

people:skills:jobs:



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

# Private Recruitment Sector Enforcement Annual Report for 2009/10



July 2010

# Foreword



This is the second annual report from my Department, which details its ongoing work in monitoring and inspecting the private recruitment sector in Northern Ireland. The report covers the period from April 2009 to March 2010.

The private recruitment sector in Northern Ireland provides an important degree of flexibility for both work-seekers and hirers and it will continue to play a vital role in supporting the region's economic recovery. My Department is fully aware of its duty to ensure that the sector is properly regulated and that those employment agencies who would attempt to abuse vulnerable workers, or break the law, are dealt with in a swift and appropriate manner.

The experience of the Department's Inspectors is that the vast majority of agencies are reputable and professional. The Inspectors will continue to work with agencies and other related organisations in order to prevent breaches before they actually take place as, in the long term, this benefits the Inspectors, agencies, hirers and, most importantly, the work-seekers. However, the Department will have no hesitation in using its full powers to take action against rogue agencies. Such agencies take advantage of vulnerable work-seekers, gain an unfair competitive advantage over compliant agencies and, if left unchecked, could damage the reputation of the private recruitment sector as a whole.

It is for this reason that my Department has sought increased powers to aid the Inspectors in their work. The powers, which were included as part of a wider Employment Bill, will provide for unlimited fines, the right to request access to an agency's financial records and will remove an information-sharing barrier between the Inspectors and HMRC National Minimum Wage enforcement officers. The Employment Bill has recently passed through its final Assembly stages and awaits Royal Assent (due in July 2010). The measures will have no impact on agencies that operate within the law. They are aimed at the seriously non-compliant and will enable my Department to tackle such agencies harder and faster.

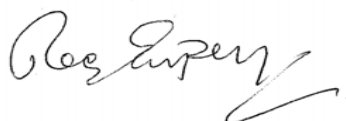
However, the potential for these additional powers will not be fully realised unless the recruitment sector and the wider public are aware of how to raise complaints, or of the Department's ability to act on their behalf. We are aware of the need to raise the Department's profile in the sector and this will be one of our main aims over the coming 12 months. My Department has already begun this process through improved communication with the Equality Commission, the Recruitment and Employment Confederation (REC), the

Gangmasters Licensing Authority (GLA) and HMRC, to raise awareness of the need for compliance and the role of the Inspectors. Furthermore, we understand that more needs to be done to get our message across to those most at risk: the work-seekers. We have also been working closely with three of Northern Ireland's main online job boards to increase the Department's profile in that area and to address concerns at the number of complaints relating to the conduct of some agencies in this relatively new area of the recruitment sector.

The Department also commissioned Millward Brown Ulster to carry out research into the private recruitment sector, the first such research of its kind in Northern Ireland. In summary, the research confirmed that there were around 270 employment agencies and businesses operating in Northern Ireland in September 2009, 58% of which had fewer than five employees and 92% of which were independently owned. At the time of the survey, more than 84,000 individuals were registered with an employment agency or business in Northern Ireland and more than 22,000 individuals were employed on a temporary basis through an employment agency. Such figures serve as a reminder that many thousands of work-seekers rely on local agencies to provide a gateway to permanent work, an opportunity to develop skills or the flexibility to balance work and other commitments.

Overall, the Inspectors carried out fewer routine inspections than anticipated this year. This was primarily due to the intensive and time-consuming work which was required in the prohibition of one agency and the prosecution of another. My Department recognises that this is an area for improvement and has reaffirmed its commitment to completing the first wave of routine inspections.

The work of the Inspectors began in January 2006 when the Department was first granted powers of entry and inspection. Agency inspection in Northern Ireland is still an evolving process and I would like to thank the sector and its representatives for identifying problems and being forthcoming with solutions. The more we can work together, the easier it will be to achieve a competitive, but fair, recruitment sector in Northern Ireland, providing work-seekers with employment and hirers with the flexibility they need to achieve economic growth.



Sir Reg Empey  
Minister for Employment and Learning

# Contents

1. Background	4
2. Summary of Achievements - April 2009 to March 2010	6
3. Future Developments	10
4. Guidance and General Information	12
Annex A - List of Regulations	14
Annex B - Inspections and Complaints (April 2009 to March 2010)	16
Annex C - Most Breached Regulations (April 2009 to March 2010)	17

# 1. Background

This is the second annual report from the Department for Employment and Learning in respect of its work on private recruitment sector enforcement. This report covers the period from April 2009 – March 2010.

Employment agencies and employment businesses must comply with the Employment (Miscellaneous Provisions) (Northern Ireland) Order 1981 (“the 1981 Order”) and the Conduct of Employment Agencies and Employment Businesses Regulations (Northern Ireland) 2005 (“the Conduct Regulations”).

## Employment Agencies and Employment Businesses

The 1981 Order defines an **Employment Agency** as: "the business (whether or not carried on with a view to profit and whether or not carried on in conjunction with any other business) of providing services (whether by the provision of information or otherwise) for the purpose of finding persons employment with employers or of supplying employers with persons for employment by them". It defines an **Employment Business** as: "the business (whether or not carried on with a view to profit and whether or not carried on in conjunction with any other business) of supplying persons in the employment of the person carrying on the business, to act for, and under the control of, other persons in any capacity".

In practical terms, an employment agency introduces a candidate to an employer to fill a permanent vacancy and thereafter the employee is under the control of the employer. An employment business supplies temporary agency workers to a hirer to fill temporary vacancies and the contractual employment relationship is between the employment business and the worker. **"Employment agency" is the term popularly used to cover both scenarios and will be used in this report.**

## Legislation

The 1981 Order provides the Department with the power to make legislation to regulate the private recruitment sector and was amended in 2006<sup>1</sup> to allow the Department to appoint officers to enter and inspect Northern Ireland-based employment agencies. The 1981 Order also prohibits the charging of a fee to a work-seeker for work-finding services. However, agencies operating in the entertainment and modelling sectors may charge fees as provided for in the Regulations.

---

<sup>1</sup> The 1981 Order was amended by the Employment (Miscellaneous Provisions) (Northern Ireland) Order 2005 which came into operation in January 2006

The Conduct Regulations, which were brought into operation by the Department in 2005 and amended in 2008<sup>2</sup>, are designed to protect work-seekers and hirers (i.e. those employers who use the recruitment industry to hire staff) using the services provided by an employment agency by setting certain minimum standards to which employment agencies must adhere.

During the year, policy development was undertaken on the Department's Employment Bill which will amend the 1981 Order to provide for unlimited fines, the right to request access to an agency's financial records, and the removal of an information-sharing barrier between the Inspectors and HMRC National Minimum Wage enforcement officers. The Bill has passed through its final stages at the Assembly and awaits Royal Assent (due in July 2010). More detail on the provisions of the Bill is available in part 3, 'Future Developments'.

---

<sup>2</sup> The Conduct Regulations were amended by the Conduct of Employment Agencies and Employment Businesses (Amendment) Regulations (Northern Ireland) 2008, which came into operation on 6 April 2008

## 2. Summary of Achievements - April 2009 to March 2010

### Inspections

From April 2009 to March 2010, employment agency Inspectors carried out a total of **44 inspections**, 35 were routine, 7 were undertaken as a direct response to complaints and 2 were undertaken as a follow up to an inspection<sup>3</sup>. This total was less than that carried out during the previous business year, the main reason for the dip being that the Inspectors had to spend significant amounts of time during the year on the prohibition and prosecution of two agencies (for more detail, see 'Enforcement Action' below). The Industrial Tribunal's decision on the prohibition case was given in March 2010 and the investigative stage of the prosecution case is now complete, which will enable the Inspectors to turn their attention back to routine inspections. We want to take this opportunity to reaffirm our commitment to the process of routine inspections. They have proved to be an invaluable way for the Inspectors to ensure compliance with the Conduct Regulations to the benefit of the agency, hirer and work-seeker. Indeed, many agencies have commented on the positive and worthwhile nature of the inspection process, as it increases awareness and knowledge of the requirements of the legislation, and allows agencies to open direct lines of communication with the Department.

### Complaints

During the period April 2009 to March 2010, the Inspectors received a total of **33 complaints**. This was fewer than the 59 complaints received during the same period in the previous year. This was mainly due to a reduction in inter-agency complaints following the introduction of the 'Code of Conduct for Online Job-Board Advertising'<sup>4</sup> which enabled the job boards themselves to initially address the rising level of complaints about advertisements (for more detail on the Code of Conduct, see 'Other Developments' below). The reduction in complaints may be partly due to the higher level of compliance amongst agencies, as a result of the programme of routine inspections. We are pleased that the number of complaints has decreased but anticipate that this number may increase again, as the Department raises its profile over the next 12 months and in particular our role in complaint investigation.

**Complaints from hirers and work-seekers are given a high priority and are subject to a full and thorough investigation.**

---

<sup>3</sup> Detailed inspection statistics are included in Annexes A-C

<sup>4</sup> The Code of Conduct is available to download from the Department's website - <http://www.delni.gov.uk/index/publications/pubs-employment-rights/other-employment-rights-publications/code-of-conduct-online-job-advertising.htm>

## **Enforcement Action**

The Inspectors operate under the Department's enforcement and procedural guide. They aim to achieve compliance through advice, education and guidance in the first instance. However, they can and will take enforcement action where appropriate, if an agency fails to adequately respond to infringement letters. The Department currently has powers to prosecute seriously non-compliant agencies in the Magistrates' Court, where the maximum fine is currently £5,000<sup>5</sup>.

During the year, the Department applied for a prohibition order against an agency which was subsequently successful (subject to conditions).

The Department also began an investigation into a second agency and is now in the process of bringing forward its first prosecution case against that agency.

The Department's main focus has been, and will remain, to encourage compliance with the legislation. As the Department develops its enforcement role, it may be necessary to take further prosecutions, or in the most serious cases, to make application to the Industrial Tribunal to prohibit an employment agency from carrying on as such for up to ten years.

## **Other Developments**

### Code of Conduct

During the previous reporting year, an increase in inter-agency complaints was recorded. A number of these related to advertisements placed by employment agencies on online job-boards. In the main, it was alleged that agencies were placing multiple and/or duplicate advertisements for a single vacancy, placing advertisements for non-existent vacancies in order to increase their online profile, or advertising vacancies without the consent of the hirer.

In response to this, the Department met with the three major online job-boards operating in Northern Ireland to draw up a Code of Conduct to which employment agencies must adhere, if they wished to advertise on these job-boards. An agreed Code of Conduct was issued to all employment agencies in Northern Ireland in June 2009.

The purpose of the Code of Conduct is to ensure that all advertisements placed on online job-boards by Northern Ireland-based employment agencies comply with legal requirements and do not mislead work-seekers or misrepresent hirers.

---

<sup>5</sup> One of the provisions of the Employment Bill will provide the Department with the option of bringing the case before the Crown Court which can issue unlimited fines

A six month review of the Code of Conduct took place in December 2009 in consultation with representatives from the three main job boards, to consider how the Code had met its objectives and how it could be improved to meet the needs of agencies, hirers, work-seekers and job-boards. As a result, the job-board complaints procedure has been amended and a revised version of the Code of Conduct will be agreed with the three job-boards for re-issue.

The Code of Conduct can be downloaded from the Department's website. To do this, please go to: [www.delni.gov.uk/er](http://www.delni.gov.uk/er) click on the green arrow entitled 'Employment Agencies' and the Code of Conduct is under 'Other Guidance'.

### Vetting and Barring Scheme

The Vetting and Barring Scheme (VBS) which was established under the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007<sup>6</sup>, was introduced in Northern Ireland in October 2009. The aim of the VBS is to prevent unsuitable people working with children or vulnerable adults in either a paid or voluntary capacity, by requiring them to register with a new Independent Safeguarding Authority (ISA). The intention was that ISA would also maintain lists of individuals whom it had barred from work in relevant positions with children and vulnerable adults. Barred individuals would be prevented from working with children and vulnerable adults.

Towards the end of the year, all employment agencies and businesses were invited to attend an information session on the VBS. The information session was delivered by the Department of Health, Social Services and Public Safety (DHSSPS) who have overall responsibility for the roll-out of the Scheme. DHSSPS outlined a number of key legislative changes which had taken effect in October 2009, some of which impacted directly on employment agencies and employment businesses. A number of new statutory duties linked to the introduction or supply of individuals for work with children and vulnerable adults were also explained.

In May 2010, the new UK Government announced that it was reviewing the VBS. Voluntary registration with the Scheme was due to start on 26 July 2010.

**As a consequence of the review, a decision was taken that the voluntary registration phase should be halted whilst the review is being carried out.**

### Recruitment Sector Research

To inform the future development of policy in this area of employment law, and to assess the impact of changes in policy and legislation on the local economy, the Department sought to measure the size and nature of the private recruitment sector in Northern Ireland. Following a competitive

---

<sup>6</sup> General guidance is available from the DHSSPS website - [www.dhsspsni.gov.uk/svg](http://www.dhsspsni.gov.uk/svg)

tendering process, Millward Brown Ulster Ltd was awarded the contract to undertake this research on behalf of the Department.

Millward Brown's final report was received by the Department in January 2010 and, in the main, findings were positive in terms of the role of the private recruitment sector and the benefits provided to hirers, workers and the economy<sup>7</sup>.

The research confirmed that there were around 270 employment agencies and businesses operating in Northern Ireland in September 2009, 58% of which had fewer than five employees and 92% of which were independently owned. At the time of the survey, more than 84,000 individuals were registered with an employment agency or business in Northern Ireland and more than 22,000 individuals were employed on a temporary basis through an employment agency. The research also found that disproportionate numbers of males, non-nationals and those from lower socio-economic backgrounds were employed through recruitment agencies. The majority of stakeholders were of the opinion that the experience of temporary agency work amongst the migrant population was different to that of indigenous workers, with issues relating to language and discrimination being the obvious differentiators mentioned. Perhaps the most important conclusion drawn from the research was that the majority of temporary agency workers were satisfied with their employment agency, had never experienced any problems regarding payment and were placed in temporary employment within a few weeks of registering with a recruitment agency.

This research will prove to be a very useful tool when developing new policies and has highlighted that the work of the Inspectors is paying dividends in terms of work-seekers' overall satisfaction. We are aware that more needs to be done to increase protection of migrant workers who are often amongst the most vulnerable and aim to address this in the coming 12 months.

---

<sup>7</sup> The full report can be downloaded from the Department's website - <http://www.delni.gov.uk/index/publications/pubs-employment-rights/private-recruitment-sector-ni.htm>

## 3. Future Developments

### Inspections

The Department's aim is to inspect all employment agencies and employment businesses at least once within the first three years of our inspection programme, to ensure that they comply with the relevant legislation and that none are at a competitive advantage by exploiting non-compliant practices. The Department is on course to complete this first wave of inspections during 2010/11, following which a second wave of risk-based inspections will commence. This risk-based approach to inspection will target those agencies or sectors which have proved most non-compliant, or where workseekers are at greatest risk.

The Department will continue to work with agencies and other stakeholders in order to address breaches before they take place. However, the Department will not hesitate to use its full powers of prohibition and prosecution to take action against any rogue agencies that seek to benefit financially at the expense of vulnerable workers.

### Employment Bill

The Department is currently in the process of passing an Employment Bill through the Assembly. Certain provisions within the Bill have been included to provide the Department with greater powers to deal with employment agencies that break the law. There are three main provisions:

#### Cases triable either way

This will enable the Department to try cases in either a magistrates' court or the Crown Court. Currently, cases can only be taken to a magistrates' court where the maximum fine for offences is £5,000. This figure is an insufficient deterrent to agencies that could make profits greatly in excess of this amount, through operating outside the law. The Crown Court has the power to issue unlimited fines.

#### Powers to compel agencies or third parties such as banks to produce financial information

This provision will enable Inspectors to request sight of an agency's financial information. Where an agency refuses, the Inspectors will be legally permitted to gather the information from a relevant third party (i.e. a bank). These powers will only be used in the most serious cases of non-compliance and only after the agency has continually failed to respond to requests for this information.

## Removal of information-sharing barrier

There is currently a legal barrier which prevents the Inspectors from sharing information with HM Revenue and Customs National Minimum Wage compliance officers and vice versa. The circumstance may arise when one enforcement body is investigating a business which it finds to be compliant with its own legislation but discovers anomalies that suggest non-compliance with the legislation of the other body. Currently, the barrier prevents Inspectors sharing this information. The removal of the barrier will enable the Inspectors to work more closely with NMW compliance officers to aid enforcement of these workplace rights.

## **Temporary Agency Workers Directive**

The Temporary Agency Workers Directive (“the Directive”) was formally adopted by the European Parliament in December 2008 and it must be transposed by December 2011. The main purpose of the Directive is to ensure the appropriate protection of temporary agency workers through the application of the principle of equal treatment (compared to directly-employed workers) with regard to pay and certain basic working conditions such as hours of work, holiday entitlement, etc. (but not, for example, unfair dismissal or redundancy pay).

Article 5(4) of the Directive allows Member States to establish alternative arrangements derogating from the principle of equal treatment on the basis of an agreement concluded between the social partners at national level. These arrangements may include a qualifying period for equal treatment. In May 2008, the UK Government announced that it had agreed with the TUC and CBI to implement the Directive in the UK with a 12-week qualifying period for equal treatment. The Department will shortly consult on proposals to implement the Directive in Northern Ireland.

## **Amendments to the Conduct Regulations**

Between July and September 2009, the Department consulted on a number of proposals in its consultation document – *Amendments to the Conduct of Employment Agencies and Employment Businesses Regulations (Northern Ireland) 2005 – A Public Consultation 2009*. Thirteen responses were received to the consultation and a Departmental Response setting out how the Department proposes to proceed has been issued<sup>8</sup>. The proposed amendments relate to a number of deregulatory measures intended to reduce administrative burdens for agencies, and other measures to ensure that work-seekers, particularly in the entertainment sectors, are protected from opportunistic agencies requiring payment of up-front fees. It is intended that the amendments will come into operation in late 2010.

---

<sup>8</sup> <http://www.delni.gov.uk/index/consultation-zone/archived-consultations/archived-consultations-2009/intro-conduct-of-employment-agencies-employment-buss-regulations-ni-05/conduct-emp-agencies-emp-buss-regs-ni-05.htm>

## 4. Guidance and General Information

### Guidance

The Department has produced a detailed guide on the Conduct Regulations. There are also Frequently Asked Questions (FAQ) booklets for work-seekers and agencies. The FAQ booklet for work-seekers is available in a number of languages. In addition there is guidance available for drivers/driver agencies and would-be models and entertainers.

All guidance is available on the Department's website at: [www.delni.gov.uk/er](http://www.delni.gov.uk/er)

### Working with other bodies

The Department works with a number of other public bodies in the course of discharging its duty to regulate the private recruitment sector.

#### The Department for Business, Innovation and Skills (BIS)

The Department for Business, Innovation and Skills<sup>9</sup> regulates GB-based agencies. It has 24 Inspectors who enforce the GB Conduct Regulations. The Employment Agency Inspectors attend BIS Inspector events to ensure an even-handed approach across the United Kingdom and to increase their awareness of other issues within the sector. BIS officials have been extremely helpful in providing advice, support and networking to the Inspectors in Northern Ireland and the Department is very grateful for their ongoing assistance.

#### The Gangmasters Licensing Authority (GLA)

The GLA<sup>10</sup> was established in 2005 and is responsible for introducing and operating a licensing scheme for labour providers working in the agricultural and horticultural sectors and for those gathering shellfish and working in related food processing and packaging sectors. The Employment Agency Inspectors meet regularly with the GLA Inspectors to share information and cooperate where appropriate.

#### HM Revenue and Customs (HMRC)

HMRC<sup>11</sup> is responsible for the enforcement of the National Minimum Wage. The Inspectors meet regularly with HMRC compliance officers to discuss relevant issues. The Department is currently legislating to allow for the lawful exchange of inspection information with HMRC.

---

<sup>9</sup> [www.bis.gov.uk](http://www.bis.gov.uk)

<sup>10</sup> [www.gla.gov.uk](http://www.gla.gov.uk)

<sup>11</sup> [www.hmrc.gov.uk](http://www.hmrc.gov.uk)

## Republic of Ireland

In the Republic of Ireland the Department works with the Department of Enterprise Trade and Investment<sup>12</sup> and the National Employment Rights Authority<sup>13</sup>.

### **Contact details**

If you require any further information or you wish to make a complaint about an employment agency you can contact us in the following ways:

Address: Department for Employment and Learning  
Employment Relations Policy and Legislation Branch  
Adelaide House  
39-49 Adelaide Street  
Belfast  
BT2 8FD

Telephone: 028 9025 7554

Fax: 028 9025 7555

E-mail: [ea.inspectors@delni.gov.uk](mailto:ea.inspectors@delni.gov.uk)

Website: [www.delni.gov.uk/er](http://www.delni.gov.uk/er)

---

<sup>12</sup> [www.deti.ie/](http://www.deti.ie/)

<sup>13</sup> [www.employmentrights.ie](http://www.employmentrights.ie)

## Annex A - List of Regulations

<b>Regulation 5</b>	Restriction on use of additional services
<b>Regulation 6</b>	Restriction on detrimental action relating to work-seekers working elsewhere
<b>Regulation 7</b>	Restriction on providing work-seekers in industrial disputes
<b>Regulation 8</b>	Restriction on paying work-seekers remuneration
<b>Regulation 9</b>	Restriction on Employment Agencies and Employment Businesses purporting to act on a different basis
<b>Regulation 10</b>	Restriction on charges to hirers
<b>Regulation 11</b>	Entering into a contract on behalf of a client
<b>Regulation 12</b>	Prohibition on Employment Businesses withholding payment to work-seekers on certain grounds
<b>Regulation 13</b>	Notification of charges and the terms of offers
<b>Regulation 14</b>	Requirement to obtain agreement to terms with work-seekers
<b>Regulation 15</b>	Content of terms with work-seeker: Employment Businesses
<b>Regulation 16</b>	Content of terms with work-seeker: Employment Agencies
<b>Regulation 17</b>	Requirement to obtain agreement to terms with hirers
<b>Regulation 18</b>	Information to be obtained from a hirer
<b>Regulation 19</b>	Confirmation to be obtained about a work-seeker
<b>Regulation 20</b>	Steps to be taken for the protection of the work-seeker and the hirer
<b>Regulation 21</b>	Provisions on information to work-seekers and hirers
<b>Regulation 22</b>	Additional requirements where professional qualifications are required or where work-seekers are to work with vulnerable persons
<b>Regulation 23</b>	Situations where more than one Employment Agency or Employment Business is involved
<b>Regulation 24</b>	Situations where work-seekers are provided with travel or required to live away from home
<b>Regulation 25</b>	Client accounts
<b>Regulation 26</b>	Circumstances in which fees may be charged to work-seekers
<b>Regulation 27</b>	Advertisements
<b>Regulation 28</b>	Confidentiality
<b>Regulation 29</b>	Records
<b>Regulation 30</b>	Civil liability
<b>Regulation 31</b>	Effect of prohibited or unenforceable terms and

	recoverability of monies
<b>Regulation 32</b>	Application of the regulations to work-seekers which are incorporated
<b>Regulation 33</b>	Electronic communications and other communications

## Annex B - Inspections and Complaints (April 2009 to March 2010)

<b>Routine Inspections</b>	
Total number of routine inspections	35
Total number of inspections following a complaint	7
Total infringements found	180
Infringement letters issued	35
<b>Complaints</b>	
Total number of complaints	33
Breaches of the Regulations identified due to complaint	13
Other breaches identified during complaint inspection	16
Infringement letters issued	7
<b>Follow-up Inspections</b>	
Number of follow up inspections	2
Total Infringements found	9
Infringement letters issued	2

## Annex C - Most Breached Regulations (April 2009 to March 2010)

Regulations Breached	Number of Breaches Found
Regulation 21	39
Regulation 14	28
Regulation 27	27
Regulation 17	26
Regulation 15	19
Regulation 19	17
Regulation 10	10
Regulation 5	7
Regulations 6, 12	5
Regulations 22, 29	4
Regulations 16, 25	3
Regulations 13, 20	2

people:skills:jobs:



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



INVESTOR IN PEOPLE

**THE DEPARTMENT:**

Our aim is to promote learning and skills, to prepare people for work and to support the economy.

This document is available in other formats upon request.

**Further information:**

telephone: 028 9025 7554

e-mail: [ea.inspectors@delni.gov.uk](mailto:ea.inspectors@delni.gov.uk)

website: [www.delni.gov.uk](http://www.delni.gov.uk)