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Department for  
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**EAI**

Employment  
Agency  
Inspectorate

# Employment Agency Inspectorate (EAI)

## Third Annual Report

April 2010 to March 2011

November 2011

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## Ministerial Foreword



This is the third annual report from my Department's Employment Agency Inspectorate (EAI). The report reviews the ongoing work of the EAI in monitoring and inspecting the private recruitment sector in Northern Ireland during the period April 2010 to March 2011.

The private recruitment sector in Northern Ireland provides important flexibility for both work-seekers and hirers, and will continue to play a vital role in supporting the region's economic recovery.

The experience of the EAI continues to be that the vast majority of agencies in Northern Ireland are reputable and professional, and my Department's Inspectors will continue to work with agencies and other related organisations to prevent breaches of the Regulations. However, my Department is committed to fulfilling its duty to ensure that the sector is properly regulated, and that those employment agencies which would attempt to abuse vulnerable workers, or break the law, are dealt with in an appropriate manner. Guidance and advice on the legislation will assist most agencies with compliance, but we will not hesitate to use our full powers to take action against agencies which take advantage of vulnerable work-seekers, to gain an unfair competitive advantage over compliant agencies. Such agencies, if left unchecked, could damage the reputation of the private recruitment sector as a whole and my Department, through the work of the EAI, will continue to do all it can to minimise the scope for rogue agencies to engage in illegal practices.

The EAI has moved away from the practice of inspecting all agencies, to a more targeted, risk-based approach and as a result the number of routine inspections carried out this year was less than in previous years.

Whilst it is outside of the scope of the period of this report, it is worth highlighting that the EAI was also successful in the prohibition of an entertainment and modelling agent in June 2011, who was banned from running an employment agency in Northern Ireland for the maximum period of ten years. The EAI intends to build on this success by continuing to pursue legal remedies for those who are intent on taking advantage of vulnerable work seekers.

Agency inspection in Northern Ireland is still an evolving process, and I would like to thank the sector and its representatives for identifying not just

problems, but also for being so forthcoming with solutions. The EAI delivers on protection for vulnerable agency workers and we must continue to work together for a competitive, but fair, recruitment sector in Northern Ireland, which affords flexibility for hirers and employment and protection for work-seekers.

A handwritten signature in black ink, reading "Stephen Farry". The signature is written in a cursive style with a large initial 'S'.

**Dr Stephen Farry MLA**  
**Minister for Employment and Learning**

# 1. Background

- 1.1 This is the third annual report from the Department for Employment and Learning in respect of the EAI's enforcement operations within the Northern Ireland private recruitment sector. The report covers the period April 2010 to March 2011.
- 1.2 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").

## 1.3 Definitions of 'employment agency' and 'employment business'

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".

The 1981 Order defines an **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".

- 1.4 In short, then, 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, on the other hand, 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 the term most often used to cover both scenarios and will be used in this report.

## Legislation

- 1.5 The 1981 Order provides the Department with the power to make legislation to regulate the private recruitment sector, and was amended in 2006<sup>1</sup> 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

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

services; however, agencies operating in the entertainment and modelling sectors may charge fees, as provided for in the Regulations. The Conduct Regulations were brought into operation by the Department in 2005 and were amended in 2008<sup>2</sup> and 2010<sup>3</sup>. These Regulations are designed to protect work-seekers and hirers using the services provided by an employment agency by setting certain minimum standards to which employment agencies must adhere.

## **Employment Act (Northern Ireland) 2010**

- 1.6 In August 2010, the Employment Act (Northern Ireland) 2010 (“the Act”) came into effect. Three sections of the Act amended previous legislation in order to assist the EAI in ensuring that agencies and businesses comply with the law.
- 1.7 ***Mode of trial and penalties for certain offences*** - Section 1 of the Act allows for certain offences to be tried in the Crown Court, as well as in the Magistrate’s Court. These offences are:
- failure to comply with a prohibition order;
  - failure to comply with the Conduct of Employment Agencies and Employment Businesses Regulations (NI) 2005; and
  - seeking a fee for work-finding services.
- 1.8 Conviction on indictment in the Crown Court means that a person may face an unlimited fine. It is hoped that the prospect of an unlimited fine will act as a greater deterrent in those most serious of cases, where agencies make significant amounts of money through illegal practices.
- 1.9 ***Powers of enforcement*** - Section 2 of the Act allows EAI Inspectors to seek financial information from third parties, such as banks, where the information is needed to support an investigation into the extent and scale of suspected illegal practices, such as illegally charging fees to work-seekers.
- 1.10 Before seeking the information from third parties, the EAI must give an agency the opportunity to provide the necessary financial information by a specified deadline. If the agency fails to provide the information by the stated date, the EAI can request it directly from the bank or other financial institution.
- 1.11 ***Employment agencies and national minimum wage*** - Section 5 of the Act opens up an information-sharing gateway between the Department and HMRC National Minimum Wage compliance officers. This gateway will allow EAI Inspectors to inform HMRC about breaches

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<sup>2</sup> The Conduct Regulations were amended by the Conduct of Employment Agencies and Employment Businesses (Amendment) Regulations (Northern Ireland) 2008.

<sup>3</sup> The Conduct Regulations were further amended by the Conduct of Employment Agencies and Employment Businesses (Amendment) Regulations (Northern Ireland) 2010.

of the National Minimum Wage Act 1998 and, likewise, will permit HMRC inspectors to pass information about legislative breaches to Employment Agency Inspectors.

### **Amendments to the Conduct Regulations**

1.12 In December 2010, the Department introduced legislation to amend the Conduct Regulations. The changes had two main purposes:

- to reduce administrative and regulatory burdens on the recruitment sector; and
- to increase protections for those vulnerable work-seekers who are most open to exploitation.

1.13 The main changes to the Regulations are:

- the removal of suitability checks for employment agencies when placing people for permanent work, unless the work-seeker will be working with vulnerable individuals;
- the removal of the requirement for employment agencies to agree terms with hirers for permanent placements;
- a significant reduction in the circumstances under which employment agencies must agree terms with work-seekers;
- greater clarity in advertisements, through the replacement of the terms “employment agency” or “employment business”, with “permanent” and “temporary”;
- a ban on taking upfront fees from photographic and fashion models; and
- additional protections for people working in the entertainment sector when they are charged a legitimate upfront fee, or fee for additional services, including the introduction of extended cooling-off periods and the right to seek refunds when promised services have not been delivered.

## **2. Summary of Achievements**

### **Inspections**

- 2.1 Between April 2010 and March 2011, the EAI carried out a total of twenty one inspections. During the same period, seven investigations were undertaken as a direct response to complaints. The inspectors were also involved during the year in a lengthy investigation which resulted in the successful prosecution of an actors' agent.
- 2.2 To date, the EAI has undertaken a programme of 'routine' inspections, whereby all identified agencies in Northern Ireland undergo a full compliance inspection, and are subsequently advised on any necessary actions to reach full compliance. This has been a structured and fair approach to enforcement, with the EAI working to support agencies and assist them with compliance. The EAI is still committed to the process of routine inspections of all new agencies. However, from April 2011, it has moved towards a risk-based approach to targeting inspections (see 'Section 3 – Future Developments' for more details). Many agencies have commented on the positive and worthwhile nature of the inspection process, as it increases awareness and knowledge of the requirements of the legislation and opens up direct lines of communication between the EAI and agencies.

### **Complaints**

- 2.3 During the period April 2010 to March 2011, the inspectors received a total of fourteen complaints. The reduction in complaints over the last three years<sup>4</sup> is largely due to the higher level of compliance amongst agencies, as a result of the programme of routine inspections. Complaints from hirers and work-seekers are given a high priority and are subject to a full and thorough investigation. The Code of Conduct for Online Job-Board Advertising agreed between the Department for Employment and Learning, nijobfinder.co.uk, NIJobs.com and recruitni.com continues to be effective, as evidenced by the reduction in complaints in relation to these job-boards. The Inspectorate can investigate a complaint where there is evidence, can seek to prohibit an agency for up to ten years, and can prosecute in the Crown Court as well as the Magistrate's Court. The Inspectorate does not have the power to get money back where it has been withheld, but it can pass information on agencies to HMRC.

### **Enforcement Action**

- 2.4 The EAI operates under the Department's enforcement and procedural guide. It aims to achieve compliance mainly through advice, education

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<sup>4</sup> 2008/09 – 58 complaints, 2009/10 – 33 complaints, 2010/11 – 14 complaints.



and guidance in the first instance. However, if an agency fails to adequately respond to infringement letters, the Inspectorate will not hesitate to take enforcement action. The Department currently has the power to prosecute seriously non-compliant agencies in the Magistrates' Court, where the maximum fine is currently £5,000, or at the Crown Court which can issue unlimited fines. This year, the EAI was involved in a protracted, but successful prosecution process against an agency, in respect of serious breaches of an existing Prohibition Order.

- 2.5 During this year, the EAI has exercised the new right to request access to an agency's financial records for the first time. These powers were included in the Employment Act in 2010, which also provided for unlimited fines and removed an information-sharing barrier between the EAI and the HMRC National Minimum Wage enforcement officers. The Employment Act contains measures aimed at the seriously non-compliant and has enabled the Department to tackle such agencies more robustly.

### **Other Developments**

- 2.6 ***Migrant Workers*** - In June 2010, the Equality Commission for Northern Ireland (ECNI) published a report entitled "The Role of the Recruitment Sector in the Employment of Migrant Workers". One of the report's recommendations was that there should be "more effective dissemination of information about employment rights and awareness-raising amongst migrant workers".
- 2.7 In response to this, the EAI collaborated with the ECNI, the GLA, and the LRA to develop an information seminar aimed at raising awareness of employment rights amongst migrant workers and their representatives. Information provided included where workers can go to for advice and guidance, what they can do when things go wrong, and how to make a complaint if they feel their rights have been infringed or withheld.
- 2.8 The EAI believes that the first step in protecting migrant workers' employment rights is to let them know what protections are available to them. Unfortunately, our experience to date has been that migrant workers are not always aware of these protections or the bodies to whom they can make a complaint. This is something we are trying to address with our partners, and we consider that our seminars have been an important step in the right direction.
- 2.9 The first seminar was held in Belfast in November 2010. Representatives from the EAI and the GLA gave presentations on recruitment agency work, including in the agriculture, forestry, horticulture, shellfish gathering, and food processing and packaging sectors. The ECNI dealt with the promotion of equality of opportunity and eliminating discrimination, and the LRA talked about its impartial

and confidential employment relations service provided to employers and workers. Future seminars are planned for 2011/2012.

- 2.10 **Awareness-Raising** - The Department also highlighted the role of the EAI in the Northern Ireland Council for Ethnic Minorities' (NICEM) publication "Minority Rights Now!". The article raised awareness of the need for compliance and the role of the Inspectors in achieving this. We recognise that we cannot be complacent and that our role must be made clear to those most at risk: vulnerable work-seekers. We have been working closely with three of Northern Ireland's main online job boards to increase the Department's profile in that area, and to address concerns at the number of complaints relating to the conduct of some agencies in this relatively new area of the recruitment sector. The EAI also issued several e-zines throughout the year to notify all known employment agencies of developments in enforcement, policy and legislation.
- 2.11 Officials from the Department have recently been invited to sit on the Belfast City Council's Migrant Workers Forum. The Forum is to encourage inter-agency cooperation in addressing issues facing migrant communities in Belfast.
- 2.12 **Rebranding** - The Inspectorate exists to ensure that agencies comply with the legislation designed to protect the work-seekers and the hirers who engage with them.

### 2.13 EAI objectives

The EAI has three main objectives:

- 1) raising awareness of agency legislation
- 2) increasing compliance with the legislation
- 3) strengthening and improving customer service

- 2.14 The EAI was concerned that there was a general lack of awareness of their role in investigating complaints. To this end, they have worked on raising their profile especially among minority ethnic groups who need to be informed about the protections that are available to them.
- 2.15 In addition, the EAI has been given a new name and logo, to increase its visibility and develop its brand recognition. The reason for raising the profile of the Inspectorate was to raise awareness of the existence and importance of their regulatory functions in respect of employment agencies and vulnerable work-seekers. It is envisaged that this will go some way to making the inspectorate more accessible, recognisable, and approachable for workseekers, although it is also recognised that there is further work to be done in this respect.

2.16 Ever conscious of the need to raise the Department's profile in this sector, we have already begun to improve contact and communication with ECNI, Belfast City Council, the Recruitment and Employment Confederation (REC), the GLA, and HMRC. The EAI has been more proactive this year in its engagement with organisations that represent or interact with migrant workers, particularly in relation to increasing an awareness of their role in inspecting recruitment agencies, as well as advertising their complaint investigation service.

### **3. Future Developments**

#### **Inspections**

- 3.1 The EAI's first phase of operation was to carry out an inspection programme whereby all known employment agencies and employment businesses would be inspected at least once. This programme was designed to ensure that agencies complied with the relevant legislation, and that none were at a competitive advantage by exploiting non-compliant practices. This phase was completed in March 2011, but EAI inspectors will continue to routinely inspect newly established agencies, and revisit existing agencies where issues remain outstanding.
- 3.2 From April 2011, the EAI will move to a risk-based approach to inspection, where agencies operating in particular occupational/sectoral areas, or geographic regions, will be targeted to ensure protections are in place for the most vulnerable work-seekers.
- 3.3 The Department will continue to work with agencies and other stakeholders in order to address breaches before they take place. However, the Department will not hesitate to use its full powers of prohibition and prosecution to take action against any rogue agencies that seek to benefit financially at the expense of vulnerable workers.

#### **Awareness-Raising**

- 3.4 The EAI is aware that there is a need to raise its profile and that of the Department to work-seekers, hirers, and recruitment agencies. There has been a steady reduction in the number of complaints over the last three years, which can mainly be attributed to greater awareness of the Regulations amongst employment agents operating in Northern Ireland, as well as the success of the Code of Conduct for advertising jobs through on-line recruitment sites. However, the EAI still considers that many agency workers, especially migrant workers, may be unaware of the employment rights to which they are entitled, and the role which the EAI can play in addressing any infringements of these rights. Over the coming year, the EAI will be working on a communications plan to increase its visibility and we would welcome any comments or input on how this could be effectively taken forward.

#### **Agency Workers Directive**

- 3.5 On 5 December 2011, the Agency Workers Regulations (Northern Ireland) 2011 will come into operation. These Regulations will give equal treatment to temporary agency workers who have worked for 12 weeks with the same employer, doing broadly the same work as permanent employees. Equal treatment will extend to basic working and employment conditions and will include duration of working time, overtime, breaks, rest periods, night work, holidays, public holidays and

pay. The new legislation will only apply to agencies operating as employment businesses.

- 3.6 It is important to highlight that these Regulations will **not** be enforced by the EAI. The Regulations provide for work-seekers to take cases to an Industrial Tribunal if they feel their rights under this legislation have been withheld from them.

## **4. Guidance, General Information and Contact Details**

### **Guidance**

- 4.1 General guidance on agency work in Northern Ireland is now available on two government websites: NIDirect for work-seekers<sup>5</sup> and NIBusinessInfo for hirers and employment agencies<sup>6</sup>.

### **Working with other bodies**

- 4.2 The Department works with a number of other public bodies in the course of discharging its duty to regulate the private recruitment sector:
- 4.3 ***The Department for Business Innovation and Skills (BIS)***<sup>7</sup> – The Department for Business, Innovation and Skills regulates GB-based agencies. It has 16 inspectors who enforce the GB Conduct Regulations.
- 4.4 The EAI inspectors attend BIS Inspectorate events to ensure an even-handed approach across the United Kingdom, and to increase their awareness of other issues within this sector. BIS' officials have been extremely helpful in providing advice, support and networking to the inspectors in Northern Ireland and the Department is very grateful for their ongoing assistance.
- 4.5 ***The Gangmasters Licensing Authority (GLA)***<sup>8</sup> – The GLA was established in 2005 and is responsible for introducing and operating a licensing scheme for labour providers working in the agricultural and horticultural sectors, and for those gathering shellfish and working in related food processing and packaging sectors. EAI inspectors meet regularly with the GLA inspectors to share information and co-operate where appropriate.
- 4.6 ***HM Revenue and Customs (HMRC)***<sup>9</sup> – HMRC is responsible for the enforcement of the National Minimum Wage. A National Minimum Wage gateway is now open. EAI inspectors meet regularly with HMRC compliance officers to discuss relevant issues.
- 4.7 ***Republic of Ireland*** - In the Republic of Ireland, the Department works with the Department of Jobs, Enterprise and Innovation<sup>10</sup> and the National Employment Rights Authority<sup>11</sup>.

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<sup>5</sup> [www.nidirect.gov.uk](http://www.nidirect.gov.uk), search for 'agency workers'

<sup>6</sup> [www.nibusinessinfo.co.uk](http://www.nibusinessinfo.co.uk), search for 'employment agencies'

<sup>7</sup> [www.bis.gov.uk](http://www.bis.gov.uk)

<sup>8</sup> [www.gla.gov.uk](http://www.gla.gov.uk)

<sup>9</sup> [www.hmrc.gov.uk](http://www.hmrc.gov.uk)

<sup>10</sup> [www.djei.ie](http://www.djei.ie)

<sup>11</sup> [www.employmentrights.ie](http://www.employmentrights.ie)

## Contact Details

- 4.8 If you require any further information, or wish to make a complaint about an employment agency, you can contact us in the following ways:

Address: Employment Agency Inspectorate  
Department for Employment and Learning  
Room 203  
Adelaide House  
39-49 Adelaide Street  
Belfast  
BT2 8FD

EAI Helpline: 028 9025 7554

Fax: 028 9025 7555

E-mail: [eai@delni.gov.uk](mailto:eai@delni.gov.uk)

Website: [www.delni.gov.uk/eai](http://www.delni.gov.uk/eai)

## List of Regulations

## Annex A

<b>Regulation 5</b>	Restriction on use of additional services
<b>Regulation 6</b>	Restriction on detrimental action relating to work-seekers working elsewhere
<b>Regulation 7</b>	Restriction on providing work-seekers in industrial disputes
<b>Regulation 8</b>	Restriction on paying work-seekers' remuneration
<b>Regulation 9</b>	Restriction on employment agencies and employment businesses purporting to act on a different basis
<b>Regulation 10</b>	Restriction on charges to hirers
<b>Regulation 11</b>	Entering into a contract on behalf of a client
<b>Regulation 12</b>	Prohibition on employment businesses withholding payment to work-seekers on certain grounds
<b>Regulation 13</b>	Notification of charges and the terms of offers
<b>Regulation 14</b>	Requirement to obtain agreement to terms with work-seekers: Employment Businesses
<b>Regulation 15</b>	Content of terms with work-seekers: Employment businesses
<b>Regulation 16</b>	Requirement to obtain agreement to terms with work-seekers and content of terms with work-seekers: Agencies
<b>Regulation 17</b>	Requirement for employment businesses to obtain agreement to terms with hirers
<b>Regulation 18</b>	Information to be obtained from a hirer
<b>Regulation 19</b>	Confirmation to be obtained about a work-seeker
<b>Regulation 20</b>	Steps to be taken for the protection of the work-seeker and the hirer
<b>Regulation 21</b>	Provisions on information to work-seekers and hirers
<b>Regulation 22</b>	Additional requirements where professional qualifications or authorisation are required or where work-seekers are to work with vulnerable persons
<b>Regulation 23</b>	Situations where more than one agency or employment business is involved
<b>Regulation 24</b>	Situations where work-seekers are provided with travel or required to live away from home
<b>Regulation 25</b>	Client accounts
<b>Regulation 26</b>	Circumstances in which fees may be charged to work-seekers
<b>Regulation 27</b>	Advertisements
<b>Regulation 28</b>	Confidentiality
<b>Regulation 29</b>	Records
<b>Regulation 30</b>	Civil liability
<b>Regulation 31</b>	Effect of prohibited or unenforceable terms and recoverability of monies
<b>Regulation 32</b>	Application of the Regulations to work-seekers which are incorporated
<b>Regulation 33</b>	Electronic communications and other communications



## Annex B

### Inspections and Complaints – April 2010 to March 2011

<b>Routine Inspections</b>	
Total Number of Routine Inspections	21
Total Infringements Found	98
Infringement Letters Issued	20
<b>Complaints</b>	
Total Number of Complaints	14
Breaches of the Regulations Identified due to Complaint	19
Other Breaches Identified During Complaint Inspection	5
Total Number of Investigations Following a Complaint	7
Infringement Letters Issued	1
<b>Follow-up Inspections</b>	
Number of Follow-up Inspections	1
Total Infringements Found	5
Infringement Letters Issued	1

## Annex C

### Most-Breached Regulations – April 2010 to March 2011

Regulations Breached	Number of Breaches Found
Regulation 21	22
Regulation 14	17
Regulation 25	13
Regulation 17	12
Regulation 27	10
Regulations 15, 16, 19	8
Regulation 10	6
Regulation 29	5
Regulation 26	3
Regulation 32	2
Regulations 13, 20, 23	1



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