

*These notes refer to the Industrial Development Act (Northern Ireland) 2002 (c.1) which received Royal Assent on 7 February 2002*

# Industrial Development Act (Northern Ireland) 2002

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## **EXPLANATORY NOTES**

### **INTRODUCTION**

1. These Explanatory Notes relate to the Industrial Development Act. They have been prepared by the Department of Enterprise, Trade and Investment (DETI) in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by the Assembly.
2. The Notes need to be read in conjunction with the Act. They do not, and are not meant to be, a comprehensive description of the Act. So where a section or part of a section or Schedule does not seem to require any explanation or comment, none is given.

### **BACKGROUND AND POLICY OBJECTIVES**

3. In November 1997, it was agreed that a review should be undertaken of the economic development support structures within the (then) Department of Economic Development (DED). Following Ministerial agreement, a Review Team was set up in January 1998, under the chairmanship of Professor Peter McKie with the following terms of reference:
  - to look at the responsibilities of the Industrial Development Board (IDB), the Local Enterprise Development Unit (LEDU), the Industrial Research and Technology Unit (IRTU) and the Training and Employment Agency (T&EA) and address (i) the effectiveness of existing arrangements, including the levels of co-operation and collaboration between the agencies; (ii) the scope for further improvements; (iii) options for re-organising delivery of services within and between the agencies; and (iv) the costs and benefits of re-organisation.
4. The Review did not consider the services provided by the Northern Ireland Tourist Board (NITB). The Review Team sought views from all interested parties in Northern Ireland and received useful representations. Most respondents to McKie endorsed awaiting the outcome of the Strategy 2010 Review and the devolution of powers to a local Assembly before any significant changes were effected. The report was presented to the Department in April 1998.

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5. In tandem with the McKie Review a fundamental review of Northern Ireland's economic development strategy was announced with a view to producing a new strategy to guide Government Departments and agencies over the medium to long term. This process was specifically designed to involve a very wide cross-section of stakeholders in the local economy. The largely private sector Steering Group that was set up to direct the review established 18 Working Groups. Of these, 11 looked at specific industry sectors and were managed by the Northern Ireland Growth Challenge. The other 7 considered wider issues of significance to the economy, such as infrastructure, energy, innovation and design, and skills and education. The Northern Ireland Economic Development Strategy Review Steering Group's report (commonly known as Strategy 2010) was published in March 1999.
6. Alongside these activities, significant political developments were taking place, which affected the context of economic development in Northern Ireland. The Northern Ireland Assembly and the 11 new Government Departments were successfully established. On 29 June 2000 the Executive published the "Agenda for Government" which set out the Executive's priorities for action for the remainder of the financial year. One of the key issues identified was to ensure that the economic development agencies were focused on the new economic challenges. The key action identified for this issue was the reorganisation of the DETI economic development agencies.

## **PURPOSE**

7. The Act establishes a single economic development agency, Invest Northern Ireland (Invest NI), as a Non-Departmental Public Body (NDPB). It transfers the existing powers in the Industrial Development (NI) Order 1982 to Invest NI thereby allowing it to exercise broadly the functions within the current remit of the IDB, LEDU, IRTU, the Business Support Division (BSD) of DETI and the business support activities of the NITB. It also transfers the current assets and liabilities of the existing bodies. The Act amends the Industrial Development (NI) Order 1982, and related legislation underpinning the existing activities of the IDB, LEDU, IRTU and NITB.
8. The main purpose of the Act is to establish Invest NI and transfer powers to it. While the Act specifies the key parameters of the membership, remuneration, etc of the Board of Invest NI and its staffing and financial arrangements, only relatively minor variations are made to existing powers in respect of the provision of financial assistance to business. This Act will not, therefore, significantly change the powers which were previously available to the predecessor agencies.

## **CONSULTATION**

9. The decision to establish a new single agency at arm's length from Government is in line with consultation feedback. The consultation process involved Assembly Ministers, the Enterprise, Trade and Investment (ETI) Committee, the Economic Development Forum and Northern Ireland Public

Service Alliance (NIPSA) and was undertaken over the period October to December 2000. It highlighted strong support, particularly among the business community, for better and more efficient delivery of economic development support services through the establishment of a new single agency. The clear predominance of opinion noted the agency would have more flexibility and credibility and would be more responsive to the needs of its clients if it were to be at arm's length from Government.

## **OPTIONS CONSIDERED**

10. In arriving at the decision to create a single economic development agency at arm's length from Government, a wide range of options was considered. These included integration of service delivery entirely within DETI; the status quo; minor variations from the status quo; a 'lead agency' scenario; and the setting up of a single agency both inside and outside Government.
11. The assessment process concluded that the amalgamation of services into a single agency, rather than a reduction in the number of agencies, or the centralising of common services, offers the greatest scope for clarity and consistency in service provision and the greatest potential for cost saving.

## **OVERVIEW**

12. The Act has 8 Clauses and 4 Schedules.

## **COMMENTARY ON SECTIONS**

### ***Section 1 (and Schedule 1): Invest Northern Ireland (Invest NI)***

*Section 1 (and Schedule 1)* establishes Invest NI and sets out its status, constitution and procedures.

*Schedule 1 (Paragraph 2)* enables the Department to appoint a chairperson and members to the Board of Invest NI. It is intended that the Board consist of a number of members deemed appropriate to secure the cost-effective discharge of its business, and must contain a chairperson and between 10 and 20 members.

The Department shall ensure that those appointed comprise persons experienced in the various activities of Invest NI and, in so far as possible, are representative of the Northern Ireland community. The Act also allows for a member of Invest NI to be appointed as deputy chairperson.

*Schedule 1 (Paragraph 3)* relates to the tenure of those appointed to Invest NI. Appointments shall be for a period of up to five years. A chairperson (deputy chairperson) or member may resign by notice in writing to the Department and the Department may, if deemed necessary, remove any person from Invest NI by notice in writing.

*Schedule 1 (Paragraph 4)* provides that remuneration and allowances of members shall be matters for the Department. It is intended to remunerate both

the chairperson and members of Invest NI. All members shall be entitled to travelling expenses and other costs associated with membership of Invest NI.

*Schedule 1(Paragraph 5)* provides that the first chief executive of Invest NI be appointed by the Department. This post was filled in advance of Invest NI being fully established which allowed the chief executive (designate) to assist the chairperson with preparatory work including the appointment of key staff. All subsequent appointments to the post of chief executive will be made by Invest NI itself and shall not require the approval of the Department. It also requires Invest NI to appoint such other staff as it considers appropriate.

*Schedule 1(Paragraph 6)* allows for staff employed within the Northern Ireland Civil Service to be seconded to Invest NI.

*Schedule 1(Paragraph 7)* requires Invest NI to pay to its employees such remuneration and allowances (as well as paying and maintaining such pensions or gratuities) as it may determine with the approval of the Department and DFP.

*Schedule 1(Paragraph 8)* enables Invest NI to establish committees but with the proviso that the appointment of committee members who are not members of Invest NI shall be with the Department's consent.

*Schedule 1(Paragraph 9)* provides for the powers of delegation to both committees and staff.

*Schedule 1(Paragraphs 10 to 12)* deal with proceedings governing meetings of Invest NI and its committees.

*Schedule 1 (Paragraphs 13 to 15)* addresses the application of the seal of Invest NI.

*Schedule 1(Paragraph 16)* allows for the funding of Invest NI by the Department. As a Non-Departmental Public Body Invest NI can in turn make payments within the terms and conditions set out in the respective relationship documents, as agreed with the Department and DFP.

*Schedule 1 (Paragraph 17)* requires Invest NI to provide proper accounts for each financial year and to make these accounts available to both the Department and the Comptroller & Auditor General (C&AG). Upon receipt of the subsequent C&AG report the Department shall lay the accounts and report before the Assembly.

*Schedule 1(Paragraph 18)* requires Invest NI to provide an annual report and for the Department, in turn, to lay this report before the Assembly.

### ***Section 2 (and Schedule 3): Functions of Invest NI***

*Section 2 (and Schedule 3)* provides for the functions of Invest NI by transferring existing industrial development functions to it. In broad terms this means that, from the appointed day, Invest NI will exercise those functions previously carried out by the Department under Part III of the Industrial Development (NI) Order 1982 and Article 3 of the Energy Efficiency (NI) Order 1999.

*Section 2 (Subsection 1) (a)* transfers to Invest NI, (subject to the exceptions outlined in *Section 2 (2)*), the powers currently exercised by the Department under Articles 7 to 11 and 13 of the Industrial Development (NI) Order 1982. This will enable Invest NI to provide financial assistance to industrial undertakings.

*Section 2 (Subsection 1) (b)* transfers to Invest NI the powers in Article 3 of the Energy Efficiency (NI) Order 1999. This provision enables Invest NI to take action for the purpose of promoting the efficient use of energy in industry.

*Section 2 (Subsection 3)* makes it incumbent upon Invest NI to advise the Department on general formulation of industrial development policy.

*Section 2 (Subsections 4 & 5)* enables the Department to issue directions to Invest NI having firstly consulted with it.

*Schedule 3 (Paragraphs 1 to 14)* effects amendments consequential on the transfer of powers from the Department to Invest NI, as outlined in Clause 2.

*Schedule 3 (Paragraph 15)* amends Schedule 2 of the Industrial Development (NI) Order in relation to the compulsory acquisition of land by Invest NI. This will enable the Department to make a vesting order on behalf of Invest NI where Invest NI proposes to acquire land otherwise than by agreement.

*Schedule 3 (Paragraphs 16 to 18)* effects consequential amendments to the Energy Efficiency (NI) Order 1999.

***Section 3 (and Schedule 2): Dissolution of IDB, LEDU and IRTU and abolition of certain functions of NITB***

*Section 3 (and Schedule 2)* dissolves the existing bodies. It also makes provision for the transfer to Invest NI of the appropriate property, rights, liabilities and staff and makes the necessary transitional arrangements.

*Section 3 (Subsections 1 to 3)* effects, from the appointed day, the dissolution of IDB, LEDU and IRTU.

*Section 3 (Subsection 4)* removes, from the appointed day, NITB's powers to provide assistance under Article 11 of the Tourism (NI) Order 1992 for the purposes of providing or improving tourist accommodation. The power to provide assistance for these purposes will in future be exercised by Invest NI under Article 7 of the Industrial Development (NI) Order 1982 as amended by this Act.

*Schedule 2 (Paragraphs 1 to 7)* makes provision for the transfer of the relevant property, rights, liabilities and staff to Invest NI. It also specifies the transitional arrangements regarding the preparation and laying of the necessary accounts and reports for the bodies being dissolved.

***Section 4: Interpretation***

*Section 4* provides for the interpretation of certain terms used in the Act.

***Section 5: Amendments and repeals***

*Section 5 (Subsections 1 and 4)* gives effect to Schedule 3 and 4 to the Act.

*Section 5 (Subsection 2)* removes a restriction in Article 7(6) of the Industrial Development (NI) Order 1982 with regard to the taking of equity as a means of offering financial assistance. Current policy thinking no longer sees the taking of equity as a ‘last resort’ and this amendment enables Invest NI to consider the taking of equity on the same basis as other options when considering offers of financial assistance.

*Section 5 (Subsection 3)* is a technical amendment to deal with a minor anomaly in the charging of interest on loans made under the Industrial Development (NI) Order 1982.

*Schedule 4* sets out the statutory provisions to be repealed.

***Section 6: Temporary saving for certain functions of the Department under Industrial Development Order in relation to gas and electricity undertakings***

*Section 6* retains within the Department the powers under the Industrial Development (NI) Order 1982 to financially assist the gas and electricity industries, responsibility for which will continue to rest with DETI.

This is a temporary saving until the issue can be fully addressed in forthcoming energy legislation. The saving expires three years from the appointed day.

***Section 7: Commencement***

*Section 7* gives the Department the powers to bring the provisions of the Act into force by order. Invest NI will be established on 1<sup>st</sup> April 2002.

***Section 8: Short title***

*Section 8* gives the short title of the Act. This is the title by which the Act will usually be referred to.