
STATUTORY INSTRUMENTS

1981 No. 839

The Employment (Miscellaneous Provisions) (Northern Ireland) Order 1981

PART II

EMPLOYMENT AGENCIES

Arts. 3#5 rep. by 1994 c. 40

[^{F1}Prohibition orders]

F1 1994 c. 40

[^{F2}Power to make orders

5A.—(1) On application by the Department, an industrial tribunal may by order prohibit a person from carrying on, or being concerned with the carrying on of—

- (a) any employment agency or employment business; or
- (b) any specified description of employment agency or employment business.

(2) An order under paragraph (1) (in this Order referred to as “a prohibition order”) may either prohibit a person from engaging in an activity altogether or prohibit him from doing so otherwise than in accordance with specified conditions.

(3) A prohibition order shall be made for a period beginning with the date of the order and ending—

- (a) on a specified date, or
- (b) on the happening of a specified event,

in either case, not more than ten years later.

(4) Subject to paragraphs (5) and (6), an industrial tribunal shall not make a prohibition order in relation to any person unless it is satisfied that he is, on account of his misconduct or for any other sufficient reason, unsuitable to do what the order prohibits.

(5) An industrial tribunal may make a prohibition order in relation to a body corporate if it is satisfied that—

- (a) any director, secretary, manager or similar officer of the body corporate,
- (b) any person who performs on behalf of the body corporate the functions of a director, secretary, manager or similar officer, or
- (c) any person in accordance with whose directions or instructions the directors of the body corporate are accustomed to act,

is unsuitable, on account of his misconduct or for any other sufficient reason, to do what the order prohibits.

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(6) An industrial tribunal may make a prohibition order in relation to a partnership if it is satisfied that any member of the partnership, or any manager employed by the partnership, is unsuitable, on account of his misconduct or for any other sufficient reason, to do what the order prohibits.

(7) For the purposes of paragraph (4), where an employment agency or employment business has been improperly conducted, each person who was carrying on, or concerned with the carrying on of, the agency or business at the time, shall be deemed to have been responsible for what happened unless he can show that it happened without his connivance or consent and was not attributable to any neglect on his part.

(8) A person shall not be deemed to fall within paragraph (5)(c) by reason only that the directors act on advice given by him in a professional capacity.

(9) In this Article—

“director”, in relation to a body corporate whose affairs are controlled by its members, means a member of the body corporate; and

“specified”, in relation to a prohibition order, means specified in the order.]

F2 1994 c. 40

[^{F3}Enforcement

5B. Any person who, without reasonable excuse, fails to comply with a prohibition order shall be guilty of an offence and liable

[^{F4}(a) on conviction on indictment, to a fine;

(b) on summary conviction, to a fine not exceeding the statutory maximum.]]

F3 1994 c. 40

F4 Words in art. 5B substituted (3.8.2010) by [Employment Act \(Northern Ireland\) 2010 \(c. 12\)](#), ss. 1, 8(2)

[^{F5}Variation and revocation of orders

5C.—(1) On application by the person to whom a prohibition order applies, an industrial tribunal may vary or revoke the order if the tribunal is satisfied that there has been a material change of circumstances since the order was last considered.

(2) An industrial tribunal may not, on an application under this Article, so vary a prohibition order as to make it more restrictive.

(3) The Department shall be a party to any proceedings before an industrial tribunal with respect to an application under this Article, and be entitled to appear and be heard accordingly.

(4) When making a prohibition order or disposing of an application under this Article, an industrial tribunal may, with a view to preventing the making of vexatious or frivolous applications, by order prohibit the making of an application, or further application, under this Article in relation to the prohibition order before such date as the tribunal may specify in the order under this paragraph.]

F5 1994 c. 40

Conduct of employment agencies and employment business

General regulations

6.—(1) Subject to paragraph (2), the Department may make regulations to secure the proper conduct of employment agencies and employment businesses and to protect the interests of persons availing themselves of the services of such agencies and businesses, and such regulations may in particular make provision—

- (a) requiring persons carrying on such agencies and businesses to keep records;
- (b) prescribing the form of such records and the entries to be made in them;
- (c) requiring persons carrying on such agencies and businesses to make such returns of information to the Department at such times and in such manner as may be prescribed;
- (d) prescribing qualifications appropriate for persons carrying on such agencies and businesses;
- (e) regulating advertising by persons carrying on such agencies and businesses;
- (f) safeguarding clients' money deposited with or otherwise received by persons carrying on such agencies and businesses;
- [^{F6}(g) restricting the services which may be provided by persons carrying on such agencies and businesses;
- (h) regulating the way in which and the terms on which services may be provided by persons carrying on such agencies and businesses;
- (j) restricting or regulating the charging of fees by persons carrying on such agencies and businesses.]

[^{F7}(1A) A reference in paragraph (1)(g) and (h) to services includes a reference to services in respect of—

- (a) persons seeking employment outside the United Kingdom;
- (b) persons normally resident outside the United Kingdom seeking employment in the United Kingdom.]

Para. (2) rep by 1999 NI 9

(3) Any person who contravenes any regulation made under this Article shall be guilty of an offence and liable

- [^{F8}(a) on conviction on indictment, to a fine;
- (b) on summary conviction, to a fine not exceeding the statutory maximum.]

F6	1999 NI 9
F7	1999 NI 9
F8	Words in art. 6(3) substituted (3.8.2010) by Employment Act (Northern Ireland) 2010 (c. 12) , ss. 1, 8(2)

Restriction on charging persons seeking employment

7.—[^{F9}(1) Except in such cases or classes of case as the Department may prescribe—

- (a) a person carrying on an employment agency shall not request or directly or indirectly receive any fee from any person for providing services (whether by the provision of information or otherwise) for the purpose of finding him employment or seeking to find him employment;

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- (b) a person carrying on an employment business shall not request or directly or indirectly receive any fee from an employee for providing services (whether by the provision of information or otherwise) for the purpose of finding or seeking to find another person, with a view to the employee acting for and under the control of that other person;
 - (c) a person carrying on an employment business shall not request or directly or indirectly receive any fee from a second person for providing services (whether by the provision of information or otherwise) for the purpose of finding or seeking to find a third person, with a view to the second person becoming employed by the first person and acting for and under the control of the third person.]
- (2) Any person who contravenes this Article shall be guilty of an offence and liable
- [^{F10}(a) on conviction on indictment, to a fine;
- (b) on summary conviction, to a fine not exceeding the statutory maximum.]

F9 1999 NI 9

F10 Words in [art. 7\(2\)](#) substituted (3.8.2010) by [Employment Act \(Northern Ireland\) 2010 \(c. 12\)](#), [ss. 1, 8\(2\)](#)

[^{F11}Appointment of officers

- 7A.—**(1) The Department—
- (a) may appoint officers to act for the purposes of this Order; and
 - (b) may, instead of or in addition to appointing any such officers, arrange with any Minister of the Crown or public body, that officers of that Minister or body shall act for those purposes.
- (2) In paragraph (1) “public body” means—
- (a) a department of the Government of the United Kingdom;
 - (b) a Northern Ireland department; or
 - (c) a body performing functions on behalf of the Crown.
- (3) When acting for the purposes of this Order, an officer shall, if so required, produce written evidence of his authority so to act.

F11 [Arts. 7A and 7B](#) inserted (15.1.2006) by [The Employment \(Miscellaneous Provisions\) \(Northern Ireland\) Order 2005 \(S.I. 2005/3424 \(N.I. 20\)\)](#), [art. 2\(2\)](#)

Powers of officers

- 7B.—**(1) An officer acting for the purposes of this Order may at all reasonable times—
- (a) enter and inspect any relevant business premises;
- [^{F12}(b) inspect—
- (i) any records required to be kept under this Part; and
 - (ii) any financial records not falling within head (i) which he may reasonably require to inspect for the purpose of ascertaining whether the provisions of this Part and of any regulations made under this Part are being complied with or of enabling the Department to exercise its functions under this Part;]
- (c) subject to paragraph (6), require any person on those premises to furnish him with such information as he may reasonably require for the purpose of ascertaining whether the

provisions of this Order and of any regulations made thereunder are being complied with or of enabling the Department to exercise its functions under this Order.

(2) If an officer seeks to inspect or acquire, in accordance with paragraph (1)(b) or (c), a record or information which is not kept at the premises being inspected,^{F13} the officer may by notice in writing require the person carrying on the employment agency or employment business to furnish him with the record or information at such time and place as he may specify.]

[
^{F14}(2A) Where a person carrying on an employment agency or employment business fails to comply with paragraph (2) in relation to any record or information and the officer has reasonable cause to believe that the record or information is kept by—

- (a) a person concerned with the carrying on of the employment agency or employment business, or
- (b) a person formerly so concerned,

the officer may by notice in writing require that person to furnish him with the record or information at such time and place as he may specify.

(2B) Where a person carrying on an employment agency or employment business fails to comply with paragraph (2) in relation to any financial record which is kept by a bank, an authorised officer may by notice in writing require the bank to furnish the record or other document to him at such time and place as he may specify.

(2C) In paragraph (2B)—

- (a) “authorised officer”, in relation to a notice, means an officer who is authorised in relation to that notice by a senior officer of the Department (within the meaning given by Article 2(3) of the Departments (Northern Ireland) Order 1999 (NI 1));
- (b) “bank” means a person who has permission under Part 4 of the Financial Services and Markets Act 2000 (c. 8) to accept deposits.

(2D) An officer may take copies of any record inspected by or furnished to him under this Article.

(2E) An officer may, for the purposes of paragraph (2D), remove a record from the premises where it is inspected by or furnished to him; but he must return it as soon as reasonably practicable.]

(3) In paragraph (1) “relevant business premises” means premises—

- (a) which are used, have been used or are to be used for or in connection with the carrying on of an employment agency or employment business,
- (b) which the officer has reasonable cause to believe are used or have been used for or in connection with the carrying on of an employment agency or employment business, or
- (c) which the officer has reasonable cause to believe are used for the carrying on of a business by a person who also carries on or has carried on an employment agency or employment business, if the officer also has reasonable cause to believe that records or other documents which relate to the employment agency or employment business are kept there.

(4) For the purposes of this Article—

- (a) “record” includes information recorded in any form, and
- (b) information is kept at premises if it is accessible from them.

(5) The powers conferred by paragraph (1) include, in relation to records which are kept by means of a computer—

- (a) power to require the records to be produced in a form in which they are legible and can be taken away; and
- (b) power to require access to, and to check the operation of, any computer and any associated apparatus or material which is or has been in use in connection with the records in question.

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(6) Nothing in this Article shall require a person to produce, provide access to or make arrangements for the production of anything which he could not be compelled to produce in civil proceedings before the High Court.

(7) Subject to paragraph (8), a statement made by a person in compliance with a requirement under this Article may be used in evidence against him in criminal proceedings.

(8) Except in proceedings for an offence under Article 10 of the Perjury (Northern Ireland) Order 1979 (NI 19) (false statements otherwise than on oath), no evidence relating to the statement may be adduced, and no question relating to it may be asked, by or on behalf of the prosecution unless—

- (a) evidence relating to it is adduced, or
- (b) a question relating to it is asked,

by or on behalf of the person who made the statement.

(9) Any person who—

- (a) obstructs an officer in the exercise of his powers under [^{F15}paragraph (1)(a) or (b), (2D) or (2E)]; or
- (b) without reasonable excuse, fails to comply with a requirement under [^{F16}paragraph (1)(c), (2), (2A) or (2B)],

shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(10) No information obtained in the course of exercising the powers conferred by this Article [^{F17}(or pursuant to section 15(5B) of the National Minimum Wage Act 1998)] shall be disclosed except—

- (a) with the consent of the person by whom the information was furnished or, where the information was furnished on behalf of another person, with the consent of that other person or with the consent of the person carrying on or proposing to carry on the employment agency or employment business concerned; or
- (b) to the Department, or an officer appointed by, or person exercising functions on behalf of, the Department for the purposes of the exercise of functions under this Order, or
- (c) by the Department, or an officer appointed by, or person exercising functions on behalf of, the Department to the person carrying on or proposing to carry on the employment agency or employment business concerned, to any person in his employment or, in the case of information relating to a person availing himself of the services of such an agency or business, to that person; or
- (d) with a view to the institution of, or otherwise for the purposes of, any criminal proceedings pursuant to or arising out of this Order or for the purposes of any proceedings under Article 5A or 5C, [^{F18} or
- (e) to an officer acting for the purposes of the National Minimum Wage Act 1998 for any purpose relating to that Act.]

(11) Any person who contravenes paragraph (10) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.]

F11 Arts. 7A and 7B inserted (15.1.2006) by [The Employment \(Miscellaneous Provisions\) \(Northern Ireland\) Order 2005 \(S.I. 2005/3424 \(N.I. 20\)\)](#), **art. 2(2)**

F12 Art. 7B(1)(b) substituted (3.8.2010) by [Employment Act \(Northern Ireland\) 2010 \(c. 12\)](#), **ss. 2(2), 8(2)**

F13 Words in art. 7B(2) substituted (3.8.2010) by [Employment Act \(Northern Ireland\) 2010 \(c. 12\)](#), **ss. 2(3), 8(2)**

F14 Art. 7B(2A)-(2E) inserted (3.8.2010) by [Employment Act \(Northern Ireland\) 2010 \(c. 12\)](#), **ss. 2(4), 8(2)**

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- F15** Words in art. 7B(9) substituted (3.8.2010) by Employment Act (Northern Ireland) 2010 (c. 12), ss. 2(5)(a), 8(2)
- F16** Words in art. 7B(9) substituted (3.8.2010) by Employment Act (Northern Ireland) 2010 (c. 12), ss. 2(5)(b), 8(2)
- F17** Words in art. 7B(10) inserted (3.8.2010) by Employment Act (Northern Ireland) 2010 (c. 12), ss. 5(2)(a), 8(2)
- F18** Art. 7B(10)(e) and word inserted (3.8.2010) by Employment Act (Northern Ireland) 2010 (c. 12), ss. 5(2)(b), 8(2)

Art. 8 rep. by 1994 c. 40

Supplementary provisions

Fraudulent applications and entries

Para. (1) rep. by 1994 c. 40

(2) Any person who makes or causes to be made or knowingly allows to be made any entry in a record or other document required to be kept in pursuance of this Part or of any regulations made thereunder which he knows to be false in a material particular shall be guilty of an offence.

(3) Any person guilty of an offence under this Article shall be liable on summary conviction to a fine not exceeding^[F19] level 5 on the standard scale] .

F19 1984 NI 3

[F20] Offences: extension of time limit

9A.—(1) For the purposes of paragraph (2) a relevant offence is an offence under Article ^{F21} . . . ^[F22], 7B(11)] or 9(2) for which proceedings are instituted by the Department.

(2) Notwithstanding Article 19(1)(a) of the Magistrates' Courts (Northern Ireland) Order 1981 (complaint to be made within 6 months of offence) a complaint relating to a relevant offence may be made at any time—

- (a) within 3 years after the date of the commission of the offence, and
- (b) within 6 months after the date on which evidence sufficient in the opinion of the Department to justify the proceedings came to its knowledge.

(3) For the purposes of this Article, a certificate of the Department as to the date on which evidence came to its knowledge is conclusive evidence.]

F20 1999 NI 9

F21 Words in art. 9A(1) repealed (3.8.2010) by Employment Act (Northern Ireland) 2010 (c. 12), ss. 7(2), 8(2), Sch. 2

F22 Words in art. 9A(1) inserted (15.1.2006) by Employment (Miscellaneous Provisions) (Northern Ireland) Order 2005 (S.I. 2005/3424 (N.I. 20)), arts. 1(2), 2(3)

[F23] Offences: cost of investigation

9B. The court in which a person is convicted of an offence under this Order may order him to pay to the Department a sum which appears to the court not to exceed the costs of the investigation which resulted in the conviction.]

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F23 1999 NI 9

Regulations

10.—(1) Subject to paragraph (2), the Department shall have power to make regulations for prescribing anything which under this Part is to be prescribed.

(2) The Department shall not make any regulations under this Part except after consultation with such bodies as appear to it to be representative of the interests concerned.

[^{F24}(5) Regulations under Article 6(1) or 7(1) shall not be made unless a draft has been laid before, and approved by resolution of, the Assembly.

(6) Regulations under Article 11(5)(g) shall be subject to negative resolution.]

F24 1999 NI 9

Interpretation of Part II

11.—(1) In this Part—

Definition rep. by 1994 c.40

“employment” includes—

- (a) employment by way of a professional engagement or otherwise under a contract for services;
- (b) the reception in a private household of a person under an arrangement whereby that person is to assist in the domestic work of the household in consideration of receiving hospitality and pocket money or hospitality only;

and “worker” and “employer” shall be construed accordingly;

“employment agency” has the meaning assigned by paragraph (2) but does not include any arrangements, services, functions or business to which this Part does not apply by virtue of paragraph (5);

“employment business” has the meaning assigned by paragraph (3) but does not include any arrangements, services, functions or business to which this Part does not apply by virtue of paragraph (5);

“fee” includes any charge however described;

Definition rep. by 1994 c. 40

“organisation” includes an association of organisations;

“organisations of employers” means an organisation which consists wholly or mainly of employers and whose principal objects include the regulation of relations between employers and workers or organisations of workers;

“organisation of workers” means an organisation which consists wholly or mainly of workers and whose principal objects include the regulation of relations between workers and employers or organisations of employers;

“prescribed” means prescribed by regulations made under this Part by the Department;

[^{F25}“prohibition order” has the meaning given by Article 5A(2);]

Definition rep. by 1994 c. 40

(2) For the purpose of this Part “employment agency” means 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^[F26] persons] employment with employers or of supplying employers with^[F26] persons] for employment by them.

(3) For the purposes of this Part “employment business” means 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.

(4) The reference in paragraph (2) to providing services does not include a reference—

- (a) to publishing a newspaper or other publication unless it is published wholly or mainly for the purpose mentioned in that paragraph;
- (b) to the display by any person of advertisements on premises occupied by him otherwise than for the said purpose;^[F27] or]

^[F27](c) to providing a programme service (within the meaning of the Broadcasting Act 1990.)

(5) This Part does not apply to—

(a) any business which is carried on exclusively for the purpose of obtaining employment for—

- (i) persons formerly members of Her Majesty's naval, military or air forces; or
- (ii) persons released from a prison or young offenders' centre;

and which is certified annually by or on behalf of the Admiralty Board of the Defence Council, the Army Board of the Defence Council or the Air Force Board of the Defence Council or by the Secretary of State (as the case may be) to be properly conducted;

Sub#para (b) rep. by 2003 NI 9

(c) services which are ancillary to the letting upon hire of any aircraft, vessel, vehicle, plant or equipment;

Sub#para. (d) rep. by 1994 c. 40

(e) services provided by any organisation of employers or organisation of workers for its members;

(f) careers or employment services provided or controlled by one or more of the following—

(i) a university;

Head (ii) rep. by 1984 NI 10

(iii) an institution of further education within the meaning of the Education and Libraries (Northern Ireland) Order^[F28] 1986];

^[F28](iv) a college of education within the meaning of that Order;]

(v) a school within the meaning of that Order.

^[F29](g) any prescribed business or service, or prescribed class of business or service or business or service carried on or provided by prescribed persons or classes of person.]

Para. (6) rep. by 2003 NI 9

F25 1994 c.40

F26 1999 NI 9

F27 1990 c.42

F28 1986 NI 3

F29 1999 NI 9

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Changes and effects yet to be applied to :

- rev in pt and am (prosp) by [1994 c. 40 s. 35Sch.10 Pt I para 2](#)

Changes and effects yet to be applied to the whole Order associated Parts and Chapters:

Whole provisions yet to be inserted into this Order (including any effects on those provisions):

- art.1 lart.1(5)(d) rev in pt (prosp) by [1994 c. 40 ss. 3581Sch.10 Pt II para 5Sch.17](#)
- arts.34589(1) revoked by [1994 c. 40 s. 81Sch.17](#)