

Draft Order in Council laid before Parliament under paragraph 2(1)(a) of the Schedule to the Northern Ireland Act 2000, for approval by resolution of each House of Parliament

DRAFT STATUTORY INSTRUMENTS

2005 No. (N.I.)

NORTHERN IRELAND

The Employment (Miscellaneous Provisions) (Northern Ireland) Order 2005

Made - - - - 2005
Coming into operation

At the Court at Buckingham Palace, the ** day of ** 2005
Present,
The Queen's Most Excellent Majesty in Council

Whereas a draft of this Order in Council has been approved by resolution of each House of Parliament:

Now, therefore, Her Majesty, in exercise of the powers conferred by paragraph 1(1) of the Schedule to the Northern Ireland Act 2000 (c. 1) and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:-

Title, commencement and interpretation

1.—(1) This Order may be cited as the Employment (Miscellaneous Provisions) (Northern Ireland) Order 2005.

(2) This Order comes into operation on the expiration of one month from the date on which it is made.

(3) The Interpretation Act (Northern Ireland) 1954 (c. 33) applies to this Order as it applies to an Act of the Assembly.

Enforcement of regulation of employment agencies and employment businesses

2.—(1) Part II of the [Employment \(Miscellaneous Provisions\) \(Northern Ireland\) Order 1981 \(NI 20\)](#) (regulation of employment agencies and employment businesses) is amended as follows.

(2) After Article 7 insert—

“Appointment of officers

7A.—(1) The Department—

- (a) may appoint officers to act for the purposes of this Order; and
- (b) may, instead of or in addition to appointing any such officers, arrange with any Minister of the Crown or public body, that officers of that Minister or body shall act for those purposes.

(2) In paragraph (1) “public body” means—

- (a) a department of the Government of the United Kingdom;
- (b) a Northern Ireland department; or
- (c) a body performing functions on behalf of the Crown.

(3) When acting for the purposes of this Order, an officer shall, if so required, produce written evidence of his authority so to act.

Powers of officers

7B.—(1) An officer acting for the purposes of this Order may at all reasonable times—

- (a) enter and inspect any relevant business premises;
- (b) require the production of any records required to be kept under this Order, inspect and examine those records, remove those records from the premises where they are kept and copy any material part of them; and
- (c) subject to paragraph (6), require any person on those premises to furnish him with such information as he may reasonably require for the purpose of ascertaining whether the provisions of this Order and of any regulations made thereunder are being complied with or of enabling the Department to exercise its functions under this Order.

(2) If an officer seeks to inspect or acquire, in accordance with paragraph (1)(b) or (c), a record or information which is not kept at the premises being inspected, he may require any person on the premises—

- (a) to inform him where and by whom the record or information is kept, and
- (b) to make arrangements, if it is reasonably practicable for the person to do so, for the record or information to be inspected by or furnished to the officer at the premises at a time specified by the officer.

(3) In paragraph (1) “relevant business premises” means premises—

- (a) which are used, have been used or are to be used for or in connection with the carrying on of an employment agency or employment business,
- (b) which the officer has reasonable cause to believe are used or have been used for or in connection with the carrying on of an employment agency or employment business, or
- (c) which the officer has reasonable cause to believe are used for the carrying on of a business by a person who also carries on or has carried on an employment agency or employment business, if the officer also has reasonable cause to believe that records or other documents which relate to the employment agency or employment business are kept there.

(4) For the purposes of this Article—

- (a) “record” includes information recorded in any form, and
- (b) information is kept at premises if it is accessible from them.

(5) The powers conferred by paragraph (1) include, in relation to records which are kept by means of a computer—

- (a) power to require the records to be produced in a form in which they are legible and can be taken away; and
- (b) power to require access to, and to check the operation of, any computer and any associated apparatus or material which is or has been in use in connection with the records in question.

(6) Nothing in this Article shall require a person to produce, provide access to or make arrangements for the production of anything which he could not be compelled to produce in civil proceedings before the High Court.

(7) Subject to paragraph (8), a statement made by a person in compliance with a requirement under this Article may be used in evidence against him in criminal proceedings.

(8) Except in proceedings for an offence under Article 10 of the [Perjury \(Northern Ireland\) Order 1979 \(NI 19\)](#) (false statements otherwise than on oath), no evidence relating to the statement may be adduced, and no question relating to it may be asked, by or on behalf of the prosecution unless—

- (a) evidence relating to it is adduced, or
- (b) a question relating to it is asked,

by or on behalf of the person who made the statement.

(9) Any person who—

- (a) obstructs an officer in the exercise of his powers under sub-paragraph (a) or (b) of paragraph (1); or
- (b) without reasonable excuse, fails to comply with a requirement under sub-paragraph (c) of that paragraph or under paragraph (2),

shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(10) No information obtained in the course of exercising the powers conferred by this Article shall be disclosed except—

- (a) with the consent of the person by whom the information was furnished or, where the information was furnished on behalf of another person, with the consent of that other person or with the consent of the person carrying on or proposing to carry on the employment agency or employment business concerned; or
- (b) to the Department, or an officer appointed by, or person exercising functions on behalf of, the Department for the purposes of the exercise of functions under this Order, or
- (c) by the Department, or an officer appointed by, or person exercising functions on behalf of, the Department to the person carrying on or proposing to carry on the employment agency or employment business concerned, to any person in his employment or, in the case of information relating to a person availing himself of the services of such an agency or business, to that person; or
- (d) with a view to the institution of, or otherwise for the purposes of, any criminal proceedings pursuant to or arising out of this Order or for the purposes of any proceedings under Article 5A or 5C.

(11) Any person who contravenes paragraph (10) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.”

(3) In Article 9A (offences: extension of time limit) in paragraph (1) after “7(2) insert “, 7B(11).

Qualification for certain appointments

3. In Article 82 of the [Fair Employment and Treatment \(Northern Ireland\) Order 1998 \(NI 21\)](#) (appointment of President and Vice-President of the Industrial Tribunals and the Fair Employment Tribunal and of a panel of chairmen of the Fair Employment Tribunal) for paragraph (2) (qualifications for appointment) substitute—

- “(2) A person is not qualified for appointment under paragraph (1) unless —
- (a) he is a barrister-at-law or solicitor of at least 7 years' standing;
 - (b) he has a 7 year general qualification within the meaning of section 71 of the Courts and Legal Services Act 1990 (c. 41); or
 - (c) he is an advocate or solicitor admitted in Scotland of at least 7 years' standing.”.

Enforcement of sums awarded by Fair Employment Tribunal

4. In Article 87 of the [Fair Employment and Treatment \(Northern Ireland\) Order 1998 \(NI 21\)](#) (enforcement of awards of Tribunal) for the words from “an award of compensation” to “Article 86(1)” substitute “any sum payable in pursuance of a decision of the Tribunal”.

Minor amendments

5.—(1) In Article 90(5) of the [Industrial Relations \(Northern Ireland\) Order 1992 \(NI 5\)](#) (codes of practice)—

- (a) in sub-paragraph (a) after “Article 92A” insert “of the Employment Rights (Northern Ireland) Order 1996”; and
- (b) in sub-paragraph (b) after “Article 92A(2)” insert “of that Order”.

(2) In Articles 152 (1)(b) and 157(1) of the [Employment Rights \(Northern Ireland\) Order 1996 \(NI 16\)](#) (compensatory award) after “158” insert “, 158A”.

Clerk of the Privy Council

EXPLANATORY NOTE

(This note is not part of the Order)

This Order provides for new enforcement powers in connection with the regulation of employment agencies and employment businesses. It also amends the qualifications for certain appointments in relation to industrial tribunals and the Fair Employment Tribunal and provides for the enforcement of sums payable in pursuance of a decision of the Fair Employment Tribunal.