



Northern Ireland  
Assembly

Committee for Employment and Learning

# OFFICIAL REPORT (Hansard)

Proposed Consultation on the Conduct of  
Employment Agencies and Employment  
Businesses Regulations (Northern Ireland) 2005:  
Department for Employment and Learning

12 March 2014

# NORTHERN IRELAND ASSEMBLY

## Committee for Employment and Learning

Proposed Consultation on the Conduct of Employment Agencies and Employment Businesses Regulations (Northern Ireland) 2005: Department for Employment and Learning

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**Members present for all or part of the proceedings:**

Mr Robin Swann (Chairperson)  
Mr Thomas Buchanan (Deputy Chairperson)  
Mr Sammy Douglas  
Mr David Hilditch  
Mr Chris Lyttle  
Ms Bronwyn McGahan

**Witnesses:**

Mr Conor Brady	Department for Employment and Learning
Ms Deirdre Walsh	Department for Employment and Learning

**The Chairperson:** I welcome Mr Conor Brady, head of employment relations policy and legislation branch in the Department for Employment and Learning, and Ms Deirdre Walsh, from the same branch. You can give a 10-minute briefing, and that will be followed by questions.

**Mr Conor Brady (Department for Employment and Learning):** I think that we can do it in five minutes.

**The Chairperson:** That will do well, Conor.

**Mr C Brady:** If the Committee is content, we will give a brief overview of the content of the proposed consultation and, equally important, the methodology used to get to the point at which we have these proposals.

As the Committee knows, the Minister launched a fundamental review of employment law back in 2012. Under the better regulation strand of the review, the Department initiated a pilot review of employment regulations, which was designed to inform the methodology for a full review of all employment regulations. One of the main attractions of choosing these conduct regulations for the pilot was the fact that the Department has responsibility for the enforcement of the conduct regulations through the Employment Agency Inspectorate (EAI), as well as for the legislation itself. Therefore, we have access to revising the legislation as well as significant awareness of its operational outworkings.

The conduct regulations set the minimum standards for recruitment agencies in such areas as fees, terms and conditions, the safeguarding of clients' money, advertisements and record-keeping, and their main purpose is to protect work-seekers and hirers who use the services of recruitment agencies. At this point, I stress that there is a distinction between the conduct regulations and the agency worker regulations, which I know that the Committee has looked at previously, because the EAI does not

enforce the agency worker regulations. However, I think that we are scheduled to present evidence to the Committee on the agency worker regulations in a couple of months' time.

Work on the review of the conduct regulations began in January last year with the first of three stakeholder meetings, which brought together a range of employment agencies and businesses, representatives of workers and hirers, and other industry bodies. The purpose of the meetings was to identify the specific regulations that afforded meaningful protections for work-seekers and hirers and to examine whether any unnecessary burdens could be removed.

It is worth pointing out at this point that our counterpart Department in Great Britain has carried out an initial consultation on its equivalent regulations, and our understanding is that it is planning a significant revision of them. However, I stress that, although the GB review was in the background of our pre-consultation with stakeholders, it was there only as background. The Minister has stated categorically that he wants to find, through the pilot, Northern Ireland-based solutions. Therefore, we took a very different tack to what is happening in GB.

There were a number of points from stakeholders on which there was general consensus. There was no strong appetite for major change to how the private recruitment sector is regulated. The Employment Agency Inspectorate serves an important and cost-effective function in settling potential breaches of the regulations without the need to resort to an industrial tribunal. Rather than wholly remove the regulations or maintain the status quo, it was preferable to revise them so that they better meet the needs of workers, hirers and agencies and take account of developments in private recruitment, including new business models as well as emerging technology. Finally, guidance could also be simplified with bespoke summary guidance for certain sectors.

A range of proposals has been developed on the basis of the discussions with our stakeholders, and those are set out in the draft consultation document that Members have received. Responses to the consultation are unlikely to extend much beyond key stakeholders in the recruitment sector and employer bodies.

I will now pass you over to Deirdre, who will briefly cover the many proposals in the consultation.

**Ms Deirdre Walsh (Department for Employment and Learning):** Thanks, Conor. The proposals relate to regulations under these two main headings: those concerning an agency's relationship with a work-seeker; and those that relate to an agency's relationship with a hirer. Proposals relating to workers fall into two main areas, which are streamlining procedures and reducing administrative burdens on agencies, and providing extra protections for workers. There are separate proposals relating to workers in the entertainment sector, including a potential ban on the charging of publication fees. The proposals that relate to agencies' relationships with hirers include improving procedures and increasing the content of the business terms between agencies and hirers in order to reduce subsequent per assignment administrative requirements.

Other miscellaneous proposals include improving clarity where an agency demonstrates its authority to hire and advertise on behalf of a hirer; revising procedures for agencies offering additional services aside from their work-finding service; and clarifying transfer fees where a hirer or another employer employs a worker directly from an agency.

We also propose improved clarity on the level of information that an agency is required to gather about a position to be filled and on the standards around confidentiality of information. In addition, we propose to merge regulations where a single policy issue or procedure is spread across several different regulations. We would like to improve guidance and templates to support agencies, workers and hirers.

In summary, and in broad terms, the consultation recommends that private recruitment sector regulation in Northern Ireland be retained but improved in line with the proposals in the consultation and that the conduct regulations and the proposed amendments be consolidated into a single set. That would involve revoking the existing Conduct of Employment Agencies and Employment Businesses Regulations (Northern Ireland) 2005 and their 2008 and 2010 amendments. That would result in a single set of regulations that are more easily understood. We are now happy to take any questions that the Committee has.

**The Chairperson:** Thanks, Conor and Deirdre. I have a couple of points to raise. Are you concerned that, if you start to review the legislation, you will end up adding to rather than removing some of the regulation, or do you already see an opportunity for removal?

**Mr Brady:** I caution against conflating deregulation and better regulation. We are not in the business of deregulating for the sake of it. What we are in the business of, under this review, is looking at regulation and making it more fit for purpose. Part of that will be about ensuring that, where possible, we look at the operational outcomes of legislation. I think that the consultation is the perfect example of that. Although we may have developed legislation with the best intentions in the past, there are sometimes perverse incentives or unseen knock-on effects from it.

We are now working with the practitioners to see what those knock-on effects are, and we are addressing the legislation specifically to remove them. There will be areas in which we will be removing regulations, and the consultation demonstrates that, but only where that is appropriate. The overarching theme of the entire employment law review is to remove regulations but not at the expense of removing rights for workers.

**The Chairperson:** The gangmasters legislation has just come into effect in Northern Ireland through negative resolution, or it will come into effect shortly. Can that affect how agencies work? You were speaking about agencies having to advertise whom they are hiring staff for. Does that come into play?

**Ms Walsh:** The gangmasters legislation has been in place since 2004. What is coming into effect is an amendment to it. I am not sure what is in that amendment.

The Employment Agency Inspectorate in DEL picks up any sectors that gangmasters do not deal with, so we will be operating in sectors that are released from the gangmasters legislation, which is what is happening.

**The Chairperson:** What is the difference between a gangmaster and an agency?

**Mr C Brady:** In some respects, absolutely nothing. The Gangmasters Licensing Authority looks after very specific sectors. It emerged on the back of the Morecambe shellfish workers disaster and looks after the general agrifood sectors and those agencies that operate in very sector-specific areas. However, those are still employment agencies and employment businesses according to the definition of the legislation.

"Gangmasters" is just a term to define what falls under the legislation that governs the work of the Gangmasters Licensing Authority. In practical terms, there is no real difference. The difference in how they are regulated is that the Gangmasters Licensing Authority issues licences to enable the employment agencies to operate, whereas we do not. We carry out a range of inspections and complaint investigations.

**The Chairperson:** Deirdre, you mentioned that proposals are different for the entertainment sector. What is the rationale behind that?

**Ms Walsh:** Arrangements in the entertainment sector are a little bit different because of the way in which work-seekers are recruited. Generally, employment agencies introduce workers into the entertainment sector. Actors, for example, are generally represented by an agent and are identifiable with an agent.

Therefore, one of the proposals that we have for the entertainment sector is to introduce exclusivity for actors so that they have only one agent. It has been suggested to us that that is safer for those workers, because production companies looking for actors will know whom to go to to find a particular person. Agents in the sector can negotiate more lucrative terms and ensure that expenses are paid and everything is in place for the actor to have good terms and conditions of work, including pay. If an actor were without an agent or had a few agents, the production company would be less clear on whom to go to, so it might approach the actor directly.

One of the other things that we propose to do in the entertainment sector is abolish publication fees. Typically, if actors, or anybody in the entertainment sector other than models, sign up with an agent, that agent may seek to put their photograph in a publication, the most well known of which is 'Spotlight'. 'Spotlight' is not produced or published in Northern Ireland, and, as far as we know, there are no publications of that nature here. It has been suggested to us that publication fees are not used in Northern Ireland. In 2010, we got rid of up-front fees for models. The modelling sector has told us that that has raised the standard across its agencies, because it is absolutely clear that no up-front fees are permitted. We are proposing that that be brought in across the whole entertainment sector so that its workers are protected in the same way as models.

**Mr Buchanan:** I notice that the employment law, when this process is over, will not marry with that which already exists in GB. Do you see that creating a problem for construction companies that operate here and across the water and are employing folk in both places? There will be two different pieces of legislation: one type for here and one type for over there.

**Mr C Brady:** We do not envisage it being too much of a problem. We are looking at how the various companies are regulated. GB is really stripping back its regulations to the bare bones. We have been told clearly by people in the recruitment sector, who are the ones whom we regulate, that they are quite happy with how they are being regulated. They do not want a removal of regulation because the existence of the EAI creates a level playing field, which is all that the recruitment sector is looking for.

Where there are differences in jurisdictional legislation, the requirements of the conduct regulations will not be significantly onerous on agencies that are operating on a UK-wide basis. As I said, we are trying to bring about better regulation, not necessarily to make it easier for agencies and businesses to operate but to remove those unnecessary businesses and ultimately to put protections in place. Ensuring that the protections are in place should be the driving force behind the consultation in a way that is not happening in GB. That is what our priority should be.

**Mr Douglas:** My question is along the same lines. Conor, where do this legislation and the proposals for agency workers fit in with European legislation?

**Mr C Brady:** For the conduct regulations, not at all. They are developed exclusively on a Northern Ireland basis. The agency worker regulations, which are a separate set of regulations that relate to agency workers, emanate from the agency workers directive, but, as I said, they are not related to this very specific set of regulations.

The main difference is that the conduct regulations are enforced by our inspectorate. The agency worker regulations are enforced by the individuals themselves through the tribunal system. As I mentioned at the beginning, we will provide separate evidence on the agency worker regulations and some work that we have been doing on that in the past year to the Committee in the next month or so.

**The Chairperson:** OK, folks. Thank you very much.