

people:skills:jobs:



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

Private Recruitment Sector Enforcement First Report: January 2006 - March 2009



August 2009

Foreword



This is the first report from my Department detailing its work on private recruitment sector enforcement and covers the period from January 2006 (when the Department was first granted powers of entry and inspection) to 31 March 2009. Future reports will cover the 12 month period of April to March each year. Employment agencies and employment businesses make a significant and positive contribution to the local economy. We estimate that there are approximately 250 to 300 employment agencies and employment businesses in Northern Ireland, providing many permanent and temporary job opportunities.


Agency work is an important factor in creating a flexible labour market, with many businesses considering it essential to better meet the demand of local and international markets. Many workers choose agency work because of their circumstances and the greater flexibility it provides. Agency workers are also important in meeting the seasonal needs of some employers. For some, agencies act as a gateway to permanent work. Others choose temporary work because it allows them to better balance their work with other commitments. Agency work can also appeal to some work-seekers because it can offer the opportunity to learn new skills or try new jobs before changing careers.

The vast majority of employment agencies are reputable and professional. However, there are a few agencies which exploit workers, particularly vulnerable workers. This is an issue my Department takes very seriously and we will not hesitate to use our enforcement powers where there are serious breaches of the law or where vulnerable workers are being exploited.

Over the last few years we have implemented changes to legislation to ensure that:

- work-seekers, agency workers and hirers have protections under the law when using employment agencies and employment businesses;
- employment agencies and employment businesses are operating with the same level of compliance with the law; and
- the Department can inspect Northern Ireland-based employment agencies and employment businesses and take appropriate corrective or enforcement action.

The Department is taking forward a number of measures in relation to private recruitment sector enforcement (see Section 9). In the meantime I look forward to working in partnership with the private recruitment sector to help people to find employment as we progress towards economic recovery.

A handwritten signature in black ink, appearing to read 'Reg Empey', with a stylized flourish at the end.

Sir Reg Empey MLA

Minister for Employment and Learning

CONTENTS

1. Introduction	4
2. Employment Agencies and Employment Businesses	4
3. Legislation	5
4. Inspections	6
5. Complaints	7
6. Enforcement Action	7
7. Guidance	8
8. Working with other Public Bodies	8
9. Future Developments.....	9
10. Contact details	11
Annex A - List of Regulations	12
Annex B - Inspection and Complaint Figures.....	14
Annex C - Most breached regulations found by the Trading Standards Service in the period January 2006 – October 2007	15
Annex D - Most breached regulations found in the period October 2007- March 2008.....	16
Annex E - Most breached regulations found in the period April 2008 – March 2009.....	17

1. INTRODUCTION

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").

This is the first annual report from the Department for Employment and Learning in respect of its work on private recruitment sector enforcement. This initial report covers an extended period from January 2006 – March 2009.

2. 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";
- **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 however the term popularly used to cover both scenarios and will be used in this report.

3. LEGISLATION

The 1981 Order provides the Department with the power to make legislation to regulate the private recruitment sector and was amended in 2006¹ 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.

The Conduct Regulations, which were brought into operation by the Department on 25 September 2005, 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.

They put in place certain minimum standards to which employment agencies must adhere. For example:

- agreeing terms and conditions with work-seekers and hirers before first providing work-finding services;
- providing adequate information to work-seekers and hirers;
- maintaining client accounts (where the agency is entitled to take a fee from a work-seeker for work-finding services); and
- only placing genuine/current vacancies and ensuring that all advertisements appear with the consent of the hirer and include all relevant information.

The Conduct Regulations were amended in 2008² (after extensive public consultation) to provide additional protections for vulnerable agency workers and work-seekers including providing:

- workers with a right to opt out of additional paid-for services provided by an agency, such as transport or accommodation, without suffering any detriment; and
- work-seekers in the entertainment and modelling sector (where work-seekers can be charged a work-finding fee by an agency) with a seven day cooling-off period before the agency can take a fee for including the work-seeker's details in a publication.

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

² 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.

4. INSPECTIONS

The Department was granted powers of entry and inspection in January 2006. The 1981 Order allows the Department to appoint officers to ensure that employment agencies are complying with the relevant legislation.

In March 2006, the Department signed a Service Level Agreement with the Department of Enterprise, Trade and Investment which allowed for Trading Standards Service officers to conduct agency inspections under a year-long pilot arrangement. The first inspection was carried out in April 2006. Trading Standards officers carried out **35** inspections in the period 2006/07 before the pilot ended. The Department is very grateful to those officers involved in the pilot for their dedication and diligence.

The Department appointed its first Employment Agency Inspector in October 2007 with a second taking up post in June 2008. From October 2007 to March 2009 a total of **116** inspections were completed. Detailed inspection statistics are included in **Annexes A-E**.

The main breaches identified to date include failure to:

- agree terms and conditions with work-seekers and hirers;
- carry out proper identity and qualification checks in relation to work-seekers;
- provide necessary information to a work-seeker or hirer at the time the work-seeker is to be placed with the hirer; and
- obtain a hirer's authority to place advertisements.

The Department's Inspectors take a structured and fair approach to enforcement, working to support agencies and assist them with compliance, giving advice and help where needed but taking firm action including prosecution or prohibition where necessary against those who are in significant breach of the law. Where the Inspectors find any breaches of the legislation an initial infringement letter is sent to the relevant organisation detailing the same. This letter gives the organisation time to rectify the situation and where necessary a follow up visit is carried out to ensure compliance. If no action has been taken to remedy the breaches after the follow up visit the Department will consider legal action.

The overwhelming experience of the Inspectors to date is that following an inspection where an agency has been found to be in breach of the legislation the agency is willing to take prompt action to change their working practices to ensure they are compliant with the legislation. The Department shares the industry's commitment to raising standards and progress has been made since inspections started. Inspectors continue to work closely with those operating in the industry to encourage improved standards throughout.

5. COMPLAINTS

Since October 2007, the Department's profile in the private recruitment sector has increased and we have received **59** complaints to date about employment agencies. 10 have been made by work-seekers or hirers but the majority have been submitted by agencies who allege that rival agencies are in breach of the law.

Initially we treated any complaint as a priority and investigated them accordingly. **Complaints from hirers and work-seekers will always remain a priority and will be subject to a full and thorough investigation.** However, the number of inter-agency complaints continues to rise and mainly concern permanent recruitment agencies in high-end sectors such as IT and the professions, where the risk to work-seekers is extremely low. The Department will in most cases investigate these through correspondence.

As a result of inter-agency complaints the Department has, in conjunction with Northern Ireland's online job boards, agreed a Code of Conduct. All employment agencies and employment businesses must now refer to and comply with this when advertising on online job boards.

You may make a complaint by contacting the Department using the details in Section 10.

6. ENFORCEMENT ACTION

Inspectors operate under the Department's enforcement and procedural guide. Although the Inspectors aim to achieve compliance through advice, guidance and persuasion in the first instance the Inspectorate can take enforcement action, where appropriate, once the agency has failed 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 not more than level 5 on the standard scale, currently £5,000. No prosecutions have been taken to date. The Department is currently in the process of obtaining enhanced prosecution powers (see Section 9).

In the short space of time that the Department has had powers of inspection, the majority of breaches have been minor, therefore we have not had any reason to bring any agency before the Magistrates' Court. The Department's main focus has been to encourage compliance with the legislation. As the Department develops its enforcement role we may be forced to take further prosecutions. A number of prosecutions are currently under consideration.

In the most severe cases the Department can apply to an Industrial Tribunal to prohibit an individual from carrying on, or being concerned with the carrying on of, an employment agency for up to ten years. The Department took such an action in 2005 against a Belfast based entertainment agent. The Tribunal decided in January 2006 to grant the Prohibition Order but stay it for four years. The Department made a new application to prohibit the same agent in November 2008 and this was heard in May 2009. The agent was prohibited for a period of two years ending in June 2011.

7. GUIDANCE

The Department has produced a detailed guide on the Conduct Regulations.

There are also Frequently Asked Questions 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

8. WORKING WITH OTHER PUBLIC 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**³ (BIS) regulates GB-based agencies. It has 24 Inspectors who enforce the GB Conduct Regulations. BIS officials have been extremely helpful in providing advice and support to the Inspectors in Northern Ireland and the Department is very grateful for their ongoing assistance.

The Department also works with the **Department of Enterprise, Trade and Employment**⁴ and the **National Employment Rights Authority**⁵ in the Republic of Ireland.

The **Gangmasters' Licensing Authority**⁶ (GLA) which was established in 2005 is responsible for introducing and operating a licensing scheme for labour providers working in the agricultural and horticultural sectors and those gathering shellfish and working in related food processing and packaging

³ www.bis.gov.uk

⁴ www.entemp.ie

⁵ www.employmentrights.ie

⁶ www.gla.gov.uk

sectors. DEL's Employment Agency Inspectors meet regularly with GLA Inspectors to share information and cooperate where appropriate.

HM Revenue & Customs⁷ (HMRC) is responsible for enforcement of the National Minimum Wage. 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.

In early 2009 the Department worked with the GLA and HMRC to investigate a complaint from a migrant worker. The investigation of the complaint led to the return of monies owed to the worker and other workers employed by the same organisation.

9. FUTURE DEVELOPMENTS

The work of the Inspectors is very much in its initial stages. It is intended that all employment agencies and employment businesses will have been inspected at least once within the next three years to ensure that all agencies comply with the relevant legislation and that none of them are at a competitive advantage through the use of non-compliant practices.

In addition the Department is focusing on a number of priorities in relation to recruitment sector regulation including:

Prosecutions and prohibition applications

The Department currently has one outstanding prohibition application. In addition we anticipate that a small number of prosecutions will be taken in 2009/2010.

Employment Bill

The Department is currently taking forward an Employment Bill to enhance the Department's powers of investigation and prosecution of non-compliant agencies.

The provisions include:

1. making offences under employment agency legislation triable at the Magistrates' Court (as at present) or the Crown Court, thereby allowing for unlimited fines;
2. compelling employment agencies or third parties such as banks to produce financial information for investigation purposes; and

⁷ www.hmrc.gov.uk

3. allowing the Department's Employment Agency Inspectors to exchange inspection information with HMRC National Minimum Wage compliance officers.

The provisions on "triable either way" offences (point 1) and production of financial information (point 2) were subject to a public consultation in Summer 2008. The provision on exchange of information with HMRC (point 3) was included after consideration of responses from consultees. It is intended that the Bill will receive Royal Assent by early 2010.

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

On 6 July 2009 the Department launched a consultation on further amendments to the Conduct Regulations. The consultation, which will close on 28 September 2009, contains proposals to exempt employment agencies that supply workers to fill permanent posts from carrying out certain suitability checks on work-seekers. Agencies will still have to make the checks in respect of temporary workers.

The Department is also seeking views on a number of other agency law proposals, including changing the system with regard to up-front fees charged by entertainment and modelling agencies. The consultation paper is available at:

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

Code of Conduct for online job-board advertising

In June 2009 the Department launched a code of conduct for agencies that advertise on online job-boards. The code, which was facilitated by the

Department in conjunction with nijobfinder.co.uk, nijobs.com and recruitni.com, will help ensure that all advertisements placed on online job-boards by Northern Ireland based agencies comply with legal requirements and do not mislead work-seekers or misrepresent hirers. The code will be reviewed at the end of 2009.

A copy of the code is available at:

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

Research

In December 2008 the Department commissioned Millward Brown Ulster Ltd to conduct research into the size and nature of the private recruitment sector in Northern Ireland. The research, which will help inform development of future policy and legislation, is expected to be completed by Autumn 2009.

10. CONTACT DETAILS

If you require any further information or you wish to make a complaint about an employment agency you can contact:

**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
Website: www.delni.gov.uk/er**

ANNEX A - LIST OF 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>

ANNEX B - INSPECTION AND COMPLAINT FIGURES

<i>Routine Inspections</i>	<i>Trading Standards Services' Cases 2006/2007</i>	<i>October 2007 – March 2008</i>	<i>April 2008 – March 2009</i>
Total number of routine inspections	35	40	76
Total infringements found	108	169	324
Infringement letters issued	N/A	36	75
<i>Complaints</i>			
Total number of complaints	N/A	1	59
Breaches of the Regulations identified due to complaint	N/A	1	27
Other breaches identified during complaint inspection	N/A	N/A	54
Infringement letters issued	N/A	1	15
<i>Follow-up Inspections</i>			
Number of follow up inspections	N/A	N/A	4
Total Infringements found	N/A	N/A	22
Infringement letters issued	N/A	N/A	4

Key: N/A – Not Available (the information is stored in an incompatible format)

***ANNEX C – MOST BREACHED REGULATIONS
FOUND BY THE TRADING STANDARDS SERVICE IN
THE PERIOD JANUARY 2006 – OCTOBER 2007***

<i>Regulations breached</i>	<i>Number of breaches found</i>
Regulation 14	20
Regulation 10	16
Regulations 15, 21	15
Regulation 17	14
Regulation 19	11
Regulation 27	10
Regulation 12	5
Regulation 23	2
Regulations 6, 13, 18, 24, 25, 29, 33	1

**ANNEX D - MOST BREACHED REGULATIONS
FOUND IN THE PERIOD OCTOBER 2007 – MARCH
2008**

<i>Regulations breached</i>	<i>Number of breaches found</i>
Regulations 10, 14	33
Regulations 17, 21	28
Regulation 19	16
Regulations 15, 27	12
Regulation 20	11
Regulation 22	5
Regulation 12	4

**ANNEX E - MOST BREACHED REGULATIONS
FOUND IN THE PERIOD APRIL 2008 – MARCH
2009**

<i>Regulations breached</i>	<i>Number of breaches found</i>
Regulation 14	70
Regulation 21	69
Regulation 17	66
Regulation 19	51
Regulation 27	32
Regulation 15	30
Regulation 10	26
Regulation 12	12
Regulations 20, 29	6

people:skills:jobs:



Department for
**Employment
and Learning**
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

website: www.delni.gov.uk