

Employment Act (Northern Ireland) 2010

EXPLANATORY NOTES

OPTIONS CONSIDERED

9. In the employment agency enforcement consultation, the Department recommended allowing serious breaches of employment agency law to be triable either in the Magistrates' Court (as at present) or in the Crown Court, thereby allowing for unlimited fines; and providing the Department with a power to compel agencies or third parties such as banks to provide financial information about an agency for investigation purposes. These proposals were welcomed by respondents to the consultation. The only other option was to do nothing. The Department considers that existing penalties in the Magistrates' Court are ineffective when compared to the money that can be made by unscrupulous employment agencies. With regard to investigation powers, the Department is receiving a number of complaints which require investigation (including a number with a financial aspect) and considers it sensible to have the necessary provisions in place to help ensure adequate investigation of complaints.
10. A further issue was not included in the consultation but was raised by consultees. This related to effective information-sharing between enforcement agencies. As a result of the consultation, and also following a recommendation in the report published by the GB Vulnerable Workers forum, it has been decided to include in the Act a provision to allow for the lawful exchange of inspection information between the Department's employment agency inspectors and HM Revenue and Customs National Minimum Wage compliance officers. Again, the only alternative at present is to do nothing. The Department considers that some agency workers on low wages are potentially vulnerable to abuse and a power to exchange information with HM Revenue and Customs would enable investigation of unscrupulous employers to proceed more efficiently and quickly.
11. The Industrial Relations (NI) Order 1992 did not permit parties appearing before the Industrial Court to be legally represented in seven of the eight Court jurisdictions. The Department received legal advice that this may breach Article 6 of the Human Rights Act; i.e. the right to a fair trial. This Act extends legal representation to all but one Industrial Court jurisdiction. This reflects the view of the Industrial Court that this jurisdiction, which provides for voluntary arbitration, by its nature, would not benefit from legal representation. The only

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other option considered was to leave the legislation as is, but this approach would be contrary to legal advice received.