**

- professional acting experience in a minimum of 4 acting jobs in either theatre, film or television (work as an extra, walk on, model or promotional work would not count); or
- been trained on an accredited course or to a relevant standard in their field.

**For children under 18 - the Department would welcome views on three potential options for an exemption from the ban on paying fees in cases where:**

- Option (i)** children are attending an accredited stage or theatre school. This would mean only a limited number of children would be exempt (i.e. they could be charged fees) as accredited schools represent a small minority of all stage schools; or
- Option (ii)** children are attending **any** stage or theatre school. This would result in a greater number of children being exempt (i.e. more children could be charged fees); or
- Option (iii)** children are attending **any** stage or theatre school or have acting experience in a minimum of 2 acting jobs in theatre, film or television. (As with adults, work as an extra, walk on, model or promotional work would not count.) This would provide the widest exemption for Directories to be able to charge fees and would mean that those children who may not have attended a stage school but have relevant acting experience would also be exempt from the ban on paying fees.

## Option 2

- **Tighten the Conduct Regulations:** in respect of the 7 day cooling off period, combined with a targeted campaign to raise awareness of this right.

*This could be achieved by amending the Conduct Regulations to:*

1. require Employment Agencies to notify in writing all new clients that there is a 7 day cooling off period and that they have the right to cancel;
2. ban Employment Agencies from taking post-dated cheques or credit or debit card impressions to ensure payment is not taken prior to this 7 day cooling off period;

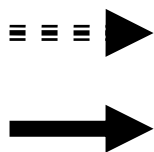
3. introduce a provision for workers being refunded an upfront fee if no publication is ever produced or circulated (allowing a period of six months by which time the agency would have to deliver on its promise to produce a publication and circulate);
4. make it explicit in the Conduct Regulations that 'assessment fees' are not permissible (a recent example of this in GB was a fee which was charged to parents to assess whether or not their children were suitable to be taken on as models); and
5. provide that the 7 day cooling off period applies to photographic and show reel services provided by the agency or a person connected with the agency.

*The Department would welcome your views on these proposals and in particular your comments in response to the following questions:-*

- Q.7** *How effective do you consider the cooling off period has been at preventing the unscrupulous practice of rogue Employment Agencies or individuals? Please give reasons.*
- Q.8** *If the regime were to be tightened which of the 2 approaches outlined above would be your preference - **Banning All Upfront Fees for Work-Finding Services (Option 1a or 1b)** or **Tightening the Conduct Regulations (Option 2)**? Can you explain why?*
- Q.9** *With respect to inclusion of information about the work-seeker in a publication would the banning of taking upfront fees damage legitimate firms or individuals working in the Modelling or Entertainment industries?*
- Q.10** *If there was a ban on upfront fees what revisions would such legitimate businesses need to make to their current business models to take this into account? What would be a reasonable period of notice for them to make those revisions?*
- Q.11** *How effective do you think **Option 1b** would be at allowing legitimate directories in the entertainment industry to continue operating whilst preventing the unscrupulous practices of rogue Employment Agencies or individuals?*
- Q.12** *Which do you think are the most effective or appropriate criteria for determining whether or not an organisation should be exempted from a ban on charging upfront fees?*
- Q.13** *Do you have any alternative solutions on how the abuse of upfront fees could be stopped?*
- Q.14** *Would you like to see a ban on the taking of upfront fees for photographic and show reel services provided by an agency or a person connected with the agency?*

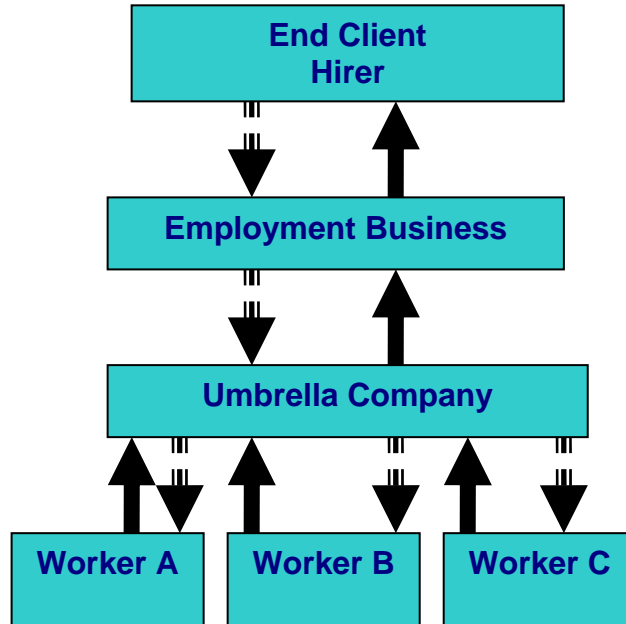
### C) Temporary workers employed through Umbrella Companies

- An **Umbrella Company** acts as an employer to independent contractors and/or workers who work under a temporary contract. The worker has an employment contract with the Umbrella Company. The worker is not a director nor do they own any shares in the Umbrella Company.
- The worker works for end clients but rather than working directly for them they provide their services through the Umbrella Company. Umbrella workers range from highly skilled professionals commanding high rates for their work to low-skilled, low-paid workers. Low-skilled workers are likely to have an Employment Business finding them work and acting as an intermediary between the hirer and the Umbrella Company. In this case the hirer pays the agency which deducts its fee and in turn pays the Umbrella Company for the worker's services. Generally many employees will provide their services through the same Umbrella Company.
- Workers tend to use Umbrella Companies because they offer tax advantages e.g. the ability to claim expenses, with relatively low cost administration for the worker.



Payments

Contracts



Under Regulation 32 where workers are supplied to a hirer through an incorporated company the company and the workers being supplied through the company can choose to opt-out of the Conduct Regulations. This was originally intended to provide flexibility for highly skilled professional personnel in the IT and Finance sector that wanted to operate as limited companies due to tax advantages.

In recent years there has been an increasing trend for Employment Businesses supplying low skilled temporary workers to require work-seekers to operate through a limited company. Rather than require each work-seeker to form their own limited company Employment Businesses direct work-seekers to what are known as '*Umbrella Companies*'. An Umbrella Company acts as an employer to independent contractors and/or workers who work under temporary contract usually through an Employment Business.

When workers are supplied to work through such a company they also have the option of an opt-out reducing the obligations of the Employment Business to the workers. Once a worker has opted out they lose all of the protections afforded to them by the Conduct Regulations. Of particular concern is the loss of protection under Regulations 5, 6, 10 and 12 which can leave the worker vulnerable to non-payment of wages and limit their ability to take up permanent employment with the hirer. This can also be detrimental to employers and their ability to take on temporary workers on a permanent basis.

Employment Businesses must get a work-seeker's written agreement that they wish to opt out and cannot insist that a work-seeker does so. However there is no express prohibition on them insisting that the work-seeker work through an Umbrella Company which many workers may not want to do. Since April 2008 an Employment Business must inform the hirer if the work-seeker has opted out.

The Department considers that low skilled workers and migrant workers whose first language is not English are more likely to be unaware of the consequences of opting out of the Conduct Regulations and the loss of protection this will incur. They are also more likely to opt out unwittingly by signing a contract and not reading the small print. In these scenarios the advantages of the opt-out lie with the Employment Business and we are concerned that as this model is increasingly used it will leave a larger number of agency workers vulnerable.

*The Department wants to gather evidence on this issue and to gauge how much of a problem this is for vulnerable workers.*

**If there does appear to be a problem then possible measures to address this issue might include:-**

**A) ISSUING BETTER GUIDANCE FOR WORKERS SO THEY DO NOT AGREE TO SIGN AN OPT-OUT WITHOUT UNDERSTANDING WHAT THEY ARE AGREEING TO.**

**B) REPEALING REGULATION 32 THEREBY REMOVING THE ABILITY FOR INCORPORATED COMPANIES TO OPT OUT OF THE CONDUCT REGULATIONS.**

**C) MAKING IT AN OFFENCE TO MAKE THE PROVISION OF WORK-FINDING SERVICES ONLY AVAILABLE TO THOSE WHO ARE INCORPORATED OR ARE PREPARED TO WORK THROUGH AN UMBRELLA COMPANY.**

**D) AMENDING THE CONDUCT REGULATIONS SO THAT THE OPT-OUT WOULD NOT APPLY TO CERTAIN KEY REGULATIONS SUCH AS:-**

- **Regulation 5:** restriction on requiring a work-seeker to use additional services;
- **Regulation 6:** restriction on detrimental action relating to work-seekers working elsewhere;
- **Regulation 10:** restriction on charges to hirers;
- **Regulation 12:** prohibition on withholding payments to work-seekers; and
- **Regulations 19 and 22:** requirement for Employment Businesses to carry out suitability checks on identity and qualifications).

**E) EXAMINING WAYS OF REMOVING THE OPT-OUT FOR WORKERS EMPLOYED BY EMPLOYMENT BUSINESSES THROUGH UMBRELLA COMPANIES WHILST ALLOWING LIMITED COMPANY CONTRACTORS TO MAINTAIN THE OPT-OUT.**

**Q.15** Do you have any evidence of low skilled or vulnerable workers being disadvantaged by the opt-out and if so how?

**Q.16** Regulation 32 enables workers supplied through an incorporated company to opt out of the Conduct Regulations. Is there still a practical need for Regulation 32 and does it do what it was originally intended to do?

**Q.17** What adjustments would need to be made if workers were no longer allowed to opt-out of the Conduct Regulations? What burdens would this add to businesses and contractors?

**Q.18** Some Employment Businesses operate on the basis of only taking work-seekers prepared to be supplied through an incorporated company (e.g. an Umbrella Company). What would be the impact on these Employment Businesses if they were prevented from doing this?

**Q.19** Do you think certain Regulations should be exempted from the opt-out and if so which Regulations should they be?

**Q.20** *Is E) (e.g. examining ways of removing the opt-out for workers employed by Employment Businesses through Umbrella Companies whilst allowing limited company contractors to maintain the opt-out) a practical option?*

## **D) Requirements to agree terms with work-seekers and hirers**

Under Conduct Regulations 14, 16 and 17 all Employment Agencies have a requirement to agree terms in respect of permanent candidates prior to submitting candidates to clients. We are aware that this is seen by some Employment Agencies as not relevant and burdensome on the basis that such requirements are the remit of the prospective employer. It can also mean the agency spends time agreeing terms with candidates before it is known if they are suitable.

**Q.21** *The Department would welcome your views on whether we could simplify or remove the need to agree these terms in relation to permanent recruitment whilst ensuring there was adequate information provision and protection for work-seekers and, if so, how?*

## **E) Requirements when placing advertisements**

Under Regulation 27 every advertisement must include the Employment Agency or Employment Business name and whether it is acting as an Employment Business or Employment Agency as well as reflecting the full nature of the position being advertised.

The Department is conscious that most people are unaware of the distinction between the terms Employment Agency and Employment Business. We would therefore like to explore if there is scope to simplify or improve the requirements and in particular amend the need to state whether the services advertised are those of an Employment Agency or Employment Business. We want to explore options that reduce the costs for the industry when placing advertisements whilst ensuring there is increased clarity for the work-seeker about whether the employment was permanent or temporary and whom they are dealing with.

*Possible options could be the use of the term 'Agency' to cover both permanent and temporary vacancies or the use of the words 'Permanent' and 'Temporary'.*

**Q.22** *The Department would welcome your views on how we could simplify advertisements or remove the requirement to state whether the services being advertised are those of an Employment Agency or an Employment Business whilst ensuring the nature of the position is clear to the work-seeker.*

**Q.23** Can you identify the level of saving that the removal of this requirement would bring to your Employment Agency or Employment Business? Please try and quantify in terms of potential annual savings.

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## ***THE NORTHERN IRELAND POST GRADUATE MEDICAL DEANERY***

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### ***The Post Graduate Medical Deanery - The Northern Ireland Medical and Dental Training Agency (NIMDTA)***

The Northern Ireland Medical and Dental Training Agency (*NIMDTA*) was established as a special agency with effect from April 2004. *NIMDTA* replaced the former Northern Ireland Council for Post Graduate Medical and Dental Education, which was a Non-Departmental Public Body. *NIMDTA* is an agency accountable to the Department of Health, Social Services and Public Safety (*DHSSPS*) for the performance of its functions and to the general public for ensuring that junior doctors and dentists are effectively trained to provide patients with the highest standards of care.

There are over 1700 trainees in all grades of foundation and specialty training whose selection, placements and assessments are managed by Foundation and Specialty Schools under the auspices of *NIMDTA*. Each School is chaired by a Head of School and membership includes the Postgraduate Dean, a Training Programme Director, representatives from the local education providers and trainee representatives.

*NIMDTA* as a deanery have always been responsible for recruitment to the Specialty Registrar grade although this was administered on their behalf by the Central Services Agency, a Service Level Agreement was in place for this arrangement. With the introduction of the Modernising Medical Careers initiative *NIMDTA* took over full responsibility for the recruitment of all grades of trainees and ended the relationship with the Central Services Agency. There is one Post Graduate Medical Deanery in Northern Ireland.

Unlike deaneries in England *NIMDTA* is not part of a university and does not come under the jurisdiction of a Strategic Health Authority (*SHA*). There are no *SHA*'s in Northern Ireland. As *NIMDTA* does not come under the organisation of a university which would exempt it as an Employment Agency under Article 11 of the Employment (Miscellaneous Provisions) (Northern Ireland) Order 1981, it is currently classed as an Employment Agency. This was an oversight as the Order was never intended to cover *NIMDTA*.

While the Post Graduate Medical Deanery (*NIMDTA*) does have a role in the training of junior doctors it is limited to areas such as regional induction programmes and generic skills programmes. However, it has a Service Level Agreement with the local Trusts for the provision of more specific training.

*NIMDTA* does not employ junior doctors. It is NHS Trusts that provide specialised training and employ doctors. However despite the dual role that the Post Graduate Medical Deanery (*NIMDTA*) plays (recruitment and

training) the Department considers that it operates as an Employment Agency within the definition contained in The Employment (Miscellaneous Provisions) (Northern Ireland) Order 1981 and there is currently no exemption from the legislation in place for it. The Post Graduate Medical Deanery (*NIMDTA*) provides an important role in ensuring that junior doctors receive appropriate training and it operates differently from standard Employment Agencies which are not concerned with the training of the workers they place and have no ongoing relationship with them.

The Department therefore considers that it is important that the Post Graduate Medical Deanery (*NIMDTA*) remains outside the scope of the Employment Agency legislation. In order to revert to the previous position where *NIMDTA* was exempt from the Employment Agency legislation the Department proposes that the Post Graduate Medical Deanery (*NIMDTA*) should be made exempt from Employment Agency legislation. This would restore its position to that prior to the NHS re-organisation.

*The Department proposes that the exemption would cover:-*

*‘Services provided by an organisation for the purpose of finding doctors and dentists post graduate training and employment with organisations providing post graduate training and employment or of supplying organisations providing post graduate training and employment with doctors and dentists for post graduate training and employment with them’.*

*Requests for further information in respect of the Post Graduate Medical Deanery (*NIMDTA*) in Northern Ireland should be directed to the address below.*

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## **CONTACT DETAILS FOR THE NORTHERN IRELAND MEDICAL AND DENTAL TRAINING AGENCY**

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*The contact details for The Northern Ireland Medical and Dental Training Agency (*NIMDTA*) are:-*

	<b>The Northern Ireland Medical and Dental Training Agency (<i>NIMDTA</i>) Beechill House 42 Beechill Road BELFAST BT 8 7RL</b>
<b>Telephone:</b>	<b>028 9040 0000</b>
<b>Website:</b>	<b><a href="http://www.nimdta.gov.uk">www.nimdta.gov.uk</a></b>

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## **OTHER COMMENTS**

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*The Department considers that we have identified in this consultation document the key issues that require action.*

*However the Department would welcome views on any further measures (legislative or otherwise) that would:-*

- make it easier for Employment Agencies and Employment Businesses and hirers to comply with the legislation without reducing essential protections for workers; or*
- remedy abuses not practiced by legitimate agencies that would make a real difference to workers but would not introduce new and unnecessary burdens.*

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## **COMPLETED RESPONSES CAN BE E-MAILED OR HARD COPIES CAN BE POSTED TO THE ADDRESS BELOW:**

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**Valerie Reilly  
Department for Employment and Learning  
Employment Relations Policy and Legislation  
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Adelaide House  
39-49 Adelaide Street  
BELFAST  
BT2 8FD**

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

**Telephone:** 028 9025 7493

**Fax:** 028 9025 7555

### **Respondents:**

Please state in your response which description from the list below best describes the group to which you belong. If in doubt please state '**Other**' and expand where possible.

### **List of Groups**

- (i). Small to Medium Enterprise**
- (ii). Representative Organisation**
- (iii). Trade Union**

- (iv). Interest Group**
- (v). Big Business**
- (vi). Local Government**
- (vii). Central Government**
- (viii). Other (please describe)**

# CONSULTATION QUESTIONS

## *A - Suitability checks for permanent recruitment (pages 9-12)*

### *Questions 1 - 6*

- Q.1** *Would the removal of this requirement be of benefit to your Employment Agency?*
- Q.2** *If you represent an Employment Agency what level of savings would the removal of this requirement bring to your Employment Agency?*
- Q.3** *Should there be any exceptions or differences with respect to Employment Agencies supplying workers for work (e.g. those supplied to work with vulnerable individuals)?*
- Q.4** *What checks do you consider your Employment Agency would undertake and what would be the best way of communicating that information to the hirer?*
- Q.5**
- a) Do you think Regulation 20(5) and (6) is necessary?*
  - b) How often does your Employment Agency inform hirers about information that has come to light during the 3 month period set out in Regulation 20(5) and (6)?*
  - c) Do you see any benefit in shortening or removing the 3 month requirement completely?*
- Q.6** *Do you agree that the other statutory provisions that currently exist will ensure the same level of protection?*

## *B - Upfront fees charged by Modelling and Entertainment Agencies (pages 13-16)*

### *Questions 7 – 14*

- Q.7** *How effective do you consider the cooling off period has been at preventing the unscrupulous practice of rogue recruitment agencies or individuals? Please give reasons.*
- Q.8** *If the regime were to be tightened which of the 2 approaches outlined above would be your preference - **Banning All Upfront Fees for Work-Finding Services (Option 1a or 1b)** or **Tightening the Conduct Regulations (Option 2)**? Can you explain why?*

- Q.9** *With respect to inclusion of information about the work-seeker in a publication would the banning of taking upfront fees damage legitimate firms or individuals working in the Modelling and Entertainment industries?*
- Q.10** *If there were a ban on upfront fees what revisions would you need to make to your current business model to take this into account? What would be a reasonable period of notice for you to make those revisions?*
- Q.11** *How effective do you think **Option 1b** would be at allowing legitimate directories in the entertainment industry to continue operating whilst preventing the unscrupulous practice of rogue Employment Agencies or individuals?*
- Q.12** *Which do you think are the most effective or appropriate criteria for determining whether or not an organisation should be exempted from a ban on charging upfront fees?*
- Q.13** *Do you have any alternative solutions on how the abuse of upfront fees could be stopped?*
- Q.14** *Would you like to see a ban on the taking of upfront fees for photographic and show reel services provided by an agency or a person connected with the agency?*

**C - Temporary Workers Employed through Umbrella Companies (pages 17-20)**

**Questions 15 - 20**

- Q.15** *Do you have any evidence of low skilled or vulnerable workers being disadvantaged by the opt-out and if so how?*
- Q.16** *Is there still a practical need for Regulation 32 and does it do what it was originally intended to do?*
- Q.17** *What adjustments would need to be made if workers were no longer allowed to opt-out of the Regulations? What burdens would this add to businesses and contractors?*
- Q.18** *What would be the impact on Employment Businesses if they were unable to only take work-seekers prepared to go through an incorporated company?*
- Q.19** *Do you think certain Regulations should be exempted from the opt-out and if so which Regulations should they be?*
- Q.20** *Is **E** (e.g. examine ways of removing the opt-out for workers employed by Employment Businesses through Umbrella Companies*

*whilst allowing limited company contractors to maintain the opt-out) a practical option?*

***D - Requirements to agree terms with work-seekers and hirers (page 20)***

***Question 21***

***Q.21*** *The Department would welcome your views on whether we could simplify or remove the need to agree these terms in relation to permanent recruitment whilst ensuring there is adequate information provision and protection for work-seekers and if so how?*

***E - Requirements when placing advertisements (pages 20-21)***

***Questions 22 - 23***

***Q.22*** *The Department would welcome your views on how we could simplify advertisements or remove the requirement to state whether the services being advertised are those of an Employment Agency or an Employment Business whilst ensuring the nature of the position is clear to the work-seeker.*

***Q.23*** *Can you identify the level of saving that the removal of this requirement would bring to your Employment Agency or Employment Business? Please try and quantify in terms of potential annual savings.*

# PARTIAL REGULATORY IMPACT ASSESSMENT

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## *INTRODUCTION*

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The Northern Ireland recruitment industry has grown and changed significantly in recent years and in doing so has made a substantial contribution to the local economy. It has provided organisations with flexibility in their workforces and assistance with recruitment. Industry values the flexibility that agency workers provide as it allows them to vary their workforce to handle peaks and troughs in workload. It also helps individuals find work that meets the needs of their personal circumstances and can provide a route into employment for those previously excluded or who were economically inactive. A significant number of agency workers value the choice and freedom agency work provides.

Employment Agencies are regulated by the Department for Employment and Learning under the Employment (Miscellaneous Provisions) (Northern Ireland) Order 1981 (as amended) and the Conduct of Employment Agencies and Employment Businesses Regulations (Northern Ireland) 2005 (*the Conduct Regulations*) which came into operation in September 2005 and introduced updated protections for industry users.

Due to the nature of the Northern Ireland recruitment sector (i.e. there is no licensing or registration of Employment Agencies and Employment Businesses in Northern Ireland) and the absence of current official statistics it is difficult to accurately predict or assess the regulatory impact of these proposals. The Department is seeking additional qualitative and quantitative information from interested parties as part of this consultation exercise and invites comments and statistics from all respondents with a view to supplementing the Partial Regulatory Impact Assessment.

To obtain a more accurate picture of the numbers of agency workers in the labour market in Northern Ireland the Department has commissioned Millward Brown Ulster Ltd to conduct a research project on this sector. This research is ongoing and is examining the size and extent of the private recruitment sector in Northern Ireland. The research is surveying key stakeholders in business, Trade Unions and migrant workers' support groups, Northern Ireland based Employment Agencies and Employment Businesses and temporary agency workers. Millward Brown Ulster Ltd has estimated that this research project will be completed in mid 2009.

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## **EMPLOYMENT AGENCIES AND EMPLOYMENT BUSINESSES**

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### *Definitions of Employment Agencies and Employment Businesses*

There is often confusion about the differences between Employment Agencies and Employment Businesses.

*To clarify:-*

***Employment Agencies*** - introduce workers to hirers for permanent employment. The worker subsequently becomes the employee of the hirer and has no further contractual relationship with the Employment Agency. Work-seekers looking for permanent employment would therefore use the services of an Employment Agency.

***Employment Businesses*** - introduce workers to hirers for temporary work only. The Employment Business (also known as 'temp agencies') will place a worker with a hirer to work. The worker's contractual relationship is with the Employment Business and it is the Employment Business that is responsible for paying the worker and managing annual leave etc. These workers are often known as agency workers, hence the confusion over the terms Employment Agency and Employment Business.

***Recruitment businesses that do both*** - some recruitment businesses offer both temporary and permanent vacancies. A work-seeker's relationship with this type of recruiter depends on the nature of the vacancy they are applying for.

For example if a work-seeker is looking for a job on an online jobs board<sup>(1)</sup> and applies for a permanent vacancy, the recruiter must act as an Employment Agency in their dealings with the work-seeker. If the work-seeker was using the same recruiter and applied for a temporary job then that recruiter's relationship with the work-seeker is as an Employment Business and it must act accordingly.

<sup>(1)</sup> An online jobs board is an Internet site where job vacancies are posted (*vacancies could be permanent or temporary*).

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## **PURPOSE OF THE CONSULTATION**

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It is hoped to gather information and views from interested parties, including those who may be affected by the proposed amendments to the Conduct Regulations, on a package of measures designed to address the three areas of interest outlined below to:

1. ensure that essential protections remain in place for the most vulnerable agency workers;
2. clarify lines of responsibility between agencies and hirers; and

3. further reduce regulatory burdens and target abuse.

***The problems under consideration which require Departmental intervention are:***

- *reducing duplication of and improving checks in the recruitment of permanent staff via Employment Agencies;*
- *maintaining fair treatment and improving the protection for vulnerable workers employed via Employment Agencies and Employment Businesses;*
- *reducing the administrative burdens on the recruitment industry so that they are proportionate to the risks; and*
- *reclassifying the Post Graduate Medical Deanery (the Northern Ireland Medical and Dental Training Agency or NIMDTA).*

These proposals will discuss how we can encourage innovation and the development of new services with the potential to make the recruitment process more open and more efficient and reduce the administrative burdens on businesses whilst at the same time ensuring that essential protections remain in place for workers, employers and vulnerable groups.

In particular the Department wants to focus on how we can introduce greater clarity and eliminate unnecessary duplication in respect of suitability checks for workers introduced for permanent employment. The Department's view is that one area where we can achieve this is to remove the requirement for Employment Agencies, which introduce workers for permanent employment, to undertake suitability checks including those for: identity, experience, training, qualifications and any authorisations required by law. The Department's intention is to consider equivalent proposals for the benefit of the Northern Ireland recruitment sector and its users.

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## ***OPTIONS, COSTS, BENEFITS AND RISKS***

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### ***Policy Objective 1: Checking Suitability for Permanent Recruitment***

In the absence of Departmental intervention there is a risk that agencies are duplicating the work (*with respect to suitability checks for permanent recruitment*) which the employer has to do by law. As a result inefficiencies arise as both the agency and the employer carry out the checks, when it is possible that only one of the parties would have to do this. The objective is to consult on the extent to which the Department can reduce regulatory burdens, clarify lines of responsibility, address overlap and eliminate duplication in respect of suitability checks for workers introduced by Employment Agencies for permanent employment.

### Option 1.a

Is to make no changes.

### Option 1.b

Amend Regulation 19(a) and (b) and Regulation 22 in order to remove the requirement for Employment Agencies (*which introduce workers for permanent employment*) to undertake suitability checks as follows.

**Regulation 19(a) and (b) - Remove the need for Employment Agencies to carry out checks on the identity of the work-seeker or any checks that the work-seeker has the experience, training, qualifications and any authorisation which the hirer considers are necessary, or which are required by law, or by any professional body to work in the position which the hirer seeks to fill.**

**Regulation 22 - When supplying a work-seeker who will be involved with vulnerable workers then there is no need to:**

- 1. provide copies of the qualifications and authorisations;**
- 2. provide two references; and/or**
- 3. take other steps to ensure that the work-seeker is not unsuitable.**

### Costs

Removing suitability checks for Employment Agencies would not incur a cost for the Employment Agency or the employer. This is because by law employers have to carry out their own suitability checks when they hire permanent workers from Employment Agencies.

### Benefits

As Employment Agencies would no longer be required to carry out suitability checks they should benefit from a decrease in the administrative burdens.

### Option 1.c

Is to do the same as **Option 1.b** plus consult on whether Regulation 20(5) and (6) (*which requires an agency to inform the hirer if they receive or obtain information that the worker is unsuitable*) is necessary and/or whether there is any benefit in shortening the current 3 month period (*after which the obligation lapses*).

## **Costs**

As stated in **Option 1.b** there would be no costs involved from removing the requirement for the Employment Agency to carry out suitability checks on workers being placed into permanent employment. In addition reducing the 3 month period should not increase costs as if the employer does its own checks (which it has to by law) then it should be informed of any changes in circumstances from whoever they contacted to get the information about the worker.

## **Benefits**

This option would have the same benefits as **Option 1.b**.

## **Risks**

No risks have been identified with respect to **Options 1.b** and **1.c** as the suitability checks ought to be carried out by the employer as they are required to do so by law.

## ***Policy Objective 2: Fees payable by models and entertainers***

In the absence of Departmental intervention there is a risk that some vulnerable agency workers in the Modelling and Entertainment sectors will continue to be mistreated as a result of certain abuses in relation to agencies charging upfront fees.

The objective is to look again at the fees Modelling and Entertainment Agencies charge with a view to proposing a ban on the taking of upfront fees altogether. Evidence suggests that, despite the introduction of the 7 day cooling off period, some agencies continue to abuse it.

### **Option 2.a**

**Is to make no changes.**

### **Option 2.b**

**Involves a total ban on upfront fees for individuals seeking work in the Modelling and Entertainment sector.**

## **Costs**

The banning of upfront fees would impose a cost to Modelling and Entertainment Agencies as they would still have to publish a portfolio for their worker but would not be able to recover the cost of the publication. It is not possible to accurately estimate the costs of this policy in the absence of better data.

### ***Benefits***

The banning of upfront fees would result in a saving for models and entertainers seeking work as well as increasing their protection against those agencies who would seek to exploit them.

### ***Risks***

With **Option 2.b** there is the risk that the agency might not be able to recoup the costs of financing the publication of a portfolio.

### **Option 2.c**

**Is the same as Option 2.b but with an exemption that allows directories to charge clients upfront fees in the entertainment sector.**

### ***Costs***

The costs of this option would be similar to those in **Option 2.b** but smaller as directories in the entertainment sector would be able to charge upfront fees. It is not possible to accurately estimate the costs of this policy in the absence of better data.

### ***Benefits***

The benefits of this option would be similar to those in **Option 2.b** but smaller as directories in the entertainment sector would be able to charge upfront fees. It is not possible to accurately estimate the benefits of this policy in the absence of better data.

### ***Risks***

There is the risk that in **Option 2.c** workers seeking employment in the entertainment sector would be charged upfront fees and no publication of a portfolio would materialise.

### **Option 2.d**

**Proposes to tighten existing Regulations (*combined with a targeted awareness campaign*) by amending the Regulations to include:-**

- **a requirement to notify clients in writing about the 7 day cooling off period and the right to cancel;**
- **a ban on the taking of credit or debit card impressions or post dated cheques;**
- **a provision for refund if no publication is produced or circulated;**  
**and**
- **an explicit reference to assessment fees not being permissible.**

## Costs

Under this option the Employment Agency would have to inform all new clients of the 7 day cooling off period in writing. Given that under this proposal the Employment Agency would have to refund the fees should no publication materialise after a certain period this poses a possible cost for the Employment Agency and a cost to the individual. Costs for agencies would increase as they would have to refund the money that they owe to the work-seeker. In addition there would be costs to agencies of chasing up individuals for payment as they cannot take post-dated cheques or credit or debit card impressions. This option would also pose costs to work-seekers (*individuals*) as they would have to chase up the agency to get their money back if the agency fails to notify them of the refund. In the absence of better data it is difficult to estimate these costs.

## Benefits

It is not possible to accurately estimate the benefits from this policy in the absence of better data.

## Risks

Under **Option 2.d** some agencies might not inform their workers of the 7 day cooling off period in order to cut corners and gain an unfair advantage over their competitors. There is also the risk that some agencies would not inform their workers that they have not distributed their portfolio in the hope that the worker would have forgotten about joining the agency. Therefore there would be a cost to the individual (*model or entertainer*) in relation to chasing up the issue with the agency.

## **Policy Objective 3: Miscellaneous Regulation Changes**

In the absence of Departmental intervention there is a risk that some vulnerable agency workers will continue to be mistreated as a result of certain work practices carried out by a minority of Employment Businesses and Employment Agencies which act in ways the vast majority of agencies would never consider and who, in doing so, cut corners at the expense of workers and gain an unfair commercial advantage at the expense of reputable agencies. In addition, there is the risk that some of these Regulations pose administrative burdens on agencies.

The objective is to consult on the extent to which the Department can reduce regulatory burdens in areas such as the requirements to agree terms with work-seekers and hirers in respect of permanent recruitment and the requirements when placing advertisements. In addition this policy objective aims to look at the protection for temporary workers being employed by Umbrella Companies.

### **3.1 - Regulations 14, 16 & 17: Obligations to agree terms with workers in case of permanent recruitment**

### Option 3.1a

Is to make no changes.

### Option 3.1b

Involves removing the requirement to agree terms with work-seekers in respect of permanent candidates. Terms must be agreed prior to submitting candidates to clients. This option proposes to remove these so that terms will instead be agreed when the work-seeker gets a job.

#### *Costs*

Removing the requirement to agree terms with work-seekers in respect of permanent candidates would not in our opinion pose any costs.

#### *Benefits*

There should be a reduction for Employment Agencies as they would no longer be required to carry out checks which mean they should benefit from a decrease in the administrative burdens.

#### *Risks*

Under **Option 3.1b** there is the risk that the work-seeker would be unaware of the terms that it has with the agency.

## **3.2 - Regulation 27: Advertisements**

### Option 3.2a

Is to make no changes.

### Option 3.2b

Is to simplify advertising requirements by removing the obligation to specify whether the hirer is acting as an Employment Agency or an Employment Business.

#### *Costs*

The costs of this option would be that the work-seeker will not know if the hirer is an Employment Agency or an Employment Business. However the impact would be small as evidence suggests that most individuals do not know the difference between an Employment Agency and an Employment Business.

#### *Benefits*

Employment Agencies and Employment Businesses would save some money from not printing their status as an Employment Agency or as an Employment Business. Advertisements must state the full name of the Employment Agency or Employment Business. Taking out the requirement to state whether the

hirer is acting as an Employment Agency or an Employment Business should see costs fall and the benefit of a reduction in the administrative burdens.

### ***Risks***

Under **Option 3.2b** there is the risk that the work-seeker would not be aware if the hirer is an Employment Agency or an Employment Business.

### **3.3 - Regulation 32: Application of the Regulations to work-seekers who are incorporated.**

#### **Option 3.3a**

**Is to make no changes.**

#### **Option 3.3b**

**Involves repealing Regulation 32 in its entirety.**

### ***Costs***

There would be no costs involved in repealing Regulation 32.

### ***Benefits***

The benefits would be that it would not leave workers vulnerable to non-payment and the employer would be able to transfer the worker from being on a temporary contract to a permanent contract. Without better data it is difficult to estimate these benefits.

#### **Option 3.3c**

**Proposes to issue better guidance for workers in order that they do not agree to sign an opt-out without understanding what they are agreeing to.**

### ***Costs***

This option would result in an increase to the administrative burdens on Employment Agencies as they would have to issue better guidance for work-seekers. Assuming that around 40% of agency workers are employed through an Umbrella Company and that it takes 30-60 minutes for the Employment Agency staff to explain the opt-out then the cost to the agency would be less than £15.

### ***Benefits***

In the absence of better data it is difficult to estimate the benefits of this option. However a benefit would be that the worker would be better informed about what the opt-out involves. Therefore it would not leave the worker vulnerable to non-payment.

### Option 3.3d

**Proposes to make it an offence to make the provision of work-finding services only available to those who are incorporated or are prepared to work through an Umbrella Company.**

#### **Costs**

There would be no costs involved in making it an offence to make the provision of work-finding services only available to those who are incorporated or are prepared to work through an Umbrella Company.

#### **Benefits**

In the absence of better data it is difficult to estimate the benefits of this option. However the benefit would be that it would not leave workers vulnerable to non-payment as they would not be forced to opt out of certain Regulations.

### Option 3.3e

**Proposes to make the opt-out not apply to certain key Regulations such as: Regulation 6 (*restriction on detrimental action relating to work-seekers working elsewhere*) and Regulation 10 (*restriction on charges to hirers*).**

#### **Costs**

There are no costs involved with this option.

#### **Benefits**

The benefits of having these restrictions in place are that it would protect workers from non-payment as they would not be forced to opt-out of certain Regulations and it would give the hirer the option to make the worker a permanent employee.

#### **Risks**

The risk of the options proposed for Regulation 32 are that the Umbrella Company which an Employment Business uses could see a fall in demand and some could potentially shut down. As the majority of Employment Businesses use Umbrella Companies for reducing payroll costs this risk is small.

### ***Policy Objective 4: Position of the Post Graduate Medical Deanery (the Northern Ireland Medical and Dental Training Agency or NIMDTA)***

In 2004 the Deanery (*NIMDTA*) following NHS re-organisation moved to become part of strategic health authorities. This moved it within the scope of

The Employment (Miscellaneous Provisions) (Northern Ireland) Order 1981 and therefore it was subject to Employment Agency legislation. In the absence of Departmental intervention the Deanery (*NIMDTA*) will continue to fall under the Employment Agencies' legislation when it should be exempt from the Order as the Deanery is not an Employment Agency.

The objective is to correct an anomaly where as a result of a National Health Service re-organisation the Post Graduate Medical Deanery (*NIMDTA*) now falls within the scope of The Employment (Miscellaneous Provisions) (Northern Ireland) Order 1981 and is subject to Employment Agency legislation. The Post Graduate Medical Deanery (*NIMDTA*) was previously exempt and it was never the intention that it would be covered by the Order.

#### Option 4.a

**Is to make no changes.**

#### Option 4.b

**Proposes to exempt the Post Graduate Medical Deanery (*NIMDTA*) from the Employment Agency legislation.**

#### *Costs*

The Department estimates that there would be no costs involved as the Post Graduate Medical Deanery (*NIMDTA*) was not previously considered to be subject to Employment Agency legislation prior to the NHS re-organisation and changing it back to its pre-2004 status would have no impact.

#### *Benefits*

The benefits of this option would be that the Post Graduate Medical Deanery (*NIMDTA*) would no longer be classified as an Employment Agency.

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## ***ENFORCEMENT***

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The Department would enforce the policy changes for the options proposed in Policy Objectives 1, 2 and 3. If the Post Graduate Medical Deanery (*NIMDTA*) [Policy Objective 4] is exempt from Employment Agency legislation then enforcement for that body would be the responsibility of the Department of Health, Social Services and Public Safety (*DHSSPS*).

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## ***SUMMARY AND RECOMMENDATIONS***

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The vast majority of Employment Agencies and Employment Businesses adhere to decent standards. However more needs to be done in order to

ensure that agency workers are protected. This consultation is being launched to seek views on proposals that are designed to bring business benefits, reduce regulatory burdens, target abuse and ensure that essential protections remain in place for the most vulnerable agency workers. It focuses on a package of proposed amendments to the Conduct of Employment Agencies and Employment Businesses Regulations (Northern Ireland) 2005 which govern the conduct of the private recruitment industry.

***This Northern Ireland consultation seeks to address the following issues:-***

- suitability checks for permanent recruitment;
- upfront fees charged by Modelling and Entertainment Agencies;
- reduce the administrative burdens on the recruitment industry; and
- a change to the position of the Post Graduate Medical Deanery (NIMDTA).

***Suitability checks for permanent recruitment***

Under the Conduct Regulations all Employment Agencies and Employment Businesses are required to undertake checks as to the suitability of workers being supplied for both permanent and temporary recruitment. This includes checking their identity, experience, training, qualifications and any authorisation which the hirer considers necessary or which are required by law or any professional body in order to work in the position which the hirer seeks to fill. The Department is conscious that there has been a huge growth in the range of services that are offered by Employment Agencies and Employment Businesses particularly in the online sector. This increase in online recruitment has raised concerns about the extent to which online recruiters are able to check the identity and suitability of the individuals they introduce to hirers.

The current situation is unsatisfactory. Therefore, in the interests of encouraging a level playing field and ensuring that the non-compliant are not given an unfair advantage, it is proposed to clarify the lines of responsibility and reduce the regulatory burdens in respect of suitability checks for permanent recruitment. The information-providing requirements in the Conduct Regulations have proved to be burdensome where agencies supply workers for very short-term assignments (*e.g. of less than 5 working days*). Such assignments are common in the hospitality, catering and industrial sectors but are not confined to these sectors.

### ***Upfront fees charged by Modelling and Entertainment Agencies***

The Department's concern is that despite the introduction of the 7 day cooling off period in April 2008 it has become clear that there continues to be a significant abuse of the upfront fees provision in this sector.

### ***Reduce the administrative burdens on the recruitment industry***

Under Regulation 21 as amended by Regulation 5 of The Conduct of Employment Agencies and Employment Businesses (Amendment) Regulations (Northern Ireland) 2008 (S.R. No.76) Employment Businesses have a duty to supply hirers with all the details they have on a work-seeker they are supplying for an assignment. They must also supply the work-seeker with information about the hirer for each assignment. This has to be done even when there are multiple short-term assignments and the work-seeker and hirer are the same. The Department proposes a simplification of this process to reduce the administrative burdens on the recruitment industry whilst ensuring that protection for workers and employers remains in place.

### ***Change to the position of the Post Graduate Medical Deanery (NIMDTA)***

The Post Graduate Medical Deanery (*NIMDTA*) is responsible in Northern Ireland for the recruitment and training programme for junior doctors and junior dentists to National Health Service employers. The Department is proposing to restore this body to its previous position as a body exempt from Employment Agency legislation.

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## **CONTACT POINT**

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