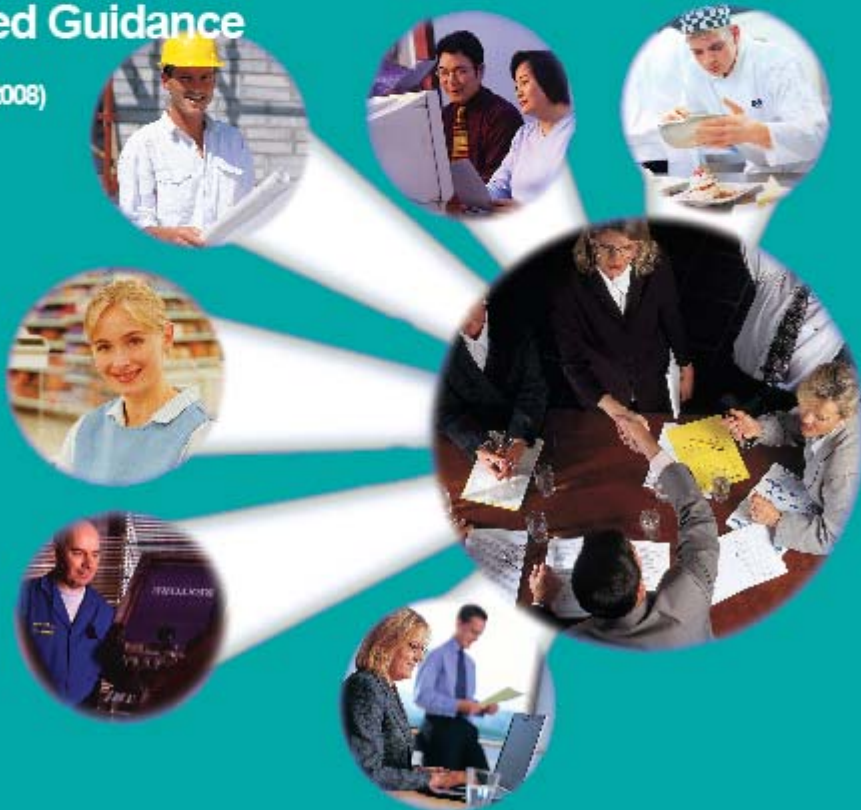


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# Departmental Response to the Consultation on: Changes to Recruitment Industry Law and Related Guidance

(January 2008)



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# Introduction

## *Background*

The Northern Ireland recruitment industry is governed by the Employment (Miscellaneous Provisions) (Northern Ireland) Order 1981<sup>1</sup> and the Conduct of Employment Agencies and Employment Businesses Regulations (Northern Ireland) 2005 (“the 2005 Conduct Regulations”)<sup>2</sup>. The Department for Employment and Learning (“the Department”) is responsible for maintaining this legislation. The 2005 Conduct Regulations replaced and updated legislation dating back to 1982 with the aim of protecting the interests of persons using agency services, i.e. work-seekers and hirers. The legislation is enforced by the Department through a programme of inspections and complaint investigation.

Between July and September 2007, the Department consulted<sup>3</sup> on proposals aimed at offering protections to the most vulnerable of agency workers. The intention of these proposals is to address the bad practices that can affect the most vulnerable agency workers, without placing burdens on the majority of agencies who do not use such practices, yet are undercut unfairly by those that do.

In summary, the proposals contained in the consultation were to:

- *provide workers with a right to withdraw from non-work finding agency service, such as accommodation or transport, without suffering any detriment;*
- *ban the taking of fees at entertainment / modelling casting sessions until 7 days afterwards;*
- *define, in law, a “reasonable estimate of costs” when a talent agency seeks a fee for including an individual’s details in a work-finding publication;*
- *reduce information-providing requirements for agencies in respect of very short-term assignments (i.e. 5 days or less);*
- *require an agency to inform a hirer if an incorporated work-seeker whom they supply has opted out of the protections afforded by the 2005 Conduct Regulations; and*
- *include “stylists” in the list of entertainment occupations where agencies may charge fees to work-seekers.*

In addition to the legislative changes set out above, the consultation also included proposals to produce the following guidance:

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<sup>1</sup> S.I. 1981/839 (N.I. 20)

<sup>2</sup> S.R. 2005 No. 395

<sup>3</sup> The proposals were set out in the consultation document *Changes to Recruitment Industry Law and Related Guidance*, which can be found in the Department’s consultation archive at [www.delni.gov.uk/consultation-zone](http://www.delni.gov.uk/consultation-zone)

- *Information alerting potential migrant workers, before leaving their countries of origin and coming to the UK, of their rights and highlighting unscrupulous practices they may fall victim to. This guidance would also include advice on the cost of living in the UK in order that migrant workers can assess their ability to repay loans provided by agencies. Existing guidance for EU workers would also be updated. The guidance would be distributed through trusted intermediaries such as faith groups, community organisations and unions.*
- *Existing guidance on steps to be taken by agencies for the protection of the work-seeker and hirer will be clarified in respect of agencies supplying drivers. The amended guidance will make it clear that it will be a breach of the 2005 Conduct Regulations if agencies fail to abide by other laws affecting drivers, e.g. limits on drivers' hours. It will make clear the consequences of coercing or colluding with drivers to work excessive hours, and that a fatal accident resulting from a breach of the law could result in a manslaughter prosecution.*
- *New summary guidance for would-be entertainers and models will be produced in order to help prevent such persons falling for scams perpetrated by unscrupulous individuals.*

The consultation document included a partial Regulatory Impact Assessment and a preliminary Equality Impact Assessment.

Copies of all relevant documents were and remain freely obtainable to the public from the 'Consultation Zone' on the Departmental website ([www.delni.gov.uk/consultation-zone](http://www.delni.gov.uk/consultation-zone)) or in hard copy from the address given on **page 4**.

### *Purpose of this document*

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This document sets out a summary of the responses received to the consultation along with the Department's response to those.

### *Responses*

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The Department received 11 responses to the consultation, 6 of which contained substantive comment. Of those which contained substantive comment four were from public sector organisations, 1 was from a business representative body and one was from a trade union. A list of those who provided substantive comment is set out at **Annex A**.

We would like to thank all those organisations and individuals who took the time to respond to the consultation. The views expressed have been carefully considered in arriving at the way forward set out in this document.

### *Analysis of responses and the way forward*

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All substantive respondents to the consultation were in support of the broad thrust of the proposals contained in the consultation document. Taking this

into consideration, **the Department intends to finalise the legislation required to enact these proposals with one minor exception.**

### *Structure of this document*

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The following pages set out: the question that was asked 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 consultation.

A draft of the Regulations as laid is included at **Annex B** of this document.

### *Departmental contact details*

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All documents referred to in this response may be obtained from the Departmental web-site, or in alternative formats upon request from the Department.

**Web-site:** [www.delni.gov.uk/consultation-zone](http://www.delni.gov.uk/consultation-zone)

**Postal address:** Employment Rights Branch  
Room 203  
Adelaide House  
39-49 Adelaide Street  
BELFAST  
BT2 8FD

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

**Tel:** 028 9025 7536

**Fax:** 028 9025 7555

**Textphone:** 028 9025 7458

# Consultation responses to proposals and the way forward

## A. Charges for services and provision of loans

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### *Guidance*

The Department proposes to provide advice about living in the UK, including the cost of living, and ensure the advice is supplied through trusted intermediaries such as community and voluntary organisations, faith groups, churches, trade unions etc.

**Q1:** What would be the most appropriate groups to help circulate such information?

**Q2:** Would you/your organisation be happy to distribute information?

All substantive respondents to the consultation agreed that clearer guidance should be circulated to potential migrant workers, and confirmed that their organisation would be happy to distribute guidance information. Some respondents also suggested that information and guidance should be made available in different languages.

A wide range of appropriate groups for circulating such information was suggested:

### *“In N.I.*

*Trade unions; FE Colleges (and other education providers); community and voluntary organisations who provide advice, support and assistance to migrant workers; churches; employers; CAB [Citizens Advice Bureau]; Ethnic food retailers; tourist information outlets; media; Government bodies. Websites of the above mentioned organisations should also be utilised.*

### *Countries of origin*

*Trade Unions; education providers; statutory bodies; travel agent networks.”*

(NIC.ICTU)

*“Council specifically welcomes the Department’s proposals to produce guidance for potential migrant workers, to be distributed before they leave their countries of origin, detailing their rights and highlighting unscrupulous practices that they may fall victim to as well as information on the cost of living.”*

(Strabane District Council)

### Departmental response

The Department is working in conjunction with GB colleagues to amend an information leaflet for migrant workers – “Know your Rights”. This will be available in Portuguese, Polish and Lithuanian. These leaflets will include information on the cost of living in GB and Northern Ireland which will enable work-seekers to make better informed decisions before they come to the UK to find work. It is intended that this advice be supplied through trusted intermediary sources in the country of origin **prior** to the work-seeker coming to the UK.

### *Right to withdraw*

The Department is proposing to strengthen existing legislation by giving agency workers the option, subject to an appropriate, defined notice period, to opt out of any extra service an agency provides (whether directly or through a connected company). In addition, the Department would introduce changes to prohibit an agency from taking any action detrimental to a worker if and when the worker exercises a right of withdrawal.

It is planned that the notice period should be defined, otherwise unscrupulous agencies could set an excessive period of notice. The Department considered a period of 5 or 10 days as a reasonable period for most services.

**Q3:** Is there a need for a notice period?

**Q4:** Is a notice period of 5 days adequate or would 10 days, or longer, be more appropriate? If so, why?

**Q5:** Should there be different notice periods for different services and if so, which services and for how long?

**Q6:** Are there any types of service that require a long notice period and, if so, why?

**Q7:** As a recruitment agency, would a right to withdraw have a seriously detrimental effect on your business? If yes, why?

There was overwhelming support for the need for a notice period, and the majority of respondents agreed to the introduction of a 5 day right to withdraw proposal. Additionally, most respondents agreed there is no need for a different notice period for different services.

*“Strabane District Council concurs that there is a need for a notice period when agency workers withdraw from key services such as transport or accommodation.”*

(Strabane District Council)

*“If a notice period is set then it should be no longer than 5 days.”*

(NIC.ICTU)

One respondent however, Trading Standards Service, suggested that a longer notice period could be justified in the case of accommodation.

**Departmental response**

As confirmed by the overwhelming support for the notice period, the introduction of a right for Agency workers to withdraw from additional services offered by agencies, without suffering detriment, will help prevent vulnerable workers being exploited by unscrupulous agencies. The Department will, therefore, implement the proposals relating to charges for services and provision of loans.

The Department will strengthen the existing legislation to permit the agency worker the right to withdraw from extra services the agency provides when giving a period of 5 working days' notice. The only exception to this will be in the case of accommodation which will be subject to 10 working days' notice.

The Department will amend Regulation 6 to prohibit an agency from taking any action detrimental to the work-seeker if, and when, the work-seeker exercises their right to withdraw.

## **B. Simplification of information providing requirements for short-term assignments**

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The Department is aware that the information provision requirements in the 2005 Conduct Regulations regarding the supply of workers for very short-term tasks can form an administrative burden for agencies and hiring companies, but do not appear to have any real benefit for the worker or the hiring company.

The Department is proposing to exempt agencies from providing the information required in Regulation 21 where the assignment is very short (i.e. less than 5 working days duration) and all the essential details had already been provided, to the worker, in writing with the agency's terms and conditions.

**Q8:** Is 5 working days a reasonable definition of a short-term assignment?

**Q9:** Do you consider this period should be longer or shorter and, if so, why?

**Q10:** Would the easing of these information providing requirements be an improvement for your agency/hiring company?

The majority of respondents agreed that the proposed simplification will ease the burden on business as there will be less administration for very short term assignments. It was generally agreed that increasing this to a longer period would be of no benefit to the worker. One respondent argued that information is likely to be received after the contract has come to an end, therefore rendering it useless. Ridding agencies of this administrative obligation would ease the burden on employers without making any material difference to protection enjoyed by workers.

*“Strabane District Council believes that 5 working days is a reasonable definition of a short-term assignment.”*

(Strabane District Council)

*“The proposed definition of 5 working days for a short-term contract appears sensible, although there are likely to be cases in which contracts of a longer duration would result in employers facing the same problems of providing information at short notice. As the consultation points out, in such situations, the information provided is likely to be received after the contract is finished, rendering it useless. Ridding agencies of this obligation would therefore ease the burden on employers without making any material difference to the protection enjoyed by agency workers.”*

(CBI, Northern Ireland)

One respondent, NIC.ICTU, was concerned that this deregulatory measure would encourage bad practice and could undermine workers' rights since, they argued, disputes could result from confusion over which assignments are short term in this context.

*“Disputes that are likely to result from the confusion over which assignments are considered short term will present more of an administrative burden for agencies, temporary agency workers and client employers than will be gained from removing the obligation to provide basic information.”*

(NIC.ICTU)

**Departmental response**

In line with the preference of the majority of respondents, the Department will amend Regulation 21 to exempt agencies from providing information requirements where the assignment is of less than 5 working days duration.

In addition, in order to address the concern raised by NIC.ICTU, the Department will provide clearer guidance to Regulation 21, to clarify how agencies can comply and to help workers understand their rights. This guidance will also explain to the worker how they can request detailed information for every assignment. This will provide further protection to the worker and safeguard against the agency having overall control of the information process.

## C. *Drivers supplied by agencies*

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### *Better guidance*

The Department explored the issue of HGV drivers seeking employment through agencies without proper driving qualifications and seeking to work longer hours driving than is legal. In considering existing legislation, the Department, like its GB counterpart, concluded that an additional requirement on agencies to make all reasonable checks before supplying drivers is not necessary, as it would not provide additional protection. Regulation 20 of the 2005 Conduct Regulations already requires agencies and employment businesses (before introducing or supplying a worker) to

*“take all such steps, as are reasonably practicable, to ensure that the work-seeker and the hirer are each aware of any requirements imposed by law, or by any professional body, which must be satisfied by the hirer or the work-seeker to enable the work-seeker to work for the hirer in the position which the hirer seeks to fill”.*

It also requires that when the business has information indicating actual or potential unsuitability of a worker, it must either end the supply of that worker or take further steps to establish suitability.

The proposal was not to amend the 2005 Conduct Regulations further on this point. However, the Department plans to provide clearer guidance on Regulation 20 to make it clear to agencies that employ drivers that this section has the effect that they would breach the 2005 Conduct Regulations if they failed to abide by other applicable legislation in NI governing drivers. This will include material warning agencies of the consequences of coercing or colluding with drivers to work excessive hours and spelling out that such practices breach driver agency legislation.

**Q11:** What do you consider would be the best way to communicate this additional guidance to agencies, drivers and hiring companies?

**Q12:** Would you or your organisation be willing to distribute information?

There was support from respondents for the Department’s proposals to provide clearer guidance for driver agencies and the companies that use them. Some respondents also suggested that the guidance should be directly communicated to employers rather than relying upon driver agencies.

*“Directly to employers; trade unions; media campaign; employers federations.”*

(NIC.ICTU)

Various options were suggested as a means of communicating this information, such as leaflet drops, spot checks and face-to-face meetings.

### **Departmental response**

The Department intends to issue guidance to drivers, driver agencies and hiring companies. The various communication options suggested by

respondents will be considered when the guidance is finalised and ready for distribution.

## D. Services offered to entertainers and models

The entertainment and modelling sector is one where agencies are permitted to charge work-seekers certain fees for finding jobs. However, there have been cases where unscrupulous individuals have made unfulfilled promises, for a fee, to a work-seeker.

### *Banning taking fees (or a promise of fees) on the day of, or during, a casting session*

The Department is proposing to ban the taking of fees on the day of, or during, a casting session, and extend that ban for a further period of 7 days after the audition occurred.

**Q13:** Would the banning of taking fees or seeking the promise of taking fees on the day of, or during, a casting session damage legitimate firms, individuals working in the entertainment/modelling industry and, if so, how?

**Q14:** If we were to extend the ban on the taking of fees for services on the day / during the session to a ban on seeking or taking fees for services for a further period of 7 days after the audition, would this damage legitimate firms / individuals working in the entertainment / modelling industry and, if so, how?

**Q15:** Should this further period be shorter than 7 days or should there be no further period and, if so, why and how short?

The majority of respondents supported the proposal to ban the taking of fees (or a promise of fees) during casting sessions. Similarly, there was also widespread support for extending this ban for a further 7 days to create a cooling off period.

*“Strabane District Council believes that the banning of taking of fees; or later seeking to take fees; on the day of, or during, a casting session will not damage legitimate firms/individuals working within the entertainment/modelling industry. Strabane District Council further asserts that the extension of the ban on the taking of fees for services for a further period of 7 days after the audition would not damage legitimate firms/individuals working in the entertainment/modelling industry.”*

(Strabane District Council)

*“Dealing with rogue model agencies should prevent cases of exploitation.”*

(CBI, Northern Ireland)

### **Departmental response**

Taking account of the views expressed by the majority of respondents to the consultation, the Department will ban taking fees (or a promise of fees) on the day or during a casting session (and for a period of 7 days afterwards) for including details of a work-seeker in a publication.

*Fees relating to a reasonable estimate of the cost of production and circulation of a publication*

The Consultation explained that the Department is aware that there is a degree of confusion surrounding a related provision in the existing legislation regarding the cost exemptions applied to publications.

Due to the lack of clarity over what sort of costs can be included in the reasonable estimate, with certain unscrupulous agents seeking to include routine day-to-day running costs, the Department proposed to simplify the law on this point and considered whether, in addition to banning fees (or the promise of fees) on the day, costs that can be recovered through fees should be limited to those directly relating to production (including photography), printing, distribution and consumables (e.g. paper and web space) Agencies would not be able to recover any other costs associated with publications through fees for example marketing.

**Q16:** Do you think the list of costs that can be recovered – photography, printing, distribution and consumables (e.g. paper and web space) includes the right costs? If no, why?

**Q17:** If you consider there are other costs, which should be included in the list of those that can be recovered, what are they and why should they be included?

Only two respondents provided comment to these questions. One agreed that the right costs had been included and provided no further comment. However, the other respondent opposed the proposals for clarifying which costs can be covered by the Agency for including a work-seeker's details in a publication.

Additionally, the consensus among respondents to a similar consultation in GB was that the proposed change would be unproductive and not achieve the expected results, maybe even resulting in higher costs being charged.

**Departmental response**

Taking all these views into account, the Department, therefore, intends to drop this proposal. The Department feels that the extension of the 7 day ban on taking fees (see above) so that a cooling off period will apply to all offers made to work-seekers to include their details in a publication, offers greater protection to work-seekers.

### Public information/awareness raising

The Department plans to produce and distribute summary guidance to help would-be models/actors to identify the unscrupulous agents coupled with advice on entering the entertainment industry. This information will be available on the Departmental and other relevant websites as well as making it available to relevant sources, like trade publications.

**Q18:** Would you or your organisation be willing to circulate this information so it would reach would-be entertainers and models?

**Q19:** What distribution channels for advice are most likely to reach would-be models/actors?

Only two respondents to the consultation answered these questions, and their responses were divided. One stated they would be willing to distribute summary guidance produced by the Department, whilst the other responded negatively. This negative response was, however, backed up with the suggestion that an affiliate of their organisation would be more appropriate for circulating the guidance.

*“Strabane District Council would be willing to circulate summary guidance to help ‘would be’ models and actors to identify the rogue agents coupled with advice on entering the entertainment industry. Strabane District Council recommend that ethnic minority associations, the website and promotional agencies would be the most relevant distribution agencies in this regard.”*

(Strabane District Council)

*“Equity and BECTU, affiliates of the ICTU who represents workers in this sector, have been key communication channels, providing reliable information to their members and to aspiring performers. In the past, this has included reports and articles in the Equity members’ magazine; reports to activists; information and briefings on the Equity website; and work with industry stakeholders and trade press on assessing and reporting the impact of up-front fees.*

*Equity is one of a small number of trusted sources in the entertainment industry, which its members, aspiring performers and the public will turn to for reliable information. Therefore, Equity believe they have a responsibility to assist in making new information available, particularly when this concerns matter that are likely to have a direct effect on entertainers and models and the way they work.”*

(NIC.ICTU)

### **Departmental response**

The Department will produce and distribute guidance for work-seekers in the entertainment industry. As proposed, this will be available on the Departmental website, and we will work with various stakeholders and agencies to ensure it is distributed to all relevant sources in NI.

### E. Request for specific further information

The Department considered that the key abuses requiring action had been identified in the consultation document. However, respondents were invited to identify further measures – legislative or otherwise – that would:

remedy abuses practiced by rogue agencies, making a real difference to workers but without burdening legitimate agencies; or  
make it easier for agencies/hirer companies to comply with the agency legislation without reducing protections for workers.

Only two respondents specifically answered this question. Strabane District Council stated that the Department had identified the key abuses which required action. NIC.ICTU made a number of further suggestions:

- Equal treatment for Agency workers enabling them to receive the same core employment rights as directly employed workers, such as access to pension rights, training and career development;
- Establishment of an effective enforcement body;
- Abolition of unreasonable transfer fees;
- Abolition of up-front fees in the entertainment sector;
- Re-instatement of the requirement for Employment Agencies to register or obtain a license; and
- Outlaw the supply of temporary agency workers to sites where official industrial action is taking place.

#### **Departmental response**

The Department has considered the issues raised by NIC.ICTU, and would like to take the opportunity to respond to each one in turn:

*Equal treatment for Agency workers* – Agency workers in the UK are already entitled to many of the same employment protections as other workers, including the right to receive the National Minimum Wage and annual leave entitlement. The proposal for a Directive on Temporary Agency Workers was adopted by the European Commission in 2002 but has largely stalled due to disagreement between Member States. The draft Directive aims to better protect agency workers and recognise agencies as employers by establishing a framework of protections for temporary workers. The proposals seek to ensure that basic working and employment conditions (e.g. pay, holiday, overtime, etc.) applicable to temporary workers should be at least those which would apply to such workers if they were directly recruited by an employer. The underlying principles in the current draft Directive are supported by the UK with further debate expected to resume in the EU this year. The UK is committed to ensuring appropriate treatment of agency workers in terms of pay and working conditions while maintaining the flexibility that makes agency work popular and creates jobs. However, along with several other Member States, the UK has been arguing for a qualifying period (perhaps up to 12

months) before agency workers are entitled to the same pay and conditions as permanent staff.

*Effective enforcement body* – The Department has recently appointed a full-time Employment Agency Inspector who will ensure that agency workers' rights are enforced and that agencies comply with their legislative obligations.

*Abolition of unreasonable fees* – The Department does not have any evidence to suggest that this is a major issue in NI and believes that the current legislation with regard to hirers engaging a temporary agency worker on a permanent basis is suitable. Therefore no changes are proposed at this time.

*Abolition of up-front fees in the entertainment sector* – The Department will ban the taking of fees on the day of, or during, a casting session and extend this ban for a further period of 7 days after the audition to allow a 'cooling off' period.

*Requirement for Employment Agencies to be licensed* – The Department does not intend to reintroduce licensing of employment agencies in NI. It considers that the licensing system which was removed in 1995 was not the most effective way of regulating the private recruitment sector. The vast majority of employment agencies and businesses are reputable and well-run and considers that a licensing system would still not prevent unscrupulous agents from breaching the Regulations. As such the Department maintains that its system of routine inspections and investigation of complaints is the most appropriate for NI, with legal action taken where this is considered necessary.

*Outlaw the supply of Agency workers to sites where industrial action is taking place* – Regulation 7 of the 2005 Conduct Regulations places restrictions on the ability of an employer to replace striking workers with temporary workers. This provision makes it a criminal offence for Employment Agencies and Businesses to supply workers to carry out the duties of workers taking part in official strike action. This is a recent change and there are no plans to change the law again.

## F. Minor miscellaneous changes

In addition to the proposed amendments contained within the consultation document, the Department also considered that the following minor clarifications to the 2005 Conduct Regulations were required:

- Regulation 32(9) – the Department proposes to include a specific requirement for an agency to inform a hirer if a worker whom they supply has opted out of the Conduct Regulations. The opt-out available for workers in Regulation 32 only applies to a worker who is incorporated and the information as to a worker’s opted-out status is relevant to issues concerning charges to hirers where the hirer wishes to take on an agency worker on a permanent basis. At present Regulation 32(9) does not address the question of passing on the information. The Department plan to address this.
- Schedule 3 – the Department proposes to add “stylists” to the list of occupations in respect of which employment agencies may charge fees to work-seekers. Clothes, hair and make-up stylists are not currently specifically included in Schedule 3. However, in practice they are part of the modelling and entertainment sector and the borderline between the activities of stylists and the activities of those listed occupations is unclear. The Department proposed to amend Schedule 3 to make the position clear.

**Q20:** Do you have any comments on either of these proposed amendments? If yes, please specify.

Whilst only two out of the six respondents answered this question, there is a definite split in their opinions. Strabane District Council indicated that they were content with the proposals –

*“Strabane District Council believes that the Department has identified the key abuses requiring action in this consultation document and does not have any further comments on minor miscellaneous changes.”*

The other respondent (NIC.ICTU), however, highlighted their opposition to the proposed amendment to Schedule 3 –

*“Given ICTU’s policy is to support a ban on all up-front fees payable to genuine employment agents, it follows that we would also oppose the proposed extension of the list of occupations in respect of which agencies may charge fees to work-seekers.”*

### **Departmental response**

The law as it stands allows for the charging of fees in the entertainment sector. It is not the purpose of this consultation, nor these legislative amendments, to ban up-front fees altogether. The proposed amendment to Schedule 3 recognises that stylists are part of the entertainment industry and it therefore remains our intention to continue with the proposed changes to the 2005 Conduct Regulations.

In addition to the amendments highlighted in the consultation document, the Department intends to make a minor clarification to make it clear that the obligation on agencies to inform the hirer if they receive information that suggests a worker that they have supplied may be unsuitable takes precedence over the general prohibition in the regulations against disclosing information regarding a work-seeker without the individual's consent.

## G. Impact assessments

### *Partial Regulatory Impact Assessment*

A Partial Regulatory Impact Assessment (PRIA) on the proposals to amend the 2005 Conduct Regulations was contained within the consultation document. Due to the nature of the NI recruitment sector and the absence of current official statistics, it is difficult to accurately predict or quantify the regulatory impact of these proposals. When compiling the PRIA for the consultation document the Department sought to include available NI-specific data in the PRIA which was produced for the equivalent Consultation carried out in GB.

The PRIA examines the impact of the changes being proposed and concludes with the Department's initial view that, based on the available data, the proposals will have an overall positive regulatory impact. Costs incurred with the proposals on charges for services and provision of loans, fees payable by entertainers and models, drivers supplied by agencies and the other miscellaneous changes are expected to be exceeded by the benefit to the recruitment sector in abolishing the statutory information providing requirement in respect of very short-term assignments.

**Q21:** What will be the impact of these Regulations on employer costs or otherwise? Do you agree with the assessment of the costs and benefits made in the Partial Regulatory Impact Assessment? If not, please specify your reasons and provide additional information to assist the assessment.

None of the respondents to the consultation provided any comments on the Partial Regulatory Impact Assessment.

### *Preliminary Equality Impact Assessment*

The Department carried out a preliminary Equality Impact Assessment (EQIA) which did not identify any negative differential impact on Section 75 groups and, therefore, a full EQIA was not considered necessary.

Two positive impacts were identified, namely promoting equality of opportunity between people of different racial groups (in respect of the proposals for providing additional protections which will benefit migrant workers), and also between people of different ages. The latter assessment takes account of the benefits of the proposals for new work-seekers in the modelling and entertainment sector, as it is reasonable to anticipate that a significant number of these will be young people or children.

In order to assess if there would be a need to carry out a full EQIA, the consultation asked:

**Q22:** Do you agree with this preliminary equality impact assessment? If not, please specify your reasons and provide additional information to assist the assessment.

Only one respondent answered this question, and stated that they did agree with the preliminary EQIA.

*“Council also agreed with the preliminary equality impact assessment and thanks the department for consulting Strabane District Council on this important issue.”*

(Strabane District Council)

**Departmental response**

The Department is content that respondents did not raise any issues with either the partial RIA or the preliminary EQIA, and we do not feel there is a requirement to carry out a full EQIA at this time.

## Next Steps & Way Forward

The Department is grateful to all those who took the time to respond to the consultation. Our intention now is to make the regulations with a view to their coming into operation in April 2008 and to ensure awareness of employment status, rights and responsibilities is raised by improving guidance, particularly targeting migrant workers.

The following summarises the new proposals included in the way forward:

### *Legislative*

- provision for workers to be given a clear right to withdraw from accommodation, transport or other services provided by an agency without suffering any detriment;
- setting a right to withdraw from extra services notice period of 5 working days, with the exception of accommodation which will be subject to 10 working days;
- introducing a measure to ease administrative burdens on agencies for short term assignments;
- banning the taking of fees on the day of, or during, a casting session and provide a cooling off period;
- defining in law a “reasonable estimate of costs” and applying a 7 day cooling off period in relation to publications; and
- making minor miscellaneous changes to, and clarifying a point in, the 2005 Conduct Regulations.

### *Guidance*

- the Department will work in conjunction with GB colleagues to amend and distribute material in several European countries on the cost of living in the UK;
- the Department will produce clear guidance for drivers, driver agencies and companies that use them; and
- the Department will produce and distribute guidance for work-seekers in the entertainment industry.

## **Annex A: List of substantive responses**

**Confederation of British Industry (CBI Northern Ireland)**

**Equality Commission for Northern Ireland**

**Northern Ireland Committee, Irish Congress of Trade Unions**

**Omagh District Council**

**Strabane District Council**

**Trading Standards Service**

## **Annex B: Draft regulations**

The draft regulations are reproduced in the following pages.

*Draft Regulations laid before the Assembly under Article 10(5) of the Employment (Miscellaneous Provisions) (Northern Ireland) Order 1981 for approval by resolution of the Assembly.*

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DRAFT STATUTORY RULES OF NORTHERN  
IRELAND

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2008 No. 0000

**EMPLOYMENT**

**The Conduct of Employment Agencies and Employment  
Businesses (Amendment) Regulations (Northern Ireland) 2008**

*Made* - - - -

*Coming into operation* - 6th April 2008

The Department for Employment and Learning(a), in exercise of the powers conferred by Articles 6(1), 7(1) and 10(1) of the Employment (Miscellaneous Provisions) (Northern Ireland) Order 1981(b) and now vested in it(c), and having consulted such bodies as appear to it to be representative of the interests concerned, makes the following Regulations:

**Citation and commencement**

1. These Regulations may be cited as the Conduct of Employment Agencies and Employment Businesses (Amendment) Regulations (Northern Ireland) 2008 and shall come into operation on 6th April 2008.

**Amendment of the Conduct of Employment Agencies and Employment Businesses Regulations (Northern Ireland) 2005**

2. The Conduct of Employment Agencies and Employment Businesses Regulations (Northern Ireland) 2005(d) are amended as follows.

3. In regulation 5 (restriction on requiring work-seekers to use additional services)—

(1) for the heading, substitute “Restriction on use of additional services”.

(2) the existing provision becomes subsection (1), and after that subsection insert—

“(2) Where the work-seeker uses services for which the Order does not prohibit the charging of a fee, an agency or employment business providing or making provision for such services shall ensure that the work-seeker is able to cancel or withdraw from those services at any time without incurring any detriment or penalty, subject to the work-seeker

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(a) Formerly the Department of Higher and Further Education, Training and Employment, see the Department for Employment and Learning Act (Northern Ireland) 2001 c. 15

(b) S.I. 1981/839 (N.I. 20); Articles 6(1) and 7(1) were amended by Article 30 and Schedule 7 to the Employment Relations (Northern Ireland) Order 1999 (S.I. 1999/2790 (N.I. 9))

(c) See Article 3 of the Departments (No. 2) (Northern Ireland) Order 1982 (S.I. 1982/846 (N.I. 11)) and Article 4(b) and Part II of Schedule 2 to the Departments (Transfer and Assignment of Functions) Order (Northern Ireland) 1999 (S.R. 1999 No. 481)

(d) S.R. 2005 No. 395

giving to the provider of those services in paper form or by electronic means notice of 5 business days or, for services relating to the provision of living accommodation, notice of 10 business days.”.

1. In regulation 13 (notification of charges and the terms of offers) at paragraph (1)(b)(iii) after “relates” insert “and a statement of the work-seeker’s right to cancel or withdraw from the service and the notice period required”.

2. In regulation 21 (provision of information to work-seekers and hirers)—

(1) in paragraph (1) substitute “paragraph (3)” with “paragraphs (3), (4) and (5)”.

(2) after paragraph (3) insert—

“(4) Subject to paragraphs (3) and (5), where an employment business intends to introduce or supply a work-seeker to a hirer for an assignment of 5 consecutive business days’ duration or less—

(a) paragraph (1)(a)(i) may be satisfied by the employment business giving to the hirer (whether orally or otherwise) the name of the work-seeker to be supplied and a written confirmation by the employment business that it has complied with regulation 19; and

(b) paragraph (1)(b) may be satisfied, where the employment business has previously provided the work-seeker with the information referred to under that paragraph and that information remains unchanged, by the employment business giving to the work-seeker in paper form or by electronic means the information referred to in regulation 18(a) to (b).

(5) Where, after it has started, an assignment to which paragraph (4) applies is extended beyond a duration of 5 business days, the information referred to in paragraph (1) which has not already been provided shall be provided in paper form or by electronic means by the end of the eighth business day of the assignment, or by the end of the assignment if sooner.”.

3. In regulation 26 (circumstances in which fees may be charged to work-seekers)—

(1) at the end of paragraph (5)(c) substitute the full stop with “; and”.

(2) after paragraph (5)(c) insert—

“(d) where an agency proposes to include information about a work-seeker in a publication for 7 days from the date of the agency and work-seeker entering into any contract, whether written or oral and whether or not expressly mentioning fees permitted under this paragraph—

(i) no fee permitted under this paragraph shall be payable by the work-seeker;

(ii) the work-seeker shall be entitled without detriment or penalty to cancel or withdraw from any such contract with immediate effect by informing the agency of such cancellation or withdrawal; and

(iii) the agency shall not include the information in the publication.”.

4. In regulation 28(1) substitute “Neither” with “Subject to regulation 20 neither”.

5. In regulation 32 (application of the regulations to work-seekers which are incorporated)—

(1) for paragraph (2), substitute the following:

“(2) In regulation 5 after “upon the work-seeker” insert—

“, or the person who is or would be supplied by the work-seeker to carry out the work”.”.

(2) for paragraph (9), substitute the following:

“(9) Subject to paragraph (12), paragraphs (1) to (8) shall not apply where, before an employment business or agency introduces or supplies to a hirer a work-seeker which is a company—

- (a) the work-seeker and the person who is or would be supplied by that work-seeker to carry out the work agree that those paragraphs should not apply, and give notice of that agreement to the employment business or agency; and
- (b) the employment business or agency proposing to introduce or supply that work-seeker and person to a hirer informs the hirer of such agreement.”

1. In Schedule 3, after “make up artist,” insert “clothes, hair or make up stylist,”.

Sealed with the Official Seal of the Department for Employment and Learning on

*Sir Reg Empey*  
Minister for Employment and Learning

#### EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations amend the Conduct of Employment Agencies and Employment Businesses Regulations (Northern Ireland) 2005 (“the 2005 Regulations”).

These Regulations make further provision for the proper conduct of employment agencies and employment businesses; they increase protection for work-seekers, reduce certain regulatory burdens on employment businesses and also make minor clarifications to the 2005 Regulations.

Regulation 3 amends the heading and substance of regulation 5 so that an agency or employment business must ensure that a work-seeker who takes up additional services will be able to give notice to cancel or withdraw from those services without incurring any detriment or penalty.

Regulation 4 amends regulation 13 so as to require an agency or employment business to give a work-seeker a statement of his right to cancel or withdraw from additional services.

Regulation 5 amends regulation 21 to provide that an employment business intending to send a work-seeker to a hirer on a short assignment is required to provide only basic information to a hirer and work-seeker.

Regulation 6 amends regulation 26 increasing the protection available to work-seekers where agencies propose to charge fees for the inclusion of information about them in a publication.

Regulation 7 amends regulation 28(1) of the 2005 Regulations to clarify its relationship with regulation 20.

Regulation 8 makes minor clarifying changes to regulation 32 of the 2005 Regulations.

Regulation 9 amends Schedule 3 to the 2005 Regulations by inserting additional occupations.

people:skills:jobs:



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and Learning**  
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