EXPLANATORY MEMORANDUM TO

The Conduct of Employment Agencies and Employment Businesses (Amendment) Regulations (Northern Ireland) 2010

Draft Affirmative

1. Introduction

1.1. This Explanatory Memorandum has been prepared by the Department for Employment and Learning to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.

1.2. The Statutory Rule is made under Articles 6(1), 7(1) and 10(1) of the Employment (Miscellaneous Provisions) (Northern Ireland) Order 1981 and is subject to the draft affirmative resolution procedure.

2. Purpose

2.1. The purpose of this Statutory Rule is to amend the Conduct of Employment Agencies and Employment Businesses Regulations (Northern Ireland) 2005 (2005 No. 395) ('the Conduct Regulations') which regulate the conduct of the private recruitment industry and establish a framework of minimum standards for work-seekers and hirers. The amended Regulations will increase protections for work-seekers and include measures to reduce administrative burdens on employment agencies and employment businesses.

2.2. The Regulations ban the taking of upfront fees for work finding services from photographic and fashion models. They also extend the statutory cooling off period in respect of any upfront fee from 7 to 30 days for the occupations of actor, background artist, dancer, extra, musician, singer or other performer.

2.3. The Regulations require employment agencies, when charging an upfront fee, to notify all new clients that they have a right to cancel within the appropriate cooling off period. They also clarify that the cooling off period will start only when the agency and work-seeker have agreed to a written contract or oral agreement to terms.

2.4. The Regulations introduce a provision for work-seekers that are charged an upfront fee to see and approve a draft of the information for which they are being charged, prior to payment of a fee for those seeking work as actor, background artist, dancer, extra, musician, singer or other performer. They also introduce a provision for a refund if no publication, for which a worker has paid an upfront fee to have their details included in, is produced and made available to potential hirers within 60 days.

2.5. Regulation 5 of the Conduct Regulations is amended to introduce a provision for a 30-day cooling off period when a photographic image, audio or video recording of the work-seeker is produced as an additional service for an actor, background artist, dancer, extra, musician, photographic or fashion model, singer or other performer. During this

time an employment agency or employment business cannot charge a fee and the work-seeker has a right to withdraw without detriment or penalty.

2.6. The Regulations also contain a number of measures to reduce unnecessary administrative burdens on the sector. They eliminate unnecessary duplication with other legislation by removing the requirement for employment agencies to carry out identity and related checks for work-seekers other than those who will be working with vulnerable people. A "vulnerable person" is a defined term in the Regulations.

2.7. The Regulations remove the requirement that employment agencies introducing work-seekers for permanent employment should obtain agreement to terms with work-seekers (since this adds little value, given that agreement of terms in these cases is a matter between the work-seeker and the permanent employer), except when a work-finding service is being provided for which the agency intends to charge a fee. The Regulations also remove the requirement for the introducing agency to agree terms with the permanent employer, since this is best seen as a contractual matter between the parties.

2.8. Finally, Regulation 27 of the Conduct Regulations will be amended so that advertisements for jobs no longer need to include a statement as to whether the organisation is acting as an employment agency or employment business but rather they must state whether a position is 'temporary' or 'permanent'.

3. Background

3.1. The Employment (Miscellaneous Provisions) (Northern Ireland) Order 1981 and the Conduct Regulations govern the conduct of the private recruitment industry and set minimum standards for employment agencies and employment businesses operating from premises in Northern Ireland. All employment agencies and employment businesses must comply with the provisions in the legislation which are designed to protect both work-seekers and hirers. The legislation is enforced by the Department for Employment and Learning, through a programme of inspections and complaints investigations.

3.2. Under the Conduct Regulations there are certain limited circumstances within the entertainment and modelling sector where employment agencies can charge work-seekers a fee. One of these circumstances is when the agency is permitted to charge an upfront fee for inclusion of information about a work-seeker in a publication, which is a publication for the purpose of finding work-seekers employment or for providing hirers with information about work-seekers. Despite the introduction of a 7 day cooling off period in Great Britain (GB) and Northern Ireland on 6 April 2008, GB evidence suggests that there continues to be significant abuse of the upfront fee provision in this sector.

3.3. This provision has long been the subject of concern as to the potential it allows for abuse of vulnerable work-seekers, in particular photographic and fashion models. The ban on upfront fees in respect of the recruitment of photographic and fashion models introduced by these Regulations will address this point directly, significantly reducing the scope for the abuse of

upfront fees. In addition, we are tightening the regulatory constraints around the charging of upfront fees in other sectors where the scope for abuse is the most significant, namely, recruitment as an actor, background artist, dancer, extra, musician, singer or other performer - in these cases, the cooling off period will be extended from the current 7 to 30 days.

3.4. The requirement for agencies to notify clients of the terms when entering into a contract where they intend to charge a work-seeker a fee, including the client's right to appove any information and the provision for refunds if no publication is ever produced and made available to potential hirers, will also give added protection to work-seekers in occupations for which fees can still be charged. This will allow directories that legitimately use upfront fees as part of their business model to continue operating whilst ensuring safeguards are in place for work-seekers.

3.5. The 30 day cooling off period when a photographic image, audio or video recording of the work-seeker is produced as an additional service for an actor, background artist, dancer, extra, musician, photographic or fashion model, singer or other performer, is to deal with the unscrupulous practice of some rogue agencies who convince work-seekers that they need photos or show-reels to find work. They then charge them large fees for this service but never find them work. A 30 day cooling off period will provide that work-seekers shall not be charged during this period and they have an opportunity to withdraw from the arrangement without detriment or penalty.

3.6. We are removing the requirement for employment agencies who introduce workers for permanent employment to undertake suitability checks because the burden for undertaking these in the vast majority of cases rests with the hirer. Removing the requirement for employment agencies to carry out checks (unless the work-seeker will be working with vulnerable people) will introduce greater clarity, eliminate unnecessary duplication and assist in particular the online recruitment industry who find it difficult to comply with this unnecessary regulatory burden.

3.7. We are removing the requirement for employment agencies to obtain advance agreement to terms with work-seekers introduced for permanent employment (unless there will be a fee charged for the work finding service) since this appears in practice to serve little purpose. We are also removing the statutory requirement for an agency introducing a work-seeker for permanent employment to agree terms with the final hirer, since we consider that this is a contractual matter between the commerical parties. Removing these requirements will further reduce regulatory burdens and in particular assist the further development of the online recruitment sector.

3.8. The amendments to the requirements around adverts will create greater clairty for workers for whom the terms 'temporary' or 'permanent' are far more likely to be understood as descriptions of work by the majority of work-seekers than 'employment agency' or 'employment business'.

4. Consultation

4.1. A formal 12 week public consultation was carried out by the Department from 6 July to 28 September 2009. A total of 13 responses to the consultation were received, ten of which contained substantive comments. The consultation covered a variety of proposals and the responses reflected the fact that certain respondents commented on the proposals within their own specific areas of interest.

4.2. One of the proposals in the consultation was to remove Northern Ireland's Post Graduate Medical Deanery (the Northern Ireland Medical and Dental Training Agency or NIMDTA) from within the scope of the Regulations. In light of the views expressed during the consultation, the Department considered that further separate discussion would be required with the relevant bodies in Northern Ireland. No amendments will be made to the Conduct Regulations at this stage in relation to the NIMDTA.

4.3. Generally, respondents were in favour of the measures to increase protection to vulnerable work-seekers and reduce the administrative burden on agencies. The consultation response has been published and is available on the DEL website.

5. Equality Impact

5.1. A Preliminary Equality Impact Assessment was carried out, concluding that the proposals have a neutral effect on Section 75 groups.

6. Regulatory Impact

6.1. A Partial Regulatory Impact Assessment (PRIA) was carried out on the proposals. The PRIA examined the impact of the changes being made and concluded that the banning of upfront fees in certain circumstances (for models and photographic models) will have a negative impact on some agencies. No information was provided in this respect during the consultation, so we do not have the robust data to estimate the exact costs of this proposal. However, the benefits to the recruitment sector of the deregulatory measures will have an overall positive regulatory impact.

7. Financial Implications

7.1. None.

8. Section 24 of the Northern Ireland Act 1998

8.1. The draft Regulations were sent to Departmental Solicitors Office (DSO) for scrutiny and clearance, and their advice was sought on compliance with section 24 of the Northern Ireland Act 1998. DSO's view is that the draft Regulations are compatible with section 24. Similar draft legislation in GB has been deemed compatible with the European Convention on Human Rights.

9. EU Implications

9.1. Not applicable.

10. Parity or Replicatory Measure

10.1. Similar amending Regulations were also made in GB to the Conduct of Employment Agencies and Employment Businesses Regulations 2003. In

order to maintain parity with GB in this area, and because the proposed measures are no less appropriate for Northern Ireland, the Department recommends that similar amendments to the legislation are made here.

11. Additional Information

11.1. Not applicable.