

*This Explanatory Memorandum refers to the
Employment (Miscellaneous Provisions) (Northern Ireland) Order 2005 (N.I.20).*

EMPLOYMENT (MISCELLANEOUS PROVISIONS) (NORTHERN IRELAND) ORDER 2005

2005 No. 3424 (N.I. 20)

EXPLANATORY MEMORANDUM

INTRODUCTION

1. The Employment (Miscellaneous Provisions) (Northern Ireland) Order 2005 (“the Order”) was made on 14 December 2005.
2. This Explanatory Memorandum has been prepared by the Department for Employment and Learning (“the Department”) in order to assist the reader in understanding the Order. It does not form part of the Order.

BACKGROUND AND POLICY OBJECTIVES

3. The Employment (Miscellaneous Provisions) (Northern Ireland) Order 1981 (N.I. 20) (“the 1981 Order”) and associated regulations, govern the conduct of private employment agencies and employment businesses operating from premises in Northern Ireland and are designed to protect the interests of job seekers and hirers using their services. They set minimum standards of conduct for employment agencies and employment businesses covering areas such as fees, safeguarding of clients’ money, advertisements and record-keeping.
4. The 1981 Order did not include powers of entry and inspection, and the absence of these enforcement powers has caused problems in Northern Ireland. Although the Department has the power to prosecute organisations who fail to comply with the regulations and, in more serious cases, to seek a prohibition notice from an industrial tribunal, in the absence of powers to enter and inspect premises operated by employment agencies and employment businesses and to obtain the necessary evidence, the Department’s enforcement role was rendered ineffective.
5. The Department implemented updated and amended Conduct of Employment Agencies and Employment Businesses Regulations on 25 September 2005. This Order introduces powers of entry and inspection to ensure effective enforcement of the regulations and to act as a deterrent to unscrupulous organisations. It was the Department’s view that this issue should be addressed through the implementation of an Employment (Miscellaneous Provisions) (Northern Ireland) Order 2005, which supplements the provisions of the 1981 Order.
6. The Order also makes amendments to the Fair Employment and Treatment (Northern Ireland) Order 1998 (N.I. 21) (“the 1998 Order”) at Articles 82(2) and 87.

CONSULTATION

7. A public consultation on the draft proposals opened on 21 June 2005, and closed on 12 September 2005. The consultation document was published on the Departmental website and consultees were notified of this. In addition, approximately one-hundred and twenty copies were issued to interested parties including all Northern Ireland political parties, Assembly Members, employment agencies and employment businesses. Four responses were received. All respondents were in support of the proposals. A copy of the consultation document, covering letter and summary of the responses is available on the following website address: <http://www.delni.gov.uk/consultDebate/index.cfm/page/details/key/93>.

MAIN ELEMENTS OF THE ORDER

Article 2 – Enforcement of regulation of employment agencies and employment businesses

8. This Article provides the Department with the power to appoint officers, or to arrange with any Minister of the Crown or public body to appoint officers, to act for the purposes of the 1981 Order. The Article then provides these officers with specific powers, such as the right to enter relevant business premises and inspect their records or other documentation required to be kept under the 1981 Order.
9. The Article also sets out the penalties that will be incurred for failure to comply with the requirements of this Order.

Article 3 – Qualification for certain appointments

10. Article 3 amends Article 82(2) of the 1998 Order to harmonise the criteria used for appointments to industrial tribunals and the Fair Employment Tribunal.

Article 4 – Enforcement of sums awarded by Fair Employment Tribunal

11. Article 87 of the 1998 Order provides the Fair Employment Tribunal with the power to enforce awards of compensation, but there is currently doubt as to its ability to enforce costs awards. This Article amends and clarifies Article 87 of the 1998 Order to enable the Fair Employment Tribunal to enforce ‘any sum payable’.

COMMENTARY ON ARTICLES (COMMENTS ARE NOT GIVEN WHERE THE WORDING IS SELF-EXPLANATORY)

12. Article 1 is introductory.

Enforcement of regulation of employment agencies and employment businesses

13. Article 2(2) inserts new Articles 7A and 7B into the 1981 Order.

New Article 7A provides the Department with the power to appoint officers, or to arrange with any Minister of the Crown or public body to appoint officers, to act for the purposes of the 1981 Order.

New Article 7B provides these officers with the power to enter any relevant business premises, inspect the premises and any records or other documents required to be kept, and remove any records or documents for the purpose of copying them. The Article also sets out the penalties that will be incurred for

obstructing an officer in the exercise of his duties, for failure to comply with the requirements of this Order, and for the wrongful disclosure of information obtained.

Article 2(3) adds the new Article 7B (11) to the list of provisions at Article 9A of the 1981 Order. The effect of the Article is to extend the time limit within which the Department may institute proceedings for the wrongful disclosure of information obtained, from 6 months of the date of the offence to within 3 years after the date of the commission of the offence, and within 6 months after the date on which evidence, sufficient in the opinion of the Department to justify the proceedings, came to its knowledge.

Qualification for certain appointments

14. Article 3 makes an amendment to Article 82(2) of the 1998 Order which specifies that a person is not qualified for appointment as a President of the Industrial Tribunals and the Fair Employment Tribunal, a Vice-President of the Industrial Tribunals and the Fair Employment Tribunal, or a panel of chairmen of the Fair Employment Tribunal unless he is “a barrister or solicitor of not less than 7 years' standing”. The Department understands that this can be legally construed to apply only to appropriately qualified members of the Northern Ireland legal profession. This Article amends Article 82(2) of the 1998 Order to enable appropriately-qualified persons from anywhere in Great Britain or Northern Ireland to apply for appointment.

Enforcement of sums awarded by Fair Employment Tribunal

15. Article 4 amends Article 87 of the 1998 Order by substituting the words “any sum payable in pursuance of a decision of the Tribunal” for the words from “an award of compensation” to “Article 86(1)”. The effect of the Article is to enable the Fair Employment Tribunal to enforce awards of ‘any sum payable’ as opposed to the current system where it can enforce awards of compensation, but not costs.

Minor amendments

16. Article 5 makes minor amendments to the Industrial Relations (Northern Ireland) Order 1992 (N.I. 5) and the Employment Rights (Northern Ireland) Order 1996 (N.I. 16).

COMMENCEMENT

17. Article 1(2) provides for the Order to come into operation on the expiration of one month from the date on which it was made.

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