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Department for
**Employment
and Learning**
www.delni.gov.uk

A Summary of Responses to the Public Consultation

**Amendments to the Conduct of Employment
Agencies and
Employment Businesses
Regulations
(Northern Ireland) 2005 -
A Public
Consultation
2009**



July 2010

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A DEPARTMENTAL RESPONSE TO THE PUBLIC CONSULTATION ENTITLED:

Amendments to the Conduct of Employment Agencies and Employment Businesses Regulations (Northern Ireland) 2005 – A Public Consultation 2009

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Introduction

1. *Background*

- 1.1 The Northern Ireland recruitment industry is governed by the Employment (Miscellaneous Provisions) (Northern Ireland) Order 1981¹ ('the 1981 Order') and the Conduct of Employment Agencies and Employment Businesses Regulations (Northern Ireland) 2005 ('the Conduct Regulations')². The Department for Employment and Learning ('the Department') is responsible for maintaining this legislation.
- 1.2 The Conduct Regulations replaced and updated legislation dating back to 1981, with the aim of protecting the interests of persons such as work-seekers and hirers who use agency services. The legislation is enforced by the Department through a programme of routine inspections and complaint investigations. It is important that the enforcement powers available to the Department are sufficiently effective from the outset, since robust mechanisms are required to deal with any disreputable agencies that mistreat workers or seek to deprive them of their rights. The Conduct Regulations were amended in 2008 to provide additional protections for vulnerable work-seekers.

*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** supplies workers to hirers for **temporary** assignments where they will be under the hirer's supervision or control. 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. Such workers are often known as 'agency workers', which can often lead to confusion over the terms 'employment agency' and 'employment business'.*

A company engaged in both permanent recruitment and the supply of temporary workers will fall into the definition of both an employment agency and employment business.

- 1.3 Between July and September 2009 the Department conducted a twelve-week consultation on proposals to further amend the Conduct Regulations³.

¹ S.I. 1981/839 (N.I. 20)

² S.R. 2005 No. 395

³ The proposals were set out in the consultation document *An Amendment to the Conduct of Employment Agencies and Employment Businesses Regulations (Northern Ireland) 2005 – A Public Consultation 2009*, which can be found in the Department's consultation archive at www.delni.gov.uk/consultation-zone

Purpose of this document

- 1.4 This document provides a Departmental response to the public consultation entitled:

Amendments to the Conduct of Employment Agencies and Employment Businesses Regulations (Northern Ireland) 2005 – A Public Consultation 2009

It sets out a summary of the responses and the way forward.

Responses

- 1.5 The Department received thirteen responses to the consultation. Ten of these contained substantive comments. Three responses were from employer organisations, one from a local authority, one from an employer, two from employment agencies, five from public bodies, and one from a voluntary body.
- 1.6 The consultation contained a number of varied proposals and the responses reflected the fact that certain respondents commented on the proposal(s) within their own specific areas of interest. Three respondents stated that they had no comment on the issues raised. A list of respondents who provided substantive responses to the public consultation is set out at **Annex A**. The Department would like to thank all those organisations and individuals who took the time to respond. The views expressed have been carefully considered in respect of the Department's way forward which is now set out in this document.

Analysis of responses and the way forward

- 1.7 All substantive responses were carefully considered and analysed when finalising a decision on the way forward. Taking this into consideration, the Department intends to amend employment agency legislation as described within the body of this document.

Structure of this document

- 1.8 The following pages set out the proposals in the consultation document together with contextual information, an analysis of the responses received and the Department's decisions in light of the outcome of the public consultation.

Departmental Contact Details

- 1.9 All documents referred to in this response can be obtained from the Department's website or in alternative formats upon request from the Department.

Website: www.delni.gov.uk/consultation-zone

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CONSULTATION RESPONSES TO PROPOSALS AND THE WAY FORWARD

2. Checking Suitability for Permanent Recruitment

- 2.1 The Department is keen to ensure that the necessary suitability checks (identity, qualifications, experience) exist within the permanent recruitment sector to protect workers. However, the Department is also conscious of the need to reduce the regulatory burden on the sector.
- 2.2 Currently, employers/hirers are required to carry out certain suitability checks when employing an individual. Regulations 19 and 22⁴ of the Conduct Regulations also place a responsibility on the employment agency to carry out certain suitability checks when introducing work-seekers to hirers, leading to a duplication of effort. In an attempt to reduce regulatory burdens and add clarity to where the responsibilities lie in carrying out checks, the Department consulted on the proposal to remove this obligation from employment agencies that introduce work-seekers to hirers to fill permanent vacancies.
- 2.3 A mixed response was received on this issue. The majority of respondents considered that these checks should be removed from the Conduct Regulations to avoid duplication and an unnecessary regulatory burden which incurs costs (albeit minor). It was felt that responsibility for these checks should rest solely with the employer.
- 2.4 However, other respondents indicated that they do not regard these checks as burdensome and that their customers value them as part of the service provided. These respondents indicated that they would continue to carry out all the checks or certain checks within Regulation 19, even if the requirement is removed from the Conduct Regulations. Comments in respect of this proposal included:

'The Labour Relations Agency welcomes any proposed changes by DEL which remedy, simplify or clarify practical and pertinent issues associated with Employment Agencies and Employment Businesses.'

Labour Relations Agency

'CBI thinks in principle that removing suitability checks before employment is worthwhile but it will have a limited cost impact.'

Confederation of British Industry

'The requirement that Employment Agencies check work seekers' identity serves no useful purpose because as noted the client must by law carry out its own check. Adecco's view therefore is that Regulation 19(a) should be deleted.'

'Adecco do not believe any savings would be realised as Adecco would continue to carry out the checks required by Regulation 19(b)'

Adecco

⁴ A brief description of each regulation is available for reference at **Annex C**.

'Although the removal of the requirement of checks could simplify regulation of recruitment processes, REC believes the checks should remain. Many of REC's members say they will continue to make these checks as it is an additional service which is valued by their clients.'

Recruitment and Employment Confederation

- 2.5 The proposals put forward the retention of checks by all employment businesses and by those employment agencies supplying work-seekers to work with children and/or vulnerable adults. Once again, the aim is to add clarity to the checking process whilst continuing to ensure that adequate protection is in place, where necessary. Responses received on this matter showed a strong desire to ensure that such workers, and the vulnerable groups with whom they work, are adequately protected.
- 2.6 Regulation 20 (5) and (6) requires employment agencies to inform the hirer if they receive information, within a three month period of the date of introduction, that the worker is unsuitable. The Department sought views on whether this three month period should be removed or shortened. All substantive responses indicated that this regulation should remain unchanged, as it does not impose unnecessary burdens on agencies and is a worthwhile protection within the Conduct Regulations.
- 2.7 **The following are questions 1 – 6 of the Consultation which relate to 'Checking suitability for permanent recruitment':**
- 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?

Departmental Response:

- 2.8 The Department has considered all the responses received and has decided to proceed broadly as outlined in the consultation paper. This will involve removing the requirement for employment agencies that introduce work-seekers to fill permanent vacancies to carry out checks for most work-seekers. Agencies will not be prevented from continuing to carry out checks, should they wish to do so. However, we will expand the definition of those circumstances where checks would still be required particularly where the worker is to work with children and/or vulnerable adults. In these cases, the employment agency will have to confirm that the work-seeker is suitable to work for the hirer by carrying out certain checks, including the identity of the work-seeker, their experience, training, qualifications and any authorisation required to fill the vacancy. Regulation 20(5) and (6) will remain unchanged.
- 2.9 The Department considers this to be the best way forward, as this will ensure lines of responsibility are clarified and regulatory burdens are reduced on employment agencies. Protections will remain in place within the Conduct Regulations where employment agencies are placing work-seekers to work with vulnerable groups. This is in line with the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007.

3. Fees Payable by Models and Entertainers

- 3.1 The 1981 Order prohibits employment agencies from charging a fee to work-seekers for work-finding services. The exception to this is in the entertainment and modelling sector, where agents are entitled to take a fee from work-seekers in certain circumstances, namely:
- for including their details in a publication (an upfront fee can be charged); and
 - from the worker's earnings relating to work which the agency has found for them.
- 3.2 In April 2008, the Department introduced a 7-day cooling off period, during which work-seekers to whom upfront fees may be charged, do not need to make any immediate payment to an agency. This gave work-seekers the opportunity to cancel or withdraw their details from a publication without detriment. However, the Department is concerned that the cooling off period may be insufficient to prevent abuse of work-seekers in this sector. Anecdotal evidence from GB (which has very similar legislation to that in Northern Ireland) suggests that further amendments to the legislation are required. This issue is one that is specific to recruitment within the entertainment and modelling industries but there were no comments received on this subject during consultation from the sector. Of the ten substantive responses received, only two commented on this proposal. Both were in support of tightening of the Conduct Regulations on this issue. Comments included:

'The Labour Relations Agency welcomes the proposed changes to tackle bad practices such as upfront fees.'

Labour Relations Agency

3.3 The following are questions 7 – 14 of the Consultation which relate to 'upfront fees':

- 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?

Departmental Response:

- 3.4 In considering this issue, the Department is mindful of the need to strike a balance between tackling abuses within the modelling and entertainment industries, and protecting work-seekers and legitimate businesses for which upfront fees are a vital part of their business model.
- 3.5 Following strong evidence from the consultation in GB on similar proposed amendments to the GB Conduct Regulations, it was felt that the best way to tackle abuses within the modelling and entertainment industries was to pursue a new option which combined elements of option 1 (ban) and option 2 (tightening the Regulations).

- 3.6 In order to ensure that any change does not adversely affect legitimate businesses and that work-seekers are afforded every available protection, it has been decided that upfront fees will be **banned** for photographic and fashion models.
- 3.7 They will continue to be **allowed** for the recruitment of actors, production staff and other entertainers.
- 3.8 The amendments will apply to workers in the modelling and entertainment sectors according to how vulnerable those workers currently are to unscrupulous practices. A would-be actor or extra, for example, is considered to be an easier “target” for these agencies than a camera operator or make-up artist. A total ban on up-front fees will apply to aspiring photographic and fashion models, as these are considered to be the most vulnerable to such abuses in this sector.
- 3.9 The Department intends to tighten the Conduct Regulations in respect of the following occupations: actor, background artist, extra, musician, singer, dancer or other performer. In these circumstances, the following conditions will apply:
- the statutory cooling off period in respect of any upfront fees will be extended from 7 to 30 days;
 - employment agencies will be required to notify all new clients in writing, making clear that the clients have a right to cancel during that period;
 - the cooling off period will only start when the agency accepts a worker on to their books or agrees to find them work and they have issued or offered the work-seeker a written contract or terms;
 - provision will be introduced for the work-seeker to see and approve a draft of the information to be provided in the publication, prior to payment of a fee; and
 - provision for a refund will be introduced if no publication is produced or circulated within a set timeframe of 60 days.
- 3.10 It is intended to retain the 7 day cooling off period for the remaining occupations in Schedule 3 of the Conduct Regulations (i.e. those occupations related to behind-the-scenes work such as production staff, camera operator etc).
- 3.11 A 30 day cooling off period will also be introduced in respect of additional services relating to the production of photographic images or audio or video recordings of the work seeker provided by the employment agency. This applies to actors, background artists, dancers, extras, musicians, singers or other performers as well as photographic and fashion models. The aim is to restrict the practice of charging high fees for poor quality or unnecessary portfolios or audition tapes which some unscrupulous agencies use to exploit work-seekers.

4. Other Miscellaneous Regulation Changes

Temporary workers employed through Umbrella Companies

- 4.1 The Department sought views on the practice of temporary workers being employed through umbrella companies. An umbrella company acts as an employer to an independent contractor or worker who works under a temporary contract. Regulation 32 of the Conduct Regulations allows workers employed in this way to choose to opt out of the Conduct Regulations. This provision was intended for high-end, high-skilled workers, such as ICT workers to opt out, should they wish to be allowed greater freedom when selling their skills to employers. Working for an umbrella company also provides the worker with tax advantages.
- 4.2 However, there is concern that this provision could be abused and that umbrella companies may require workers, particularly low-skilled workers, to opt out of the Conduct Regulations as a condition of joining the umbrella company and availing of its financial and accounting services. The concern is that low-skilled workers may not be aware they are opting out of the Conduct Regulations, or of the protection the Regulations afford them, particularly 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.
- 4.3 Responses received included:

'REC has not received evidence that low skilled or vulnerable workers are disadvantaged by the opt-out and cannot see what the advantage would be for Umbrella Companies in the use of the opt-out. REC does not consider that this is a matter which can be tackled through the review of Regulation 32.'

Recruitment and Employment Confederation

'Restricting the use of Umbrella Companies due to abuse by a minority of unscrupulous agencies will deter a legitimate form of contractual relationship.'

'Detailed research into established practice in the sector is necessary to establish the true extent to which such a problem is occurring.'

Confederation of British Industry

'In our experience, the overwhelming majority of limited company and umbrella arrangements are entered into by individuals who are able to command rates of pay significantly above average earnings.'

Adecco

- 4.4 **The following are questions 15 – 20 of the Consultation which relate to 'Temporary workers employed through Umbrella Companies':**

- 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?

Departmental Response

4.5 The consultation process did not provide convincing evidence of vulnerable workers suffering detriment whilst working under these arrangements and the matter will be re-visited as it is likely to fall within scope of the Temporary Agency Worker's Directive 2008/104/EC which must be transposed by December 2011. Issues arising from this consultation will be further explored during consultation on the Directive and will not be pursued any further at this time. Regulation 32 will therefore remain in the Conduct Regulations.

Requirement to agree terms with work-seekers and hirers

- 4.6 Under regulations 14, 16 and 17 of the Conduct Regulations, all employment agencies are required to agree terms with work-seekers and hirers prior to providing work-finding services. The Department is aware that some employment agencies see these provisions as burdensome and irrelevant on the basis that such requirements are the responsibility of the prospective employer.
- 4.7 The Department has therefore asked for views on this issue to establish if there is a need to simplify or remove these requirements. As detailed in this document, the responses were mixed on this issue:

'These are a significant and costly administrative burden and should be immediately removed. The need to agree these terms in writing is 'non-green' and also seems unnecessary.'

Bond Search and Selection

‘REC does not think that the provisions of Regulation 14 are necessary. Responses for the need for Regulation 17 were evenly split. As the agency would have to continue to issue contract terms to the hirer for commercial reasons REC does not see any benefit in removing Regulation 17.’

Recruitment and Employment Confederation

‘There would appear to be little to be lost from the repeal of these Regulations.’

Confederation of British Industry

4.8 Question 21 of the Consultation relates to the ‘Requirement to agree terms with work-seekers and hirers’:

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?

Departmental Response

4.9 Having considered the responses carefully, the Department has decided to **remove** the requirement that employment agencies that introduce work-seekers to hirers to fill permanent vacancies should obtain agreement to terms with work-seekers in regulation 14 and agreement with hirers in regulation 17. This means these regulations will only apply where an employment business supplies temporary workers.

4.10 Regulation 16 will be amended to provide for terms to continue to be required between work-seeker and agency for workers within the modelling and entertainment sectors. Regulation 16 will also be amended to reflect the changes in relation to the circumstances in which an upfront fee can be charged to workers in those sectors.

4.11 The removal of the requirement to agree terms does not remove the other protections afforded to work-seekers by the Conduct Regulations and in particular the practice of charging work-seekers for work finding services will continue to be unlawful.

Requirements when placing advertisements

4.12 Under regulation 27, every advertisement issued by an employment agency must include the agency’s name and whether it is acting as an ‘employment business’ (i.e. supplying temporary workers) or an ‘employment agency’ (i.e. introducing work-seekers to hirers to fill permanent vacancies), as well as reflecting the full nature of the position being advertised.

4.13 The Department is conscious that most people are unaware of the distinction between the terms ‘employment agency’ and ‘employment business’ and therefore consulted on views as to how this regulation

could be simplified and made clearer for work-seekers. The Department suggested the use of the terms 'permanent' and 'temporary' in regulation 27.

- 4.14 The Department received six comments on this proposal. All were in favour of using clearer terms to simplify this regulation.

'The Labour Relations Agency believes that the problem stems from the loose use of language and labels associated with this area. The Labour Relations Agency welcomes any proposal that clarifies in the advertisement the nature of the relationship from the outset.'

Labour Relations Agency

'Citizens Advice would support an amendment of Regulation 27 in respect of stating whether a vacancy is temporary or permanent.'

Citizens Advice Bureau

'Adecco agree that the terms 'Employment Business' and 'Employment Agency' are probably not widely understood by work seekers. Although they have no legal meaning, the words 'temporary' and 'permanent' would be more appropriate.'

Adecco

- 4.15 **The following are questions 22 – 23 of the Consultation which relate to 'Requirements when placing advertisements':**

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.

Departmental Response

- 4.16 The Department will now proceed with the change as proposed in the public consultation and amend regulation 27 so that advertisements for jobs state whether or not the vacancy is 'permanent' or 'temporary'. This change recognises that the terms 'employment agency' and 'employment business' mean little to most work-seekers and employers. The new terms introduce greater clarity and are far more likely to be understood by the wider public.

5. Post Graduate Medical Deanery (NIMDTA)

- 5.1 The Northern Ireland Medical and Dental Training Agency (NIMDTA) is Northern Ireland's only Post Graduate Medical Deanery. 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. NIMDTA recruits but does not employ junior doctors.

- 5.2 The Department considers that NIMDTA currently operates within the scope of the 1981 Order and is therefore technically an employment agency. 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 proposed that NIMDTA should be made exempt from the employment agency legislation.
- 5.3 Respondents on this issue included NIMDTA and the British Medical Association (BMA). NIMDTA were in favour of the Department's proposal. However, BMA expressed strong objections to it, pointing out that junior doctors are just as likely to be vulnerable to the same exploitations as other workers and that protections afforded to work-seekers within the Conduct Regulations would be advantageous to junior doctors.

Departmental Response

- 5.4 In light of the views expressed during the consultation, the Department considers that further separate discussion is required with the relevant bodies in Northern Ireland. No amendments will be made to the Conduct Regulations at this stage in relation to the NIMDTA.

6. Impact Assessments and Summary of the Proposals

Partial Regulatory Impact Assessment

- 6.1 The consultation document contained a Partial Regulatory Impact Assessment (PRIA) which considered the costs, risks and benefits of each proposal.
- 6.2 The PRIA examined the impact of the changes being made and concluded that the banning of upfront fees in certain circumstances will have a negative impact on some agencies. However, no information was provided in this respect during the consultation, so we do not have the robust data to estimate the exact costs of this proposal. However the benefits to work seekers and the benefits to the recruitment sector of the deregulatory measures will have an overall positive regulatory impact.
- 6.3 The Department asked respondents to consider the findings as outlined in the PRIA when providing their responses. No respondents highlighted any significant risks or costs to any groups of workers. Therefore, a full RIA is not considered necessary.

Preliminary Equality Impact Assessment

- 6.4 The Department also carried out a preliminary Equality Impact Assessment (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 was not considered necessary at present.

Summary of the Proposals

A - Checking suitability for permanent recruitment

- 6.5 The Department will remove the requirement for employment agencies that introduce work-seekers to hirers to fill permanent vacancies, to carry out suitability checks for most work-seekers. However, we will expand the definition of those circumstances in which suitability checks will still be required. In particular, checks will remain if the person will be working with or caring for children and vulnerable adults. Checks will also remain in respect of all temporary workers to be supplied by an employment business.
- 6.6 We have concluded that the position regarding Regulation 20(5) and (6) will remain unchanged.

B - Fees payable by models and entertainers

- 6.7 Upfront fees will be **banned** for photographic and fashion models. They will continue to be **allowed** for the recruitment of actors, production staff and other entertainers. Furthermore, in respect of the occupations of actor, background artist, musician, singer, dancer or other performer, tighter restrictions on upfront fees will be applied which will extend the cooling off period from 7 to 30 days, and will require agencies to provide clients with written notification of this cooling off period and a refund if no publication is produced within a set timeframe of 60 days. A 30 day cooling off period is also introduced for additional services relating to the production of photographic images, or audio or video recordings, of a work seeker.

C - Temporary workers employed through umbrella companies

- 6.8 No change will be made to regulation 32 at this time,

D - Requirement to agree terms with work-seekers and hirers

- 6.9 Regulations 14 and 17 will be amended so that employment agencies that introduce work-seekers to hirers to fill permanent vacancies will not be required to agree terms with work-seekers and hirers, prior to submitting candidates to clients. Regulation 16 will now be amended to reflect the changes in relation to the circumstances in which an upfront fee can be charged.

E - Requirements when placing advertisements

- 6.10 The Department will amend regulation 27 so that job advertisements state whether or not the vacancy is 'permanent' or 'temporary.' These terms are to be used in place of 'employment agency' or 'employment business', recognising the fact that these terms can be confusing to the wider public.

Post Graduate Medical Deanery

- 6.11 The Department will respond specifically on this matter, following the outcome of further discussions and consultation taking place in Great Britain and consultation with relevant bodies in Northern Ireland.
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7. Summary of the Way Forward

Legislation

- 7.1 The Department is grateful to all organisations and individuals who took the time to respond to the consultation. Our intention now is to take these proposals forward through the Northern Ireland Assembly, with the changes coming into operation later in 2010.

Guidance

- 7.2 The Department will also consider a review of guidance based on the full consultation process, outcomes and intended changes to the Regulations, with a view to ensuring that any guidance produced is up-to-date and relevant.

EU Agency Workers Directive (AWD)

- 7.3 As mentioned in the consultation document, the issues raised in the Consultation and Departmental Response regarding the proposed amendments to the Conduct Regulations are entirely separate to those raised by the implementation of AWD. The Department is still considering its options on AWD and intends to consult in autumn 2010.

Employment Bill

- 7.4 The Department's Employment Bill has recently passed the final Assembly stages and is awaiting Royal Assent. The proposals in relation to employment agencies include provisions to:
- allow offences under employment agency legislation to be tried at the Magistrates' Court or the Crown Court, thereby allowing for unlimited fines;
 - provide new powers for agency inspectors to compel agencies or third parties such as banks to produce financial information for investigation purposes; and
 - allow the Department's employment agency inspectors to exchange inspection information with HM Revenue and Customs National Minimum Wage compliance officers.

ANNEX A: Respondents to the Public Consultation

RESPONDENTS TO THE PUBLIC CONSULTATION

Adecco

Belfast Telegraph

Bond Search and Selection

British Medical Association (BMA)

Citizens Advice Bureau (CAB)

Confederation of British Industry (CBI)

Labour Relations Agency (LRA)

Limavady Borough Council

Northern Ireland Association for the Care and Resettlement of Offenders (NIACRO)

Northern Ireland Judicial Appointments Commission (NIJAC)

Northern Ireland Medical and Dental Training Agency (NIMDTA)

Recruitment and Employment Confederation (REC)

United Kingdom Homecare Association (UKHCA)

ANNEX B: The Consultation Questions

A - Suitability checks for permanent recruitment

- 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

- 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

- 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

- 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

- 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.

ANNEX C: Summary of the Conduct Regulations

<i>Regulation 5</i>	<i>Restriction on use of additional services.</i>
<i>Regulation 6</i>	<i>Restriction on detrimental action relating to work-seekers working elsewhere.</i>
<i>Regulation 7</i>	<i>Restriction on providing work-seekers in industrial disputes.</i>
<i>Regulation 8</i>	<i>Restriction on paying work-seekers remuneration.</i>
<i>Regulation 9</i>	<i>Restriction on Employment Agencies and Employment Businesses purporting to act on a different basis.</i>
<i>Regulation 10</i>	<i>Restriction on charges to hirers.</i>
<i>Regulation 11</i>	<i>Entering into a contract on behalf of a client.</i>
<i>Regulation 12</i>	<i>Prohibition on Employment Businesses withholding payment to work-seekers on certain grounds.</i>
<i>Regulation 13</i>	<i>Notification of charges and the terms of offers.</i>
<i>Regulation 14</i>	<i>Requirement to obtain agreement to terms with work-seekers.</i>
<i>Regulation 15</i>	<i>Content of terms with work-seeker: Employment Businesses.</i>
<i>Regulation 16</i>	<i>Content of terms with work-seeker: Employment Agencies.</i>
<i>Regulation 17</i>	<i>Requirement to obtain agreement to terms with hirers.</i>
<i>Regulation 18</i>	<i>Information to be obtained from a hirer.</i>
<i>Regulation 19</i>	<i>Confirmation to be obtained about a work-seeker.</i>
<i>Regulation 20</i>	<i>Steps to be taken for the protection of the work-seeker and the hirer.</i>
<i>Regulation 21</i>	<i>Provisions on information to work-seekers and hirers.</i>

<i>Regulation 22</i>	<i>Additional requirements where professional qualifications are required or where work-seekers are to work with vulnerable persons.</i>
<i>Regulation 23</i>	<i>Situations where more than one Employment Agency or Employment Business is involved.</i>
<i>Regulation 24</i>	<i>Situations where work-seekers are provided with travel or required to live away from home.</i>
<i>Regulation 25</i>	<i>Client accounts.</i>
<i>Regulation 26</i>	<i>Circumstances in which fees may be charged to work-seekers.</i>
<i>Regulation 27</i>	<i>Advertisements.</i>
<i>Regulation 28</i>	<i>Confidentiality.</i>
<i>Regulation 29</i>	<i>Records.</i>
<i>Regulation 30</i>	<i>Civil liability.</i>
<i>Regulation 31</i>	<i>Effect of prohibited or unenforceable terms and recoverability of monies.</i>
<i>Regulation 32</i>	<i>Application of the regulations to work-seekers which are incorporated.</i>
<i>Regulation 33</i>	<i>Electronic communications and other communications.</i>

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