

*These notes refer to the Employment Act (Northern Ireland)
2010 (c.12) which received Royal Assent on 2 August 2010*

Employment Act (Northern Ireland) 2010

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Section 1: Employment agencies: mode of trial and penalties for certain offences

Section 1 amends the Employment (Miscellaneous Provisions) (NI) Order 1981 to provide for offences under employment agency legislation to be triable either in a Magistrates' Court or the Crown Court. At present, the maximum fine that can be awarded by a Magistrates' Court can be no greater than level five on the standard scale (currently £5,000). Agencies that act unlawfully can make much more than this amount. Allowing more serious cases to be tried in the Crown Court will provide for the potential for unlimited fines to be awarded against such agencies.

Section 2: Employment agencies: powers of enforcement

Section 2 amends the Employment (Miscellaneous Provisions) (NI) Order 1981 to provide the Department with powers to compel agencies and third parties, such as banks, to provide the Department with financial information about an agency for investigation purposes. Limits will be placed on the circumstances in which this power can be used and it will only be available where an agency is suspected of serious offences under employment agency legislation and is asked for, but does not provide, the necessary financial information. This power can only be used following authorisation by a senior officer of the Department (at least Director-level).

Section 3: Membership of the Industrial Court

Section 3 makes amendments to the Industrial Relations (NI) Order 1992 to replace current arrangements for Industrial Court appointments with equivalent subordinate legislation provisions which will provide greater flexibility in making appointments.

Section 4: Legal representation before the Industrial Court

Section 4 amends Article 92(4) of the Industrial Relations (NI) Order 1992 to enable parties before the Industrial Court to engage legal representation with the exception of one jurisdiction which is related to the provision of

voluntary arbitration in relation to industrial disputes. Legal advice states that failure to allow legal representation could lead to a challenge under Article 6 of the European Convention on Human Rights (Right to a fair trial). Voluntary arbitration, by its nature, would not benefit from legal representation.

Section 5: Employment agencies and national minimum wage: information

Section 5 amends the National Minimum Wage Act 1998 and the Employment (Miscellaneous Provisions) (NI) Order 1981 to clarify the law relating to information-sharing and allow HM Revenue and Customs National Minimum Wage compliance officers and Department for Employment and Learning employment agency inspectors to legally share and exchange information discovered by them in the course of exercising their powers. The exchange of such information was previously restricted. The removal of this restriction enables, for example, employment agency inspectors to report breaches of the National Minimum Wage Act by employment businesses to HM Revenue and Customs.

Section 6: Compensation for financial loss

Section 6 provides a simplified process for claimants who have suffered direct financial losses as a result of unlawful deductions from wages, including failure to pay the National Minimum Wage, and the non-payment of statutory redundancy awards. Previously, an industrial tribunal could only order an employer to pay or repay the amount arising from the employer's direct liability for breaches of law in this area. The claimant was therefore left to bring a separate action in the civil courts for financial losses incurred over and above the amount owed but which could be attributed to the non-payment or unauthorised deduction; for instance, as a result of charges for unauthorised overdrafts. Section 6 allows an industrial tribunal to make an additional award against the employer to compensate workers (which includes employees) for the full financial loss they have sustained as a result of unlawful deductions from wages and employees for non-payment of redundancy awards.

Section 7: Minor and consequential amendments and repeals

Section 7 provides that the minor and consequential amendments and repeals set out in the Schedules to the Act will have effect.

Section 8: Commencement

Section 8 gives the Department power to bring the membership of the Industrial Court provision of the Act into operation by commencement order. It also provides that the remaining provisions of the Act will come into operation on the day after the Act receives Royal Assent.

Section 9: Short Title

Section 9 cites the title of the Act. This is the title by which the Act will be known.

Schedule 1: Minor and consequential amendments

Schedule 1 provides for a number of minor and consequential amendments including:

- Amendments to Section 1 of the Employment and Training Act 1950 and Article 4 (1) of the Employment and Training (Amendment) (NI) Order 1988 to ensure that people taking part in Departmental employment and training programmes and receiving payments in connection with their participation have those payments treated as a Training Allowance and not as employed income;
- Amendments to the Industrial Relations (NI) Order 1992 to provide for the Department to consult the LRA about the arrangements for appointing the Certification Officer;
- Amendments to the Industrial Relations (NI) Order 1992, Schedule 4, paragraph 2 and the Industrial Training (NI) Order 1984, Schedule 2, paragraph 2 (2) to clarify legislation in relation to the consultation process on appointments to the Labour Relations Agency and the CITB-ConstructionSkills Northern Ireland, respectively;
- Amendment to Article 92 of the Industrial Relations (NI) Order 1992 to amend incorrect references to the Arbitration Act;
- Amendment to Schedule 1A of the Trade Union and Labour Relations (NI) Order 1995 to remove the restriction that the Court's secretariat functions may only be fulfilled by staff from the Department; and
- Amendment to Articles 67M and 103B of the Employment Rights (NI) Order 1996 to amend incorrect references to jury service legislation.

Schedule 2: Repeals

Schedule 2 provides for a number of repeals in relation to the provisions within the Act. It also provides for the repeal of Article 16 of the Employment Relations (NI) Order 2004.