

*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

BACKGROUND AND POLICY OBJECTIVES

3. The Department is responsible for regulation of the private recruitment sector in Northern Ireland under the Employment (Miscellaneous Provisions) (NI) Order 1981 and the Conduct of Employment Agencies and Employment Businesses Regulations (NI) 2005. The Department was granted powers to enter and inspect Northern Ireland-based employment agencies and employment businesses in 2006, and currently employs two employment agency inspectors to routinely inspect employment agencies and investigate complaints. If an employment agency does not comply with the law, the Department can prosecute the agency in a Magistrates' Court, or apply to an industrial tribunal to prohibit an individual from operating, or being concerned with the operation of, an employment agency for up to ten years. There is a need, however, to enhance the Department's powers of investigation and prosecution of very serious offences under employment agency law.
4. Existing provision relating to the Industrial Court's appointments process is enshrined in primary legislation and is too restrictive, in that even a minor modification would require an appropriate legislative vehicle to enact and could only be achieved over a lengthy timescale. In addition, there is currently no power to remove or suspend members of the Court. More flexible regulation-making powers in relation to Industrial Court appointments are introduced via this Act.
5. Article 92(4) of the Industrial Relations (NI) Order 1992 contains a restriction which prohibits legal representation within seven of the Industrial Court's eight jurisdictions. The original intention of the restriction was to limit the formality of the Court and encourage consensus-building in relation to the Court's role in arbitrating in trade disputes and resolving complaints about the disclosure of information for the purposes of collective bargaining. Subsequently, however, the Department received legal advice 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). Consequently, this Act amends Article 92(4) to enable those parties that so choose to engage legal representation, with the exception of one jurisdiction which is related to the provision of voluntary arbitration in relation to industrial disputes.