

EMPLOYMENT ACT 2008

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Employment agencies

Section 15: Offences: mode of trial and penalties

83. Currently all offences under EAA 1973 are summary only offences and therefore triable only in the magistrates' court. Section 15 provides that certain offences committed under EAA 1973 shall be triable either on indictment in the Crown Court or summarily by the magistrates' court. The effect of this section is to increase the penalty available to the court where the offence results in conviction on indictment. Where the offences are tried in the Crown Court there is no limit on the fine that can be imposed.
84. This section also amends the maximum fine that can be imposed by a magistrates' court on conviction from a fine not exceeding level 5 on the standard scale to a fine not exceeding "the statutory maximum". At present, the statutory maximum fine is £5,000 in England and Wales and from 10 December 2007 it was increased to £10,000 for offences tried in Scotland.
85. The offences that will become triable either way under this section are:
- failure to comply with a prohibition order under section 3B of EAA 1973;
 - contravention of or failure to comply with any regulations made under EAA 1973. Currently the regulations made under EAA 1973 are contained in the Conduct of Employment Agencies and Employment Businesses Regulations 2003¹; as amended by the Conduct of Employment Agencies and Employment Businesses (Amendment) Regulations 2007²; and
 - requesting or receiving (either directly or indirectly) a fee for providing work-finding services under section 6 of EAA 1973 (except where this is permitted under Conduct of Employment Agencies and Employment Businesses Regulations 2003 as amended).

Section 16: Enforcement powers

86. **Section 16** strengthens the powers of inspection for inspectors appointed under section 9 of EAA 1973.
87. **Subsection (2)** extends the powers of inspection available under section 9(1)(b) to enable an inspector of the Employment Agency Standards Inspectorate specifically to request financial records and documents that are held on the inspected premises which he may reasonably require to inspect to ensure compliance with EAA 1973. This is in addition to the power already contained in EAA 1973 permitting an inspector to inspect

¹ (SI 2003/3319)

² (SI 2007/3575)

any records or documents kept as required by EAA 1973 or the Conduct of Employment Agencies and Employment Businesses Regulations 2003, as amended.

88. *Subsection (4)* substitutes a new power. Currently under section 9(1A) of EAA 1973 an inspector may require any person on the inspected premises to inform him where a record, document or information is kept and to make arrangements, where reasonably practicable, for that record, document or information to be inspected or furnished to the inspector at the premises. This power is replaced by a new power enabling an inspector by notice in writing to require the person carrying on the employment agency or employment business to furnish him with a record, document or information at such time and place as the inspector may specify.
89. The effect of this amendment is to place the requirement to furnish the required record, document or information on the person carrying on the employment agency or employment business rather than on the person present on the premises at the time of the inspection (who may not have access to the record or document or sufficient knowledge to supply the information). Enabling the inspector to specify the place at which the person carrying on the business must furnish the record, document or information will mean that the inspector will not need to revisit the inspected premises but can inspect the record, document or information at a convenient place of his choice.
90. *Subsection (5)* inserts two new powers into section 9 of EAA 1973 by inserting new subsections (1AA), (1AB) and (1AC). Where a person carrying on an employment agency or employment business fails to furnish the inspector with a record, document or information specified in a written notice, and where the inspector has reasonable cause to believe that the record, document or information is kept by a person concerned with, or formerly concerned with, the carrying on of the employment agency or employment business an inspector may by notice in writing require that person to furnish the record, document or information at such time and place as he may specify.
91. Additionally, where the record, document or information is kept by a bank (as defined by the Financial Services and Markets Act 2000) an inspector may by notice in writing require the bank to furnish the record, document or information at such time and place as he may specify.
92. *Subsection (6)* taken together with *subsection (3)* replaces the power to take copies of records and documents inspected pursuant to EAA 1973 with a power to take copies of records and documents inspected pursuant to EAA 1973 and copies of financial records and financial documents inspected in order to ascertain whether the provisions of EAA 1973 have been complied with. This wider power reflects the wider range of records and documents that an inspector may inspect. Under this wider power an inspector may remove any record or document from the premises where it is inspected in order to take a copy of it but it must be returned as soon as is reasonably practical. This will enable an inspector to take away a record or document for the purpose of taking a copy before returning it rather than, as is currently the case, relying on copying facilities at the business premises.
93. *Subsection (8)* creates the offence of obstructing an inspector in the exercise of his powers under section 9 or of contravening a requirement under section 9. A person guilty of the offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale. This subsection amends section 9(3) and extends the offence to the new powers granted by section 16.

Section 17: Offences by partnerships in Scotland

94. **Section 17** provides that where an offence under EAA 1973 is committed by a partnership in Scotland, and where it is proved that the offence concerned has been committed with the consent or connivance of a partner, or is attributable to the neglect of a partner, then the partner as well as the partnership shall be guilty of the offence and prosecuted.

*These notes refer to the Employment Act 2008 (c.24)
which received Royal Assent on 13 November 2008*

95. This reflects a difference between English and Scottish law. Under Scottish law a partnership is a separate legal entity, distinct from the partners who make up the partnership. This is not the case under English law.
96. [Section 17](#) therefore enables any partners who have consented to or connived at the offence, or whose neglect has caused the offence, to be prosecuted as well as the partnership.
97. No provision was made in EAA 1973 for Scottish partnerships as until the late 1980s specific provision tended not to be made in legislation for offences committed by Scottish partnerships as it was considered that none was necessary.