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

Employment Agency/Business Regulations

Frequently asked questions for agencies



EMPLOYMENT AGENCY/BUSINESS REGULATIONS

FREQUENTLY ASKED QUESTIONS FOR AGENCIES

The questions and answers that follow are some of those which are most often asked. The contact details of the organisations mentioned throughout this guide and a number of other organisations which you may find useful are listed at the back of this booklet under **USEFUL CONTACTS**.

Do I need a licence to run an employment agency?

No. However, agencies must comply with the Employment (Miscellaneous Provisions) (Northern Ireland) Order 1981 and the Regulations stemming from it. The previous licensing requirements were abolished in 1995. Agencies who supply registered nurses, midwives or health visitors must also be registered with the Regulation and Quality Improvement Authority.

What effect does the Gangmasters legislation have on the private recruitment sector?

If you are operating as an employment business i.e. you are supplying workers who are employed by you but work under the control of other people and are supplying those workers to the agricultural, horticultural or shellfish gathering sectors which includes the processing or packaging of any products derived from these sectors, then you will need to apply to the Gangmasters Licensing Authority for a licence. It is a criminal offence to operate as a gangmaster without a licence.

What does the current employment agency legislation consist of?

The two main pieces of legislation are the Employment (Miscellaneous Provisions) (Northern Ireland) Order 1981 (S.I. 1981/839 (N.I. 20)) (as amended)¹ and the Conduct of Employment Agencies and Employment Businesses Regulations (Northern Ireland) 2005 (S.R. 2005 No. 395) (the Conduct Regulations) (as amended)².

Where can I obtain copies of the legislation?

The legislation is available from the Department's website - www.delni.gov.uk

- 1 The 1981 Order was amended by the Employment (Miscellaneous Provisions) (Northern Ireland) Order 2005
- 2 The Conduct Regulations were amended by the Conduct of Employment Agencies and Employment Businesses (Amendment) Regulations (Northern Ireland) 2008

What issues does the legislation cover?

The legislation covers the conduct of employment agencies and employment businesses regarding their relationship with both work-seekers and hirers.

The main provisions of the Conduct Regulations cover:

- clarifying the content and provision of contractual terms and conditions;
- establishing the suitability of the work-seeker to undertake the work (including ensuring clarification of the work-seeker's ID and confirmation that the work-seeker has the relevant qualifications deemed necessary by the hirer) and the suitability of the vacancy for the work-seeker;
- preventing the imposition of restrictions on work-seekers;
- restricting charges to hirers;
- prohibiting employment businesses withholding payments to work-seekers on certain grounds;
- extending the legislation to work-seekers who are incorporated;
- allowing those who are incorporated who do not wish to be protected by the new Regulations to opt out, but including provisions to prevent limited company contractors from being pressurised into opting out;
- restricting any employment agency's fee to a work-seeker to a deduction from workers' earnings; and
- tightening of controls on client accounts.

The Conduct Regulations were amended in 2008 and detailed guidance on all aspects of the Regulations are available on the Department for Employment and Learning website.

What other legislation should I comply with when operating as an employment agency or business?

The main areas of legislation include the following:

- Race Relations (Northern Ireland) Order 1997
- Fair Employment and Treatment Order 1998
- Sex Discrimination (Northern Ireland) Order 1976
- Disability Discrimination Act 1995
- Employment Rights (Northern Ireland) Order 1996
- Employment Equality (Sexual Orientation) Regulations (Northern Ireland) 2003
- Rehabilitation of Offenders (Northern Ireland) Order 1978.

It is also recommended that you keep up-to-date with any new requirements imposed by law.

Am I allowed to charge workers a fee for finding them a job?

A fundamental principle of the Employment (Miscellaneous Provisions) (Northern Ireland) Order 1981 is that workers should not be charged for work-finding services. However, there are some exceptions to this, i.e. the entertainment and modelling sectors e.g. actors, models or sports persons.

Where can I get advice on how to set up an agency?

Invest NI can provide assistance including advice, and in certain circumstances financial support, to new and existing businesses in Northern Ireland. Also, the Labour Relations Agency can provide general advice on employment rights and responsibilities and related issues.

Can I operate an agency from home?

There is nothing in the Employment (Miscellaneous Provisions) (Northern Ireland) Order 1981 to prevent you doing so but you should check with your local council.

Do I need to form a company to run an agency?

No. There is no requirement for you to form a company. If you decide to form a company, you can find out more information from Companies Registry.

Can a Northern Ireland agency operate in other countries?

It depends on the law of the country concerned. You should check with the Labour Attaché of the appropriate country's embassy in London.

I operate an employment business. How do I protect myself from unwittingly employing illegal migrants?

Employers have a responsibility to prevent illegal working in the UK. It is important that you check relevant documentation to ensure a migrant work-seeker is here legally. The UK Border Agency provides detailed guidance on its website on the steps which you can take to satisfy yourself that any documents produced by a work-seeker demonstrate an entitlement to work in Northern Ireland.

What if I do not comply with the Employment (Miscellaneous Provisions) (Northern Ireland) Order 1981 and the associated Regulations?

Any person who contravenes or fails to comply with the legislation will be guilty of an offence and liable on summary conviction to a fine not exceeding £5,000 for each offence. In more serious cases the Department for Employment and Learning may apply to an Industrial Tribunal for a Prohibition Notice to be served for up to 10 years which will prevent a person from running an employment agency or business, or impose certain conditions under which a person may be allowed to run an employment agency or business, on the grounds that the person concerned is unsuitable because of misconduct or any other sufficient reason.

Can employment agencies and employment businesses be inspected?

The Department has legal powers to enter premises and inspect the records of all employment agencies and businesses based in Northern Ireland. Employment Agency Inspectors based in the Department for Employment and Learning conduct routine inspection visits and investigate any complaints/allegations of non-compliance. Inspectors usually arrange inspections by appointment but they can inspect employment agencies and employment businesses without notice.

Further detailed guidance on the requirements of the legislation is available from the Department for Employment and Learning's employment agency website at:

<http://www.delni.gov.uk/index/er/employment-agency-and-business-regulations-2.htm>

Upon request, consideration may be given to making this guide available in alternative formats. All requests/comments should be addressed to the Department for Employment and Learning.

Please note that this booklet gives general guidance only and should not be regarded as a complete or authoritative statement of the law. Authoritative interpretations of the law can only be given by the courts. Readers should be alert to the possibility of developments in case law that may affect the advice in this guide.

USEFUL CONTACTS

Companies Registry

1st Floor
Waterfront Plaza
8 Laganbank Road
BELFAST
BT1 3BS

Tel: 0845 604 8888
Website: www.detini.gov.uk

Department for Employment and Learning

Employment Relations Policy and Legislation Branch
Adelaide House
39-49 Adelaide Street
BELFAST
BT2 8FD

Tel: 028 9025 7580
Website: www.delni.gov.uk

Gangmasters Licensing Authority

P.O. Box 8538
NOTTINGHAM
NG8 9AF

Tel: 0845 602 5020
Website: www.gla.gov.uk

Health and Safety Executive for NI

83 Ladas Drive
BELFAST
BT6 9FR

Tel: 0800 0320 121
Website: www.hseni.gov.uk

Invest NI

Bedford Square
Bedford Street
BELFAST
BT2 7ES

Tel: 028 9023 9090
Website: www.investni.com

Labour Relations Agency

Head Office
2-8 Gordon Street
BELFAST
BT1 2LG

Tel: 028 9032 1442
Website: www.lra.org.uk

Labour Relations Agency

Regional Office
1-3 Guildhall Street
LONDONDERRY
BT48 6BJ

Tel: 028 7126 9639
Website: www.lra.org.uk

Office of Public Sector Information

London Office
102 Petty France
LONDON
SW1H 9AJ

Tel: 020 3334 2799
Website: www.opsi.gov.uk

Regulation and Quality Improvement Authority

9th Floor
Riverside Tower
5 Lanyon Place
BELFAST
BT1 3BT

Tel: 028 9051 7500
Website: www.rqia.org.uk

UK Border Agency

Lunar House
40 Wellesley Road
CROYDON
SURREY
CR9 2BY

Tel: 0870 606 7766
Website: www.ukba.homeoffice.gov.uk

USEFUL BOOKLETS

The Department has produced the following guidance material which provides further useful advice:

- Conduct of Employment Agencies and Employment Businesses Regulations (NI) 2005 - A detailed guide
- Employment Agency/Business Regulations – Frequently asked questions for work-seekers
- Employment Rights booklet series
- Fixed-term work: A guide to the regulations
- Part-time work: The law and best practice
- Public Interest Disclosure (NI) Order
- Working Time Regulations – A detailed guide

FURTHER GUIDANCE:

All the above guidance plus a range of further guidance is available on our website or by contacting:-

Employment Relations Policy and Legislation Branch

Department for Employment and Learning
Room 203
Adelaide House
39/49 Adelaide Street
Belfast
BT2 8FD

General enquiries:

Tel: 028 9025 7580
Fax: 028 9025 7555
Text-phone: 028 9025 7576
E-mail: employment.rights@delni.gov.uk
Website: www.delni.gov.uk/er

Employment Agency Inspector enquiries:

Tel: 028 9025 7554
E-mail: ea.inspectors@delni.gov.uk
Website: www.delni.gov.uk/er

people:skills:jobs:



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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 7580

e-mail: employment.rights@delni.gov.uk

website: www.delni.gov.uk