

**Investigation into the Role of Employment
Agencies and Employment Businesses in the
Recruitment and Employment of Migrant
Workers in Northern Ireland.**

A Literature Review

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Introduction

In April 2008, the Institute for Conflict Research was commissioned by the Equality Commission for Northern Ireland to provide information that would provide a background to the Commission's investigation into the role of employment agencies and employment businesses in the recruitment and employment of migrant workers in Northern Ireland. In fulfilment of this brief, the following review considers the situation of migrant workers vis-à-vis the recruitment sector – that is employment agencies and employment businesses – in Northern Ireland. The review contains seven sections concentrating on various aspects of the current situation.

Section 1 provides the definitions and explains the terminology used throughout the report that is central to the understanding of the issues that are of concern to the Equality Commission's investigation. It therefore addresses the various definitions of the term 'migrant worker', as well as defines what is understood by 'recruitment sector'. Section 1 also provides information about the various rights and entitlements that depend on employment status.

Section 2 of the Review discusses the various immigration regimes under which migrant workers arrive in Northern Ireland, and the corresponding registration requirements and entitlements while in the UK. The section also focuses on the available data indicating the number of workers and their families that are currently in Northern Ireland, while section 3 provides information about their demographic profile.

Section 4 focuses on the legal framework that regulates the activities of employment businesses and employment agencies in Northern Ireland, while section 5 discusses the current position on the EU draft Agency Workers Directive and the UK Government's response to the long-discussed proposals.

Section 6 discusses in some detail the barriers in accessing employment by migrant workers – including those who are looking to the recruitment sector for assistance. The Review focuses particularly on the issue of language and the transferability of skills, qualifications and work experience to the Northern Ireland labour market.

The Review concludes with a discussion of factors that impact or may impact on the equality of migrant workers seeking employment through the recruitment sector in Northern Ireland. The concluding section also provides some comparative data, as well as highlights examples of good practice in this area.

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1. Terminology and definitions

1.1 Migrant workers

Migrant workers

A migrant worker is defined in the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families as:

[...] a person who is to be engaged in a remunerated activity in a State of which he or she is not a national.¹

The Department of Employment and Learning (DEL) set out the definition used internally in Northern Ireland in their *Migrant Worker Strategy*:

[...] a migrant worker is someone from outside the UK and Ireland who is here to seek or take up work.

DEL's definition focuses on work as the primary purpose of migration. This focus is slightly different to the UN definition that concentrates on the situation in which a migrant finds him- or herself while abroad and in need of work. DEL's definition also takes into account the long-established flow of workforce between Ireland and the UK and therefore excludes Irish workers from its scope. The distinction between UK and Irish workers and those coming to Northern Ireland from other countries rests on differences in linguistic and cultural backgrounds of the various groups, and can be useful for the purposes of planning, as suggested in Dungannon and South Tyrone Borough Council (2008):

[...] there will be aspects of planning which will need to map the new migrant population rather than the overall population change due to migration, given the need to ensure accessibility to persons from different linguistic and

¹ International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, adopted by General Assembly Resolution 45/158 of 18 December 1990 (art.2). The Convention has not so far been signed by either the UK or the Republic of Ireland.

cultural backgrounds [...] (Dungannon and South Tyrone Borough Council 2008, p.4).

Another element of the definition refers to the length of stay. Looking at the Belfast area, the *Memorandum by the Institute for Conflict Research* produced as Evidence for the House of Lords' Select Committee on Economic Affairs Inquiry into the Economic Impact of Immigration, distinguished between three categories of migrants:

- **Short term migrants** who *intend to work in Belfast for up to two years. They have little interest in integrating and see their presence here as transitory;*
- **Medium-term migrants** who *plan to work here for an undetermined period, but will return home to work. They are likely to embrace local culture and learn English. This will assist integration and be a benefit when they return home;*
- **Long-term migrants** who *move to Belfast with their family, enrol their children in school, have a goal of owning their own home and wish to integrate into society. This group's needs and interests are very different from the other two and may form the core of more formalised new minority communities (House of Lords 2008b, p.247).*

However, these categories are not fixed. It has been indicated that the key period for making a decision about returning home or building a life in the new country or location is the first two years of stay:

After two years, migrants have become more established and it becomes more difficult to uproot and return home (House of Lords 2008b, p.247).

Similarly, it has been argued that the traditional distinction between the terms 'immigrant' and 'migrant', which was based on the expected length of stay, has now become obsolete. Whilst 'migrant' used to refer to people whose stay was anticipated to be temporary, and 'immigrant' referred to long-term migration, the terms are now increasingly used interchangeably (Anderson 2007, p.137).

1.2 Unauthorised Workers

In the context of an investigation into employment practices, it is important to bear in mind that a number of people are living and/or working in Northern Ireland without being officially authorised to do so. For reasons explained below, such migrants are particularly vulnerable to exploitation and have significantly limited recourse to any means of redress. The Global Commission on International Migration (GCIM 2005) refers to this group as ‘**migrants with irregular status**’. In the economic context, the International Organisation on Migration (IOM) defines undocumented migrant workers as:

[...] migrant workers or members of their families, who are not authorized to enter, to stay or to engage in employment in a State (IOM 2004, p.67).

In 2007 the Migrant Rights Centre Ireland (MRCI) conducted the first qualitative survey on irregular migration in Ireland. The report opens a discussion on the appropriate terminology:

*The term ‘illegal’ has associations with criminality [...] the terms **undocumented** and **unauthorised** are not an accurate description of all migrants with an irregular status as some have documents and are authorised to be in the country. While the term **irregular** captures the complexity of the issue it also has shortcomings as an individual person cannot be irregular, but rather be in an irregular situation (MRCI 2007, p.17) [emphasis added].*

The terminology chosen to refer to migrants in an irregular situation impacts on how such person is treated. Koser (2005) also underlined that the use of the term ‘illegal’ has connotation with criminality, whilst most irregular migrants are not criminals. Koser (2005) refers to the UN Special Rapporteur on the Rights of Non-Citizens’s recommendation that:

Immigrants [...] even those who are in a country illegally and whose claims are not considered valid by the authorities should not be treated as criminals (E/CN. 4/Sub. 2/2003/23 Para. 29, as quoted in Koser, 2005, p.5).

In that respect, the Migrants Right Centre Ireland (MRCI 2007) underlined that having an irregular status is an administrative infringement, not a criminal offence:

Most migrants with irregular status have committed administrative infringements rather than criminal offences. This has been emphasised by a number of bodies including the ILO and the Council of Europe (MRCI 2007, p.18).

The notion of a ‘**spectrum of compliance**’, put forward by Anderson and Ruhs (2006), informs a slightly different perspective:

***Compliant migrants** are legally resident and working in full compliance with the conditions of their immigration status. **Non-compliant migrants** are those without the rights to reside in the host country. **Semi-compliance** indicates a situation where a migrant is legally resident but working in violation of some or all of the conditions (Anderson and Ruhs 2006, p.2) [emphasis added].*

Similarly to Koser (2005) and MRCI (2007), Holder and Lanao (2005) emphasised the dangers of assimilating administrative and criminal offences, and showed that different sets of circumstances can lead to migrants taking up unauthorised work:

This is the reality for some non-EU workers whose immigration status has lapsed, or migrant workers from EU accession countries who have not signed up to the Worker Registration Scheme. The causes of undocumented working are multi-faceted. Some workers feel (often rightly) there is no path to legalising status and hence enter under tourist or visitor visas and undertake work (this is largely the pattern of unauthorised Irish migrant workers to the United States). Also common are workers who arrive with work permits or other status but fall into undocumented status due to confusion or inaction of employers, arbitrary decisions by the Immigration Service or other factors. There would also be breaches of restrictions, for example, international students who work over the number of permitted hours a week. There is also a considerable demonisation of unauthorised workers by using terms such as

‘illegal’ against persons who are not criminals (Holder and Lanao 2005, p.34).

As underlined by MRCI (2007), according to Anderson and Ruhs’ criteria, a student working more than part-time, or a spouse-dependant of a work permit holder who is legally entitled to residence but works without a permit, would be ‘semi-compliant’:

The notion of compliance is helpful in that it indicates that grey areas exist within the concepts of irregular migration, and highlights that immigration status is not static and it is possible to slip in and out of irregularity, according to the visa requirements of the countries concerned (MRCI 2007, p.18).

Furthermore, a report prepared for the Northern Ireland Human Rights Commission in 2003 noted that many undocumented migrants might be unaware of their unauthorised status due to the existence of the free travel area between Northern Ireland and the Republic of Ireland (Latif 2003, as quoted in Jarman 2005, p.13).

1.3 ‘Workers’ and ‘employees’ under UK employment law

The term *migrant worker* refers to immigration status and is used in the context of immigration law and the situation in which persons from outside of the UK find themselves while in the UK. This context is different from the definitions of a *worker* and *employee* which are terms used by the UK employment law. The UK employment law distinguishes between workers and employees:

[...] while both workers and employees have certain basic rights such as a minimum wage, employees have some additional rights, particularly concerning how and when employment can be ended (Animate et al., 2008, p.30).

Migrant workers can be *workers*, as well as *employees* under the employment law and will generally have the same rights as workers and employees from the UK.

The Employment Rights (Northern Ireland) Order 1996² defines an *employee* as:

[...] an individual who has entered into or works under (or, where the employment has ceased, worked under) a contract of employment.

The same Order defines a *worker* as:

[...] an individual who has entered into or works under (or, where the employment has ceased, worked under) -

(a) a contract of employment, or

(b) any other contract, whether express or implied and (if it is express) whether oral or in writing, whereby the individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual [...]

As both definitions refer to working under a ‘contract of employment’,³ the distinction between the two is not readily obvious. While stressing that the distinction between a ‘worker’ and an ‘employee’ is very important, particularly in relation to extended rights for employees, Animate et al. (2008) acknowledged that:

It can often be difficult to establish if you are a worker or an employee. If you have a written agreement with your employer that includes a phrase ‘contract of employment’, it is probable that you are an employee. However, this is not an absolute requirement and you may still be an employee if:

- your employer controls what you do overall and lays down when and how you do it*
- you have to carry out the work yourself (you cannot normally get another worker to do it on your behalf)*

² The Order is an equivalent in Northern Ireland of Great Britain legislation included in the Employment Rights Act 1996, which includes the same definitions.

³ The Order defines *contract of employment* as a contract of service or apprenticeship, whether express or implied, and (if it is express) whether oral or in writing.

- *your employer requires you to work regular hours and you are paid for these hours whether or not there is work to be done*
- *your employer supplies the equipment and tools required for your job*
- *your employer pays tax and National Insurance on your behalf.*

You may be a worker if:

- *you are only offered work and paid when your employer needs you*
- *you can decide when to work, and can even turn down work when offered*
- *you can provide a substitute worker to carry out the work in your place if you wish*
- *you provide your own equipment and tools*
- *you are responsible for paying your own tax and National Insurance*
- *you have a written agreement with your employer that includes the phrase ‘contract for services’ (Animate et al. 2008, pp.27-28).*

However, Animate et al. (2008) stated clearly that those lists should be treated as indicative, rather than definitive elements of the respective definitions.

Rights of Workers and Employees

Employees enjoy more rights by law than workers, although both categories are guaranteed the following:

- a) they have to be paid the National Minimum Wage;
- b) they have the right not to have unlawful deductions made from pay;
- c) they have to receive itemised payslip, showing earnings and deductions, such as tax;
- d) they have the right not to work beyond 48 hours a week (maximum working week) and to 4 weeks holiday a year;
- e) they have the right not to be discriminated against;
- f) they have the right to join a trade union;
- g) they have the right to health and safety protection;
- h) they have the right to protection relating to pregnancy, and
- i) they have the right to Statutory Sick Pay (Animate et al. 2008, p.28).

Additionally, employees enjoy some rights dependent on such status:

- a) the right to maternity leave and the right to return to work at the end of the leave period;
- b) the right to a certain amount of unpaid leave for family emergencies;
- c) the right to time off for medical appointments while pregnant;
- d) the right to protection from dismissal as a result of pregnancy or because of trade union activity;
- e) the right to equal pay,
- f) the right to paid or unpaid time off work in certain situations (Animate et al. 2008, p.31-32).⁴

Employees are also guaranteed certain rights dependent on length of employment with a given employer. These are:

- a) after one month – the right to one week’s paid notice of dismissal and pay in cases of suspension on medical grounds;
- b) after two months – the entitlement to a written statement of terms and conditions of employment, including hours, pay and holiday entitlement;
- c) after six months – the right to maternity pay (providing that an employee has worked a certain number of weeks before the maternity leave);
- d) after one year – the right to protection from unfair dismissal (in cases where employment was ended without good reason or dismissal took place without a proper procedure being observed);
- e) after two years – the right to claim redundancy pay if the person’s position is no longer needed and no-one else has been employed to do the same job (Animate et al. 2008, p.32).

Agency Worker

Up to date, the legislation has not defined ‘agency worker’ as a category separate to the two above. The Conduct of Employment Agencies and Employment Businesses Regulations (Northern Ireland) 2005 include, however, a definition of a *work-seeker*:

⁴ The circumstances include: taking part in trade union activities, child care responsibilities, time off to make arrangements to deal with unexpected emergencies, such as injury or illness of a family member.

[...] "work-seeker" means a person to whom an agency or employment business provides or holds itself out as being capable of providing work-finding services.

In the context of this review, we will refer to *agency workers* as persons who are supplied by employment agencies and employment businesses to work for an end-user under a contract or other arrangement. Such definition of *agency worker* is equivalent to one that was employed in the legislation most recently proposed in the UK:

*[...] "agency worker" means any person who is supplied by an employment business, or employment agency, to do work for another person ("the end user") under a contract or other arrangements made between the employment business, or employment agency, and the end user [...].*⁵

1.4 Employment businesses and employment agencies

The following review considers the situation of migrant workers vis-à-vis the recruitment sector – that is employment agencies and employment businesses. The law in Northern Ireland defines **employment agency** as:

[...] 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 workers employment with employers or of supplying employers with workers for employment by them [...] ⁶

Distinctively, **employment business** is defined as:

⁵ *Temporary and Agency Workers (Equal Treatment) Bill 2007-08*, Clause 5. The Bill was withdrawn from Westminster following the agreement on the principles of the EU Agency Workers Directive on the 10 June 2008.

⁶ *The Employment (Miscellaneous Provisions) (Northern Ireland) Order 1981* (for more detail about the relevant legislation please see: Section 4 of the review).

[...] 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 for the employment of the person carrying on the business, to act for, and under control of, other persons in any capacity.

The difference between the two arrangements is explained to workers by the Department for Employment and Learning (DEL) in the following terms:

An EA (employment agency) will introduce you to hirers that you are going to work for permanently (or work for on a fixed or short-term contract). With this arrangement, your contract of employment will be with the hirer and not with the agency. An EB (employment business) will place you with hirers to work but your contractual relationship is with the EB and it is the EB that is responsible for paying you (Department for Employment and Learning, 2007d).

2 The number of migrant workers employed in Northern Ireland – sources of information and current estimates

2.1 Immigration status and corresponding registration requirements

Jarman (2004) highlighted three distinct periods of migration into Northern Ireland. In 2001, various employment sectors started outsourcing workers from other countries to fill vacancies. Mostly, the trend was for the food processing industry to recruit workers from Portugal whilst hospital trusts recruited nursing staff in South Asia and the Philippines.

The second period of work-related migration started in May 2004, as eight of the associated countries of 1991/1999 accessed the European Union (EU), along with Cyprus and Malta.⁷ The group of eight countries, which includes Estonia, Lithuania,

⁷ Association Agreements were passed in 1991 and in 1999, between the EU and 10 countries: Bulgaria, Czech and Slovak Republics, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, and Slovenia, to give nationals from these countries advantages in migration or work matters. In 2004, eight of these ten countries (excluding Romania and Bulgaria) joined the EU, along with two other countries, Cyprus and Malta. Romania and Bulgaria accessed the EU in 2007.

Latvia, Hungary, Poland, Slovenia, Slovakia and the Czech Republic, are commonly referred to as ‘**A8 countries**’, and people coming to the UK from those countries as ‘A8 nationals’.

Whilst most EU Member-States initially placed restrictions on A8 nationals’ access to their labour markets, the UK, Ireland and Sweden did not and the number of A8 nationals has been much higher in those three countries than in the rest of the EU. A different policy was applied to Cyprus and Malta whose nationals have been entitled to work freely within the EU since the 2004 enlargement.

In 2007, the two remaining associated countries of 1991/1999, Bulgaria and Romania, joined the EU and are commonly referred to as the ‘**A2 countries**’. The UK Government decided that new migrants from A2 countries would be allowed gradual access to the UK labour market, on the basis of their recognised skills:

There would continue to be access for skilled workers who met the skills requirements of the United Kingdom’s work permit arrangements and the Highly Skilled Migrant Programme. Access for lower skilled workers, however, would be quota limited and restricted to those accessing existing schemes (the Seasonal Agricultural Workers Scheme and the Sectors Based Scheme) for the agricultural and food processing sectors. At the same time these low-skilled schemes would move to being restricted to Bulgarian and Romanian nationals only (Home Office 2007 p.2).⁸

Recently, the UK government decided to maintain the restrictions on Romanian and Bulgarian workers until at least the end of 2008, justifying the time extension by *the need to get the right balance for Britain’s immigration policy* (Home Affairs Committee 2007, p.4):⁹

Provided their talents are fully utilised, the immigration of skilled workers or entrepreneurs will raise the demand for unskilled labour in the recipient

⁸ See also: *The Accession (Immigration and Worker Authorisation) Regulations 2006* (available at: <http://www.opsi.gov.uk/si/si2006/20063317.htm>).

⁹ See also: Commons Written Ministerial Statement by the Minister for Borders and Immigration, Mr Liam Byrne MP (HC Deb, 30 October 2007. cols 34WS-35WS).

country and will thereby benefit existing unskilled workers. The immigration of unskilled workers may have the opposite effect. If the immigrants are able to compete freely with unskilled local workers, the position of the latter may get worse (House of Lords 2008b, p.6).

The Romanian Under-Secretary of State for European Affairs and the Acting Romanian Ambassador to the UK told the Home Affairs Committee that they were ‘surprised and disappointed’ by these restrictions. They regarded them as ‘discriminatory’ and politically rather than economically motivated,

given the low unemployment rate in Romania, the long-term trend for economic growth and that preferred destinations for Romanian migrants are in fact Italy, Spain and Germany (Home Affairs Committee 2007 p.5).

Furthermore, the Romanian Under-Secretary of State perceived these regulations to be resulting from the no-restriction policy applied to the first eight central European countries when they accessed the EU in 2004.

A8 Workers

Nationals of A8 countries are normally obliged to register under the Worker Registration Scheme (WRS) if they wish to work for an employer in the UK for longer than one month.¹⁰ The registration requirement lasts for 12 months – once a person has been legally working in the UK for this period, without any breaks in employment, they no longer have to register and gain the same rights to social security as nationals of EU17 countries.¹¹ Application for registration should be submitted after the person has started work in the UK, within one month of taking up work. If application is not made within that time, the person’s employment in the UK will be treated as unlawful.¹² Persons registered under WRS are free to change their job at any time, but have to notify the Border Agency using the WRS form of the

¹⁰ Please note that WRS does not apply to those A8 nationals who are self-employed.

¹¹ ‘Uninterrupted work’ or ‘working without any breaks in employment’ means that a person cannot be out of work for a total of 30 days in a 12 month period. See: UK Border Agency *Worker Registration Scheme* (available at: <http://www.bia.homeoffice.gov.uk/workingintheuk/wrs>).

¹² Nationals of A8 countries do not require a visa to enter the UK, or a leave to remain, but can reside in the country if: they are self-employed; are employed and registered under the WRS (first 12 months) or have sufficient funds to support themselves without recourse to public funds.

change (if the change takes place within the first 12 months). Breaks in employment extending beyond the allowed time limit (of 30 days within the 12 month period) can affect the worker's status in the UK in terms of the right to reside, as well as their access to public funds and welfare provision.

A2 Workers

Nationals of A2 countries who want to work in the UK are obliged to apply for an *accession worker card* and their employer has to apply for a work permit (unless the person/post is exempt under the scheme¹³). The accession worker card is valid for as long as the person concerned remains in employment for which it has been issued. A2 nationals can switch their category of employment, but have to apply for a new card if they change employers.

Those A2 nationals who are: exempt from the worker authorisation restrictions; highly skilled migrants; students; self-employed and/or self-sufficient persons or are family members of applicants under the accession worker card scheme, can apply for a *registration certificate*.

Non EU/EEA Workers

The Points-Based System (PBS), replacing the current work permit schemes, was launched at the end of February 2008 and concerns persons from outside of the EU and the EEA. Neither A8 nor A2 nationals are or will be covered by the PBS. The new system was introduced as part of a large scale reform outlined in *Making migration work for Britain* (Home Office 2006)¹⁴ and sets out a five-tier framework almost entirely based on considerations related to economic gains for the UK. The five tiers will be activated gradually, between 2008 and 2009:

¹³ Examples of categories of employment exempt from accession worker card requirements are: airport based operational ground staff of an overseas airline; domestic workers in a private household; ministers of religion; overseas government employees; postgraduate doctors, dentists and trainee general practitioners (See: UK Border Agency *Bulgarian and Romanian Nationals*, available at: <http://www.bia.homeoffice.gov.uk/workingintheuk/bulgriaromania/liveworkuk>).

¹⁴ All the key official documents on the Points Based System can be accessed from the Home Office-UK Border Agency website at: <http://www.bia.homeoffice.gov.uk/sitecontent/documents/managingourborders/pbsdocs/>

- a) Tier 1 concerns highly skilled professionals (entrepreneurs, top scientists and business people) who may be allowed to come to the UK without a job offer to seek work or set up a business;
- b) Tier 2 concerns skilled migrants who have a job offer in an area where there is a shortage of workers (for example, nursing). *“This covers people with qualifications or important work-related experience in a huge range of sectors from health service workers to white collar jobs and the trades.”* (BBC 2008b). Furthermore, employers will need to register as a sponsor and will need to meet strict criteria to be able to bring in non-EU or non-EEA workers on this Tier, the presumption being that shortages will be filled with EU and EEA nationals;
- c) Tier 3 concerns a *“limited number of low skilled workers needed to fill specific temporary labour shortage”* (Home Office 2006, p.2) that EU and EEA workers are not able to fill. Among the work sectors listed are hospitality, food processing and agriculture;
- d) Tier 4 concerns students who are enrolled at a UK university. The introduction of this Tier will mean that the student visa will be tied to the educational institution and not to the course to which the student has been accepted. This will allow international students to change courses, on the same visa. Students over the age of 16 will be entitled to be joined by their dependents and to work part time;
- e) Tier 5 concerns both ‘Youth mobility’ programmes (Au Pair placements, working holiday schemes) and temporary workers (professional sports people, professional musicians who need to work in the UK for a specific event like a football game or a concert).

Before the new Points-Based System becomes fully operational,¹⁵ some of the work permits can still be issued under 6 different schemes:

- a) business and commercial work permit;
- b) training and work experience scheme (TWES);
- c) sports and entertainments scheme;
- d) student internships scheme;

¹⁵ The full timetable for the introduction of the Points Based System is available from the Home Office – UK Border Agency website at: <http://www.bia.homeoffice.gov.uk/employers/points/timetable/>

- e) General Agreement on Trade in Services scheme (GATS) and
- f) Sectors Based Scheme (SBS).¹⁶

Work permits are normally issued for a limited time only (up to 5 years), although some of the schemes can provide a way to settlement (indefinite leave to remain). Persons who are allowed to work on a work permit cannot change their employer without permission from the Home Office.

EU17 migrants

Nationals of any of the 17 EU member states (EU-15 plus Cyprus and Malta) are not subject to any registration requirements, although they are required to show for the first three months of their stay in the UK that they will not place a burden on public funds (for instance, by claiming benefits). EU17 nationals are advised to obtain a *registration certificate*, and later the *permanent residency (indefinite leave to remain)* to confirm their status in the UK and their entitlement to social security protection.

EEA migrants

Nationals of the European Economic Area (EEA) (which includes the EU plus Iceland, Liechtenstein and Norway, plus Switzerland by special arrangement) are not subject to any registration requirement.¹⁷

The following table includes all standard registration requirements by category of country grouping:¹⁸

¹⁶ See: UK Border Agency *Work permits* (available at: <https://www.bia.homeoffice.gov.uk/workingintheuk/workpermits>). Since 1 January 2007, the SBS has been closed for new applications for persons from outside of the EU and the EEA, and is open only to applications from employers wishing to hire workers from Bulgaria and Romania. Persons who hold a valid work permit under this scheme can, however, still apply for extension of their current permit if the time limit has not been reached.

¹⁷ Both EU-17 and EEA nationals are required to obtain a National Insurance Number when seeking or undertaking work in the UK.

¹⁸ The Table reflects standard requirements. There may be detailed requirements, or indeed exemptions, under all schemes, which are not discussed in this paper.

Table 1: Standard Registration Requirements by Category of Country Grouping

Country grouping (immigration status)	Registration requirements
A8 Nationals (Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia and Slovenia). Freedom of movement within the EU; freedom of labour within the UK (subject to registration)	Worker Registration Scheme
A2 Nationals (Romania and Bulgaria) Freedom of movement within the EU; restricted access to the UK labour market.	Accession Worker Card Work Permit
EU-17 and EEA Nationals Freedom of movement and labour within the EU, and freedom of labour within the UK.	No registration requirement
Non-EU Nationals Visa requirement for 'visa nationals'; work in the UK by permission only.	Work Permit Schemes (to be gradually replaced by the Point Based System)

2.2 Available population statistics

A number of attempts have been made at estimating the numbers of migrant workers and members of their families living in Northern Ireland. In 2006, NISRA published its first long-term international migration estimates.¹⁹ These estimates are updated annually and the new figures have been published in July 2008.

The exact numbers of migrant workers are difficult to estimate due to a variety of registration requirements under different immigration regimes. Currently NISRA calculates the net international migration figures using the following sources of information:

- a) the Home Office Worker Registration Scheme for A8 nationals;
- b) the Home Office Schemes for A2 nationals;
- c) the Home Office Work Permits Schemes;
- d) new National Insurance Numbers registered to nationals of countries other than the UK;
- e) the Department of Education Annual School Census;²⁰

¹⁹ Beatty, R. et.al. (2006).

²⁰ This is looking at the number of children with English as an Additional Language, as well as data gathered by asking an additional in-migration question, added to the 2007 schools census.

- f) the Department of Agriculture and Rural Development Farm Structure Survey;
- g) the country of birth of new mothers in Northern Ireland;
- h) the country of birth of new fathers in Northern Ireland;
- i) new registrations with a family doctor;
- j) de-registrations from the family doctor system (health cards);
- k) new National Insurance Numbers registered to non-UK nationals which are no longer in use; and
- l) new questions on household surveys in Northern Ireland (particularly investigating migration movements of household members); and
- m) out-migration questions added to the 2007 Schools Census.²¹

Table 2: Estimated Net International Migration, by age and gender (July 2006 - June 2007)

Gender / Age		Estimated Net International Migration
Male		4,377
	Less than 18 years	1,046
	18-24	1,735
	25-34	1,458
	35-44	117
	45-54	146
	55-64	-39
	65 years and over	-86
Female		3,660
	Less than 18 years	1,054
	18-24	1,383
	25-34	1,181
	35-44	84
	45-54	86
	55-64	-57
	65 years and over	-71
Total		8,037

Source: NISRA (July 2008) ²²

It has to be borne in mind that the above figures include, but are not exclusively made up of, the number of migrant workers *per se*. The estimates include *all* migrants,

²¹ NISRA *Long-term International Migration Estimates for Northern Ireland (2006-07)* (NISRA, July 2008, available at:

[http://www.nisra.gov.uk/archive/demography/population/migration/NI_Migration_Report\(2007\).pdf](http://www.nisra.gov.uk/archive/demography/population/migration/NI_Migration_Report(2007).pdf)). In comparison to the 2006/07 figures, more administrative sources of data were added to improve the accuracy of the estimates.

²² http://www.nisra.gov.uk/archive/demography/population/migration/Net_Mig0607.xls (Migration Table 3.6).

regardless of their employment status or the reason for which they changed their country of residence. It is worth noting that the figures include over 1,900 persons under the age of 18. Current estimates allow, however, for identification of the overall trends, and also of the districts in Northern Ireland where one might expect greater impact of migration on local communities, services and needs and community relations.

Table 3: Estimated Net International Migration, by Local Government District (July 2004 – June 2006)				
Area (LGD)	Estimated Net International Migration (Jul 2004 - Jun 2005)	Estimated Net International Migration (Jul 2005 - Jun 2006)	Estimated Net International Migration (Jul 2006 - Jun 2007)	Total
Antrim	194	417	307	918
Ards	-28	102	42	116
Armagh	234	416	385	1,035
Ballymena	290	318	313	921
Ballymoney	40	94	44	178
Banbridge	112	108	114	334
Belfast	329	1,138	1,625	3,092
Carrickfergus	-5	41	33	69
Castlereagh	26	72	22	120
Coleraine	128	179	21	328
Cookstown	233	312	341	886
Craigavon	926	1,141	894	2,961
Derry	-187	75	-31	-143
Down	-49	207	220	378
Dungannon	1061	1,443	1,421	3,925
Fermanagh	282	515	332	1,129
Larne	-1	58	16	73
Limavady	35	86	14	135
Lisburn	135	410	164	709
Magherafelt	191	345	284	820
Moyle	-17	-7	13	-11
Newry & Mourne	584	1,174	1,223	2,981
Newtownabbey	-41	-28	-149	-218
North Down	11	100	-63	48
Omagh	287	324	454	1,065
Strabane	-99	-17	-2	-118
Northern Ireland	4,671	9,023	8,037	21,731

Source: NISRA (July 2008)

Previous estimates illustrate the significant increase in the number of migrant workers/foreign nationals in Northern Ireland, with year 2006/2007 being the first since 2004 to show a downward trend:

Table 4: Estimated Net International Migration to Northern Ireland (mid 2002-mid 2006)

Year	International net migration to Northern Ireland
Mid 2002 - mid 2003	-1,102
Mid 2003 – mid 2004	416
Mid 2004 – mid 2005	4,671
Mid 2005 – mid 2006	9,023
Mid 2006 – mid 2007	8,037

Agency workers – numbers and trends

The UK has the second highest number of private employment agencies and businesses per country in the world.²³ The European Confederation of Private Employment Agencies (Euro-Ciett) estimates that in 2006 agency workers in the UK constituted 90.7% of all persons working on temporary contracts.²⁴ According to the same data, the number of agency workers supplied through all agencies on a daily average was 1,265,060, which made up 4.5% of total employment in the UK.²⁵ According to Euro-Ciett's figures, the number of agency workers in the UK doubled in the 10-year period between 1996 and 2006 (from 682,000 to 1,265,000).²⁶

It is hard to estimate what proportion of agency workers consists of migrant workers. Some indication of the number of people registered under the Worker Registration Scheme (A8) and Accession Card Scheme (A2) can be found in the monitoring data published by the UK Border Agency by looking at registration in the administration, business and management sector. The majority of workers registered under this category are working, at least initially, through the employment sector in a variety of industries.²⁷ This sector has seen the highest number of registrations under the WRS for all years of monitoring. While these numbers do not necessarily indicate the most current situation in the industry, they do indicate to some extent the number of people who seek employment through the recruitment sector upon arrival in the UK.

²³ The number of agencies operating in the UK in 2006 has been estimated at 10,500 enterprises. The only country that has more is Japan with 30,600. See: International Confederation of Private Employment Agencies (2007).

²⁴ Statistics available at: <http://www.euro-ciectt.org/index.php?id=131>

²⁵ ib.id. (Calculated as full-time equivalent posts.)

²⁶ ib.id. p. 21.

²⁷ (see: The UK Border Agency (2008a); pp.12-13).

According to the most recent data from the Worker Registration Scheme,²⁸ between May 2004 and March 2008, 9,360 workers registered in business, administration and management category in Northern Ireland. It can be inferred from the general rules of registration that the majority of them would have been registered, at least initially, through the employment sector. It is hard to similarly disaggregate data for A2 registrations, as sectoral registration is not recorded by region. There were 215 registrations of A2 nationals in administration, business and management sector between January 2007 and March 2008 in the UK as a whole. It is unclear from the statistics what proportion exactly took up work with or through the recruitment sector, although, similarly to the WRS, they would constitute a majority of such registrations. Unfortunately, data regarding Work Permits by sector of employment is not readily available.

3 Demographic profile of migrant workers in Northern Ireland – sources of information and available data²⁹

Until recently, migrant workers in Northern Ireland were considered as a homogenous group. Major changes in migration patterns are, however, making this approach increasingly out-dated:

The term ‘migrant workers’ increasingly covers a diverse range of nationalities, ethnicities, skills, employment sectors and personal experiences and as such no longer can be considered as a homogenous group. Thus there must be some caution exercised when generalising about the experiences and needs of ‘migrant workers’ (Jarman and Byrne 2007 p.43).

²⁸ The UK Border Agency (2008a).

²⁹ The key sources of data in this section include: NISRA migration estimates for 2006-2007; Worker Registration Scheme (WRS) monitoring data for May 2004 – March 2008; information on Work Permit; information on National Insurance Number (NINos) allocations; information on the use of Health Service Interpreting services and 2001 Census. Data specific to Belfast are provided by Jarman and Byrne (2007) and the Minority Ethnic Employability Support Project (MEESP), which was set up by GEMS in South Belfast to provide support to work seekers from a minority ethnic background, who live near the Laganside / Gaswork area. The data was given at the end of November 2007 to LOCUS, who conducted an evaluation of the project (LOCUS 2008).

3.1 Nationality

In the UK as a whole, Poles represented 67% (540,755) of the total number of applications approved under the Worker Registration Scheme (WRS) between May 2004 and March 2008. The Central Statistical Office of Poland (CSO) estimated that 580,000 Poles were living in the UK in 2006, which constituted 30% of all Polish migrants living and working in the EU. For the whole of the UK, Slovaks and Lithuanians constitute the next two largest groups registered under the WRS, with 84,200 and 76,080 persons respectively. A smaller number of accepted applications came from Latvia (38,680), Czech Republic (36,260), and Hungary (28,335), and even less from Estonia (7035) and Slovenia (755).³⁰

In Northern Ireland, most of A8 nationals registering between May 2004 and March 2008 were also from Poland. The next two most represented countries of origin are Lithuania and Slovakia:

Table 5: NI Worker Registration Scheme (WRS) Registrations by Nationality (May 2004 - March 2008)

Nationality	NI WRS Count (May 2004 - Mar 2005)	NI WRS Count (Apr 2005 - Mar 2006)	NI WRS Count (Apr 2006 - Mar 2007)	NI WRS Count (Apr 2007 - Mar 2008)	Total
Czech Republic	390	390	305	280	1,365
Estonia	20	40	15	5	80
Hungary	80	110	210	240	640
Latvia	430	470	360	230	1,490
Lithuania	1,545	1,735	1,485	1,075	5,840
Poland	2,150	4,980	5,660	4,935	17,725
Slovakia	875	1,315	1,230	965	4,385
Slovenia	5	-	-	-	5
Total	5,495	9,045	9,270	7,725	31,530

Source: UK Border Agency and NISRA (July 2008)

The data on Work Permits issued in Northern Ireland shows that the largest number of permits is issued to workers from India and the Philippines, with those from Ukraine in a third place:

³⁰ The UK Border Agency (2008a).

Table 6: Number of Work Permits Issued by Nationality (April 2004 - March 2008)

	NI WP Count	NI WP Count	NI WP Count	NI WP Count	
	(Apr 2004 - Mar 2005)	(Apr 2005 - Mar 2006)	(Apr 2006 - Mar 2007)	(Apr 2007 - Mar 2008)	
Nationality					Total
India	760	665	670	450	2,545
Philippines	685	475	485	180	1,825
Ukraine	530	330	250	30	1,140
Romania	265	265	170	110	810
China	255	165	205	135	760
Pakistan	420	85	60	35	600
Bulgaria	115	95	75	290	575
USA	110	115	120	190	535
South Africa	125	70	50	30	275
Moldova	120	60	40	-	220
Malaysia	55	45	45	30	175
Canada	20	25	35	30	110
Australia	20	25	25	25	95
Russia	-	40	35	20	95
Nepal	30	20	30	15	95
Bangladesh	40	20	-	-	60
Nigeria	25	30	-	-	55
Brazil	25	25	-	-	50
Belarus	20	20	-	-	40
Japan	35	-	-	-	35
British National Overseas	-	25	-	-	25
Morocco	-	-	-	20	20
Kenya	20	-	-	-	20
Countries with less than 20 registrations	245	215	225	210	895
Total	3,930	2,805	2,510	1,800	11,055

Source: UK Border Agency and NISRA (July 2008)

In Belfast, most migrants registered on the WRS and WP schemes between May 2004 and December 2007 came from Poland (1,680), Slovakia (500), the Philippines (395), India (375), Czech Republic (240), Lithuania (160), China (150) and the USA (120) (Jarman and Byrne 2007, p.13). Previous data from ICR (2005) showed that in the health sector, 50 % of the 275 migrant workers interviewed came from the Philippines, 17 % from India and 8 % from Malaysia. Jarman and Byrne (2007, p.14) argued that the very small number of staff coming from Eastern Europe to work in the Health Service is probably reflective of the fact that the dynamics of migration have changed very rapidly over recent years, and that migrant workers from certain countries tend to work in specific sectors of employment.

The data on allocation of National Insurance Numbers (NINOs) to foreign nationals for 2003-2007 shows that A8 nationals constituted the only group whose number of applications increased steadily and significantly in all three application centres in Northern Ireland; statistics on NINO applications show, however, that a significant number of migrant workers in Northern Ireland come from outside of the EU.

Table 7: National Insurance Number (NINO) Applications by Nationality (April 2003 - March 2008)

Nationality	NINO Applications (Apr 2003 - Mar 2004)	NINO Applications (Apr 2004 - Mar 2005)	NINO Applications (Apr 2005 - Mar 2006)	NINO Applications (Apr 2006 - Mar 2007)	NINO Applications (Apr 2007 - Mar 2008)	Total
Polish	230	3,482	8,512	9,937	10,278	32,439
Irish	2,162	2,395	1,092	2,074	2,354	10,077
Lithuanian	93	1,999	2,553	2,465	1,954	9,064
Slovak	38	958	2,078	2,193	2,285	7,552
All Other Countries	678	1,033	852	972	932	4,467
Portuguese	1,167	967	496	471	517	3,618
Indian	645	858	452	477	487	2,919
Latvian	39	545	707	597	523	2,411
Czech	21	557	665	525	451	2,219
Chinese	303	416	290	351	479	1,839
Filipino	395	400	350	381	285	1,811
Hungarian	7	86	180	365	648	1,286
British	254	232	199	211	271	1,167
Australian	184	260	226	210	220	1,100
French	157	251	163	266	260	1,097
Ukrainian	219	281	118	235	76	929
Spanish	172	187	161	164	213	897
American	122	227	122	176	232	879
German	119	185	138	171	212	825
South African	187	223	161	118	105	794
Bulgarian	148	118	67	69	245	647
Romanian	60	120	49	174	218	621
Canadian	99	128	95	116	112	550
Italian	72	121	98	102	139	532
New Zealander	73	80	74	67	77	371
Unknown	-	-	23	53	293	369
Dutch	34	82	75	47	80	318
Malaysian	75	26	85	41	90	317
Nigerian	52	62	40	43	61	258
Total	7,805	16,279	20,121	23,071	24,097	91,373

Source: Department for Social Development (July 2008)

3.2 Gender

NISRA estimated that out of 8,037 people immigrating to Northern Ireland between July 2006 - June 2007, 4,377 were male and 3,660 were female (see: Table 2, p.19). In terms of percentages, this estimate data matches WRS figures for the whole of the UK, where out of all migrant workers who registered on the WRS between May 2004 and March 2008, 57 % were men and 43 % were women (UK Border Agency 2008a). A similar gender ratio was found for Romanian and Bulgarian migrant workers who came to the UK between October and December 2007 (Pollard et al., 2008, p. 25).

Jarman and Byrne (2007, p.15) reported similar proportions for Belfast. They found that just over 60 % of migrant workers in the city are male and slightly less than 40 % are female.

3.3 Age

WRS data for the whole of the UK show that the vast majority of A8 migrants registered between May 2004 and March 2008 are aged 18-34, with 43 % of them aged between 18 and 24, and 39 % aged 25-34.³¹ The data concerning Bulgarian and Romanian migrants registering for an Accession Worker Card and registration certificates shows that between January 2007 and March 2008, between 45 and 50% of all applicants were aged 25-34 years.³²

In Northern Ireland, NISRA's data for July 2006 - June 2007 shows that the majority of migrants are aged 18-24, closely followed by the 25-34 age group.³³ Over 2,000 international in-migrants in the same year were under 18 years of age. Local calculations for the Dungannon area show that 23% of the new migrant population is of non-working age, with 19% of the total migrant population being children under 15 years (Dungannon and South Tyrone Borough Council 2008, p.4). Considering the age profile of the new migrant populations, Jarman and Byrne (2007) submit that as families and children are increasingly moving to and/or settling in Northern Ireland,

³¹ The UK Border Agency (2008a).

³² Border and Immigration Agency (2007a); Border and Immigration Agency (2007b); Border and Immigration Agency (2007c); Border and Immigration Agency (2007d); UK Border Agency (2008b).

³³ See: Table 3.3, http://www.nisra.gov.uk/archive/demography/population/migration/Net_Mig0607.xls

social rights like access to childcare, education, health care, are becoming the prominent issue:

The new migrant communities are becoming increasingly diverse internally as partners, family members and children move as well; but also as people become established and children are born here. The focus can be sustained less on the work side of the migration process and will inevitably focus on more general social needs (Jarman and Byrne 2007, p.43).

Data provided through the Minority Ethnic Employment Support Project (MEESP) for South Belfast showed that the vast majority (73%) of the work seekers supported by the programme were aged between 18 and 34 years old, with 25% of them aged between 18 and 24, and 48% aged between 25 and 34. Only 15% of MEESP clients were aged 35-44, and 10% were aged 45-54. A remaining 2% belonged to the 55+ group (LOCUS 2008, p.16).

3.4 Education

Whilst official data relating to educational profile of migrant workers is currently unavailable, some attempts have been made at establishing their characteristics in this area. Eale et al. combined the age variable of the Labour Force Survey (LSF) and World Bank education statistics to calculate the average number of years spent in full-time education (as reported in Pollard, et.al.). On average, the findings showed that Polish migrants spend 13.6 years in education, whilst other A8 migrants spend an average of 11.9 years in education. However, it should be emphasised that there was a higher proportion of students amongst Polish migrants coming to the UK (Pollard et al., 2008, p.27). It is interesting to compare this data with research conducted by the Institute for Public Policy Research in December 2007, using LFS data. Findings showed that the average age for leaving full-time education among Polish nationals is 20.1. In comparison, UK citizens leave education on average at 17.5 years old.

Jarman and Byrne (2007) found that there has been an increase in recent years in the number of migrants who arrive in Belfast with a high level of education and with

professional experience. Combining data from two surveys – a 2003 general survey of migrant workers and 2005 survey of workers in the health sector, it appears that:

- a) All of the 48 respondents of the 2003 survey had a university education, but 15% of them said that their qualifications were not recognised in Northern Ireland.
- b) Similarly, 16% of the respondents to the 2005 survey said that their qualifications were not recognised in the UK, and 25% said that they had to go through training again to get work.

The evaluation of the Minority Ethnic Employability Support Project (MEESP) delivered by GEMS Northern Ireland shows that 40% of the people seeking work through the programme have a third level educational qualification, and 14% have a recognised professional qualification. 42% of clients do not have any qualifications other than those achieved at school while 3% claim to have no qualifications at all (LOCUS 2008, p.16).

3.5 Employment sectors

According to the latest Accession Monitoring Report, which covers the period of May 2004 - March 2008, the top 5 sectors employing migrant workers from A8 countries in Northern Ireland are: administration, business and management (with 9,360 WRS registrations); manufacturing (5,415); food/fish/meat processing (4,145); construction and land services (3,435); and hospitality and catering (3,100). As noted above, the majority of persons registered in the administration, business and management services category under the Workers Registration Scheme are persons registered through the recruitment sector.³⁴

Data provided by Belfast-based employment agencies in 2007 showed that the majority of the migrant workers that they assist in finding work, work in the healthcare system, the construction industry, the hospitality industry, or as manual or casual labour (Jarman and Byrne, 2007, p.30).

³⁴ See also: The UK Border Agency (2008a).

It is important to note that in the Belfast-based employment agencies migrant workers constituted a large part of the overall number of workers they placed with their clients:

One recruitment agency noted that 80% of staff that they supplied to the health sector would be classified as migrant workers, while another agency that specialised in supplying the construction industry reported that nearly a quarter of its registered workers were migrant workers (Jarman and Byrne 2007, p.30).

4 Regulation of employment agencies and employment businesses – the legal framework.

The conduct of employment agencies and businesses in Northern Ireland is regulated by the following legislation:

1. The Employment (Miscellaneous Provisions) (Northern Ireland) Order 1981 (the 1981 Order);
2. The Conduct of Employment Agencies and Employment Businesses Regulations (Northern Ireland) 2005 (the 2005 Regulations) and
3. The Conduct of Employment Agencies and Employment Businesses (Amendment) Regulations (Northern Ireland) 2008 (the 2008 Regulations)
4. Gangmasters (Licensing) Act 2004.³⁵

The 1981 and the Regulations

The 1981 Order applies to two types of enterprises: employment agencies and employment businesses (as defined in the first section of this report). The 1981 Order contains a number of exclusions, and therefore its provisions do not apply to:

- a) services provided by university appointments boards and certain other educational institutions, by local authorities, by trade unions, employers' organisations and certain professional bodies for their members or by charitable organisations;

³⁵ See also: *The Gangmasters (Licensing Authority) Regulations 2005; The Gangmasters Licensing (Exclusions) Regulations (Northern Ireland) 2006; The Gangmasters (Appeals) Regulations (Northern Ireland) 2006; and The Gangmasters (Licensing Conditions) Rules 2006.*

- b) any business which is carried on exclusively for the purpose of obtaining employment for ex-members of HM forces or for persons released from prisons or young offenders' centre;
- c) services which are ancillary to the letting upon hire of any aircraft, vessel, vehicle, plant or equipment;
- d) publishing a newspaper or other publication, unless it is published wholly or mainly for the purpose of providing work-finding services;
- e) the display of advertisements on premises that are not otherwise used for work-finding purposes;
- f) the provisions of a programme service (within the meaning of Broadcasting Act 1990); and
- g) gangmasters³⁶ (Department for Employment and Learning, 2008a).

The most recent changes (the 2008 Regulations) followed a period of consultation in 2007 initiated by the Government to address some of the issues affecting most vulnerable workers. In the consultation document of July 2007, the Department of Employment and Learning pointed to existing anecdotal evidence of exploitation of migrant workers, in particular in relation to charges for services they did not want or need (such as transport), breaches of National Minimum Wage and issues with loans provided by agencies abroad.³⁷

The 2008 Regulations added a number of protections for work-seekers. Firstly, in relation to the use of additional services offered by an employment agency or an employment business, the 2008 Regulations ensure that the work-seeker will be able to cancel or withdraw from such services at any time, without any negative consequences.³⁸ The only requirement is that of giving set period of notice to the provider (10 days for accommodation arrangements, 5 working days for all other services). Additionally, the recruitment sector is now required to list in writing the services provided to a work-seeker, together with fees charged.

³⁶ Employment businesses (or that part of the business) covered by the Gangmasters (Licensing) Act 2004. This exclusion applies unless the employment agency or employment business also supplies labour to other sectors, in which case see: section of this paper on the 2004 Act below.

³⁷ Department for Employment and Learning (2007b), at page 7.

³⁸ Department for Employment and Learning (2008b).

The 1981 Order, together with the 2005 and 2008 Regulations, provide for a number of important safeguards:

- a) the 1981 Order prohibits, with only limited exceptions, agencies and employment businesses from charging fees to workers for finding employment (Article 7(1));
- b) the Regulations state that employment agencies and employment businesses cannot require a work-seeker to avail and pay for any additional services provided by them (for instance, CV writing or transport); if availed of, the work seeker has the right to withdraw from additional services at any time without negative consequences;
- c) the Regulations prohibit supply of workers in situations of industrial disputes;
- d) the Regulations prohibit employment agencies and employment businesses from entering into contract with the hirer on behalf of the work seeker;
- e) employment businesses are prevented from withholding or threatening to withhold the whole or any part of the payment due to workers;
- f) employment agencies and businesses are required by the Regulations to agree with the work seekers the terms that will apply, including the type of service provided, the type of work that the agency or business will seek to find and any other terms and conditions specifying: the type of contract entered into; an undertaking to pay the work seeker for any work carried out; the length of notice for termination of contract; rate of pay and intervals at which remuneration will be paid; details of entitlement to paid holidays;
- g) the Regulations require that agencies and employment business obtain certain information from hirer (for example, the hirer's identity; the date of duration of the work; details of the position including hours of work required); they also require agencies and employment businesses to obtain from work seekers the necessary information (including on qualifications and experience, as well as willingness to undertake certain types of employment); **it is important to stress** that in establishing the identity or qualifications of work seekers the recruitment sector have **no right** to withhold any original documents such as passports or any other identity proof;
- h) there is a requirement on employment agencies and employment businesses to take any reasonable steps to ensure that they check conditions of employment

before supplying workers to the hirer (these include health and safety conditions);

- i) the Regulations prohibit employment agencies and employment businesses from disclosure of any information about the work seeker, including to the hirer, without their prior express consent.

The Department for Employment and Learning (DEL) enforces the 1981 Order and the Regulations in Northern Ireland. DEL inspections can enter and inspect the premises and records of all employment agencies and businesses to ensure compliance. Inspections can be carried out routinely or upon receipt of a complaint, and serious or repeated breaches of the legislation are prosecuted. DEL provides an electronic complaint form, available at www.delni.gov.uk/index/er/employment-agency-and-business-regulations-2.htm, as well as brochures translated into a number of foreign languages.

In May 2008, DEL published a consultation document on the strengthening of enforcement procedures in relation to employment practices of the recruitment sector.³⁹ Among the changes proposed are the increase in maximum penalties imposed on employment businesses and employment agencies for breaches of relevant law, as well as strengthening of DEL's prosecution powers. The consultation will close in September 2008.

Gangmasters (Licensing) Act 2004

The Gangmasters (Licensing) Act 2004 (the 2004 Act) was introduced as a direct result of the deaths of Chinese cockle pickers in Morecambe Bay in 2004 and regulates the provision of labour in certain sectors by requiring a licence to be obtained by a business supplying workers in those sectors.

The 2004 Act applies to a number of sectors: agriculture, horticulture, commercial forestry, fish processing, gathering shellfish, or the packaging or processing of any of

³⁹ Department for Employment and Learning (2008) *Employment Agencies and Businesses: Proposed Changes to Investigation Powers and Penalty Regime – A Consultation* (DEL: Belfast). Available at: <http://www.delni.gov.uk/index/consultation-zone/archived-consultations/archived-consultations-2008/emp-age-simp-enf-consult-08.htm>

such products.⁴⁰ For the purposes of the 2004 Act, *agriculture* is defined to include: dairy-farming; the production for the purposes of any trade, business or other undertaking of consumable produce; the use of land as grazing, meadow or pasture land; the use of land as an orchard or an osier land or woodland, and the use of land for market gardens or nursery grounds.

The Gangmasters Licensing Authority (GLA) – the body responsible for enforcement of the 2004 Act through licensing and inspections – defines a *gangmaster* as

[...] *an individual or business that:*

- *supplies labour to agriculture, horticulture, shellfish gathering and food processing and packaging (commonly referred to as labour provider)*
- *uses labour to provide a service in the regulated sector, e.g. harvesting or gathering agricultural produce*
- *uses labour to gather shellfish [...]*⁴¹

The Gangmasters (Licensing) Act outlines obligations of all providers of labour (whether temporary or permanent workers) in the UK, even if the business itself is not UK-based. The Act makes it an offence to operate as a provider without a license, as well as to use an unlicensed gangmaster in the provision of labour.

Any business that applies for a license under the 2004 Act is inspected by the GLA before such license is issued, as well as through compliance inspections after it is issued. All gangmasters are obliged to fulfil a number of licensing standards, in accordance with guidance produced by the GLA,⁴² The key areas of compliance listed by the GLA are as follows:

- a) payment of wages, tax, National Insurance, VAT; improper deductions from wages;

⁴⁰ Some general exclusions apply to licensing and such permission is not needed if workers are supplied for the purpose of packing or processing of any produce in: a catering establishment, a shop or other retail establishment, a wholesale market, a wholesale establishment or a distribution warehouse. (Gangmasters Licensing Authority *Advice for labour providers based in and outside the United Kingdom*, available at: <http://www.gla.gov.uk>).

⁴¹ Gangmasters Licensing Authority *Advice for labour providers based in and outside the United Kingdom* (available at: <http://www.gla.gov.uk>).

⁴² *Ib.id.*, p.7 of Annex A.

- b) debt bondage, harsh treatment or intimidation of workers;
- c) workers' accommodation;
- d) hours worked and compliance with Working Time Regulations;
- e) breaches in health and safety, including provision of appropriate training;
- f) recruitment and contractual arrangements;
- g) sub-contracting;
- h) identity issues and under-age working;
- i) legality and rights of workers.⁴³

Some gangmasters operate as employment businesses or employment agencies, supplying labour not only to the sectors regulated under the 2004 Act, but also to other sectors. In relation to the crossover of responsibility between the GLA and former Department for Trade and Investment (DTI; now the Department for Business, Enterprise and Regulatory Reform, BERR and, in Northern Ireland, the Department for Employment and Learning, DEL) in relation to enforcement of standards, the GLA states:

29. Employment Agencies and employment businesses that come within the scope of the Act, whether supplying temporary or permanent labour, will be tested against the licensing standards.

30. However, given that many may supply labour also to other sectors not covered by the Act, and may have been inspected under the DTI rules, the extent to which the inspection needs to be targeted by the GLA will be decided on a case-by-case basis.⁴⁴

The GLA provides a variety of materials on workers' rights translated into a number of foreign languages, as well as an internet-based complaint/report form, available at: www.gla.gov.uk/report/Default.aspx.

⁴³ *Ib.id.*, p.7.

⁴⁴ *Id.id.*, p.5 of Annex A.

Other relevant legislation.

Apart from direct legal regulation under the above specific legislation, employment businesses and employment agencies are obliged to observe the following legal requirements:

- a) Working Time Regulations (NI) 1998 protecting workers from imposition of excessive working hours;
- b) National Minimum Wage Act 1998 guaranteeing minimum level of hourly pay for various categories of workers;
- c) Race Relations (NI) Order 1997 making unlawful differential treatment on the grounds of colour, race, nationality, ethnic or national origin;
- d) Sex Discrimination (NI) Order 1976 (as amended) making unlawful differential treatment on the grounds of sex or marital status;
- e) The Disability Discrimination Act 1995 making unlawful differential treatment on the grounds of disability and requiring employers, including employment agencies and businesses, to make reasonable adjustments to employment arrangements (including terms and conditions) and the workplace;
- f) The Fair Employment and Treatment (NI) Order 1998 making unlawful differential treatment on the grounds of religious belief or political opinion;
- g) The Employment Equality (Sexual Orientation) Regulations (NI) 2003 making unlawful differential treatment on the grounds of sexual orientation;
- h) The Gender Recognition Act 2004 making unlawful differential treatment of individuals who had, or are in the process of having their gender reassigned and
- i) The Employment Rights (NI) Order 1996 making unlawful differential treatment on the grounds of union membership.⁴⁵

⁴⁵ More detailed information is provided by: Department for Employment and Learning (2008a).

5 The position on the EU Agency Workers Directive (EU AWD or the Directive) and the UK response

5.1 The draft Directive

The situation of agency workers in the EU varies from country to country. In its briefing on the EU AWD, the European Trade Union Confederation (ETUC) states:

The nature of jobs varies between countries, as does the gender profile of workers. In the UK, some 80% of temporary agency work is in the service and public sectors, while three-quarters is in construction and manufacturing industry in France. In most of the EU-15, the majority of workers are male, but in all three Nordic countries there are women, and proportions are roughly equal in the Netherlands and the UK.⁴⁶

The proposed Directive has a long history on the EU level; the first ideas about the regulation of rights of agency workers were brought forward in 1986. The most recent round of negotiations started in 2000, but broke down without agreement with social partners in May 2001. The European Commission adopted a draft document in March 2002, and the discussions were taking place until December 2007, but with no agreement between member-States. The proposals for an EU AWD have been stalled until the beginning of 2008 when the Portuguese Presidency brought it back on the agenda. Following the agreement on equal rights for agency workers in May 2008 between the trade unions and the UK Government,⁴⁷ negotiations of the Directive entered a new phase. On 9 June 2008, a political agreement on the Directive was reached at the European Employment Council meeting and the draft will now progress through EU legislative process.

⁴⁶ European Trade Union Confederation *Temporary agency workers in the European Union* (11 December 2007, available at: <http://www.etuc.org/a/501>).

⁴⁷ European Parliamentary Labour Party *Protection for Agency Workers* (20 May 2008, available at: <http://www.eurolabour.org.uk/printversion/2446.html>); European Centre of Public Employers and Enterprises Providing Public Services (CEEP) *UK agreement on temporary agency workers: paving the way for a European solution?* (22 May 2008, available at: <http://pr.euractiv.com/?q=node/2990>)

The currently debated proposal for the Directive⁴⁸ would apply to workers with a contract of employment or employment relationship with the recruitment sector, who are posted to an end-user to work *temporarily* under the end-user's supervision (Article 1). As such, it will therefore not cover those who are recruited to work for an end-user on a permanent basis ('headhunted').

The draft Directive in Article 3 defines a *worker* as any person who, in the Member State concerned, is protected as a worker under national employment law. The Directive also defines *temporary worker* as someone with a contract of employment or an employment relationship with the recruitment sector, with a view to being posted to the premises of end-user to work temporarily under their supervision (i.e. where the end-user assigns tasks to the person, provides management and supervision, etc).

The draft Directive requires Member States to afford people seeking work through the recruitment sector the same basic working and employment conditions, defined as conditions laid down by legislation, regulations, administrative provisions, collective agreements and/or other general provisions relating to:

- a. the duration of working time, overtime, work breaks, rest periods, night work, paid holidays and public holidays;
- b. pay.

The draft Directive is based on the principle of non-discrimination, expressed in Article 5:

The basic working and employment conditions of temporary workers shall be, for the duration of their posting at a user undertaking, at least those that would apply if they had been directly recruited by that enterprise to occupy the same job.

Article 5 then continues:

⁴⁸ Commission of the European Communities *Amended proposal for a Directive of the European Parliament and the Council on working conditions for temporary workers* (COM (2002) 701 final; 2002/0072 (COD)).

When applying the above paragraph, the rules in force in the user undertaking on:

- i) protection of pregnant women and nursing mothers and protection of children and young people and*
- ii) equal treatment for men and women and any action to combat any discrimination based on sex, race or ethnic origin, religion, beliefs, disabilities, age or sexual orientation*

must be complied with as established by legislation, regulations, administrative provisions, collective agreements and/or any other general provisions.

The draft Directive allows for limited exemptions from the non-discrimination principle, particularly in relation to pay where it states that Member States can provide for such exemptions in the case of workers who are paid by employment businesses in between postings.

The draft Directive guarantees agency workers the right to be informed by the end user of any vacant posts to give them the same opportunity as other workers in the same enterprise to find permanent employment (Article 6). The same regulation states that any clauses in the contract to prevent such move will be null and void. It also guarantees the workers the right to access the amenities or collective services provided by the end user, such as childcare, canteen or transport. The draft Directive makes it clear that agency workers should not be charged any fees for them being recruited by an end user, or for concluding a contract of employment or an employment relationship with a user undertaking.

5.2 The UK response

The lack of agreement over the EU AWD before June 2008 led to the introduction on domestic level of the *Temporary and Agency Workers (Equal Treatment) Bill 2007-08*.⁴⁹ The Bill, introduced to Westminster in February 2008 as a Private Member Bill, would have entitled individual agency workers to the same basic working and

⁴⁹ Private member's Bill, introduced by Andrew Miller MP in February 2008 (See: <http://services.parliament.uk/bills/2007-08/temporaryandagencyworkersequaltreatment.html>).

employment conditions as contracted employees. The Bill followed similar attempt at legislation in the previous session of Parliament – an initiative that did not attract enough support at the time of its introduction.

The Bill proposed that agency workers have the right to be treated equally to a comparable direct worker in respect of their basic working and employment conditions. This equal treatment would have to have been ensured by either the employment agency or employment business, as well as by the end user.

The Bill defined the basic working and employment conditions as those relating to:

- a) the duration of working time, rest periods, night work, paid holidays and public holidays;
- b) pay, including sick pay;
- c) work done by pregnant women and nursing mothers, children and young people; and
- d) action taken to combat discrimination on the grounds of sex, race or ethnic origin, religion or beliefs, disabilities, age or sexual orientation.

One of the most important aspects of the proposed legislation was the provision guaranteeing equal pay for agency workers. It has been reported in the past that agency workers receive lower wages than permanent employees, and that migrant workers are the most vulnerable group within agency workers in general. Reporting on a research into low paid employment in hotels and hospitality sector in London, the TUC observed:

The research revealed that workers in the sector experienced the lowest pay rates of all the four sectors surveyed (the others were cleaning on London Underground, office cleaning and care work). Workers were often paid per room cleaned and some 17% earned below the minimum wage as a result.⁵⁰

In its recent report on the employment of Polish and Lithuanian migrant workers, the TUC stated:

⁵⁰ TUC *Migrant Agency Workers in the UK*, quoted in: Keter, V. (2008).

*Over one fifth of our respondents [...] were working for an agency rather than directly for an employer [...] Agency working is associated with experiencing problems at work. A survey conducted by the TUC found that agency workers tended to be paid less than permanent equivalent workers, rarely had pensions or anything above statutory minima for holiday or sick pay.*⁵¹

In relation to pay differential, Keter (2008) quotes the results of the Labour Force Survey which indicated that between July and September 2007, agency workers received median hourly earnings of £6.67, in comparison to £7.10 for all temporary workers (those on all temporary contracts, including agency workers), and to median hourly earnings of £9.38 for permanent employees.⁵² In a report published in February 2007, the TUC observed:

*The Government has acknowledged the pay gap that exists between agency workers and directly employed workers. Its Regulatory Impact Assessment, produced in response to the proposed European Union [...] Directive, calculates an average pay gap of £110 per week and admits that agency workers earn only around 68% of the earnings of permanent employees.*⁵³

The new law was planned to guarantee agency workers access to direct employment and protection from unfair treatment. According to the proposals contained in the Bill, an end user would have had to inform all agency workers in the company/business of any vacancies for work as a direct worker. If a contract between an agency and the worker or between the agency and the end user prohibited such move, such clause would have been null and void and of no effect insofar as it prevented the worker to become direct worker of the end-user enterprise. The law would have also protected agency workers from negative consequences of bringing proceedings against an employment agency, or business, or the end user in relation to the protection of rights guaranteed by the Bill.

The Bill received its second reading on the 22 February 2008 and was moved to consideration in the Public Bills Committee. While this time the Bill commanded the

⁵¹ Anderson, B., et.al. (2008), p.9.

⁵² Keter, V. (2008), at page 29. Equivalent data for Northern Ireland only is not currently available.

⁵³ TUC (2007), p. 8.

support of the majority of the Labour Party MPs, there was little sign of support from either the Government, or the Conservative Party.⁵⁴

This changed with the agreement reached in May 2008 between the Trade Union Congress (TUC), the Confederation of British Industry (CBI) and the UK Government. It has been reported that the trade unions and the Government agreed that agency workers would be entitled to equal pay and holiday entitlements after 12 weeks in a particular job.⁵⁵ Unlike the proposals contained in the Bill, or the EU draft Directive, the agreement does not cover sick pay, neither does it cover pension payments. The Bill has now been withdrawn until Government proposals for relevant legislation are published.⁵⁶ Depending on the progress of the Directive on the EU level, these are expected to be introduced in the next parliamentary session.⁵⁷

6 Barriers in accessing employment by migrant workers

6.1 Job seeking techniques

GEMS, an employability support organisation based in South Belfast, noticed in 2004 that an increasing number of the work seekers referred to them came from a minority ethnic background.⁵⁸ GEMS had been working with socially and economically deprived communities living near the Laganside / Gasworks area since 1998, and was therefore able to identify specific barriers that the minority ethnic client group faced when trying to access employment. Among these barriers were ‘unrealistic expectations’, or the fact that many clients believed that despite the barriers of language, transferability of skills and of work experience, they would be able to find equivalent employment as that previously held (LOCUS 2008, p.7).

⁵⁴ House of Commons, Hansard, 22 February 2008.

⁵⁵ Andrew Sparrow *Agency workers to get equal rights*, The Guardian, Tuesday, May 20, 2008; Catherine Boyle *Agency workers to get equal rights*, TimesOnline, Tuesday, May 20, 2008; Kate Hughes and Ben Russell *Agency workers to get more rights*, The Independent, Wednesday, May 21, 2008; Patrick Wintour *Agency and temporary workers win rights deal*, The Guardian, Wednesday, May 21, 2008.

⁵⁶ See: General Committee Debates, House of Commons, Public Bill Committee, Wednesday, 21 May 2008 (<http://www.publications.parliament.uk/pa/cm200708/cmpublic/temp/080521/am/80521s01.htm>).

⁵⁷ Written Ministerial Statement by Pat McFadden MP, Minister of State for Employment Relations and Postal Services, 22 May 2008, *Temporary Agency Workers – Joint Declaration by the Government, the CBI and the TUC*. (Available at: <http://www.berr.gov.uk/files/file47072.pdf>).

⁵⁸ The GEMS website can be accessed at: <http://www.belfastgems.org/>

The Minority Ethnic Support Project (MEESP) was set up by GEMS in 2004, to address these issues. In relation to job seeking techniques, MEESP put in place four workshops:

- a) Job search: *the Project co-ordinator discusses with clients the nature of work that they would like and assesses their suitability in terms of both their qualifications and work experience and their proficiency of the English language. She will then show clients how to search for jobs, provide them with access to a computer in the GEMS office with internet access where they can complete online job search activities as well as look herself for jobs that would be suitable*
- b) Help with application forms: *once the client has received an application form the Project co-ordinator will meet with them to discuss how the application should be completed and will review completed forms, making recommendations on ways that the application could be improved*
- c) CV Preparation: *consultation with the Project co-ordinator and with the beneficiaries of the GEMS service has identified that without exception all clients have needed CV support, either to produce a CV as they do not have one or to improve and amend their CV in line with Northern Ireland recruitment standards.*
- d) Interview skills: *in advance of a job interview, the Project co-ordinator will meet with the client to discuss interview format and techniques and take the client through a practice interview.*

6.2 Language

Migrant workers' knowledge of the English language has proven crucial at all levels of the employment process. As GEMS observed through its minority ethnic employment support project,

while the level of English can vary widely between clients, many have a low standard of English. This barrier impacts upon job search, interviews, willingness of employers to hire and exclusion if they gain employment. (LOCUS, 2008, p.6-7).

Significant level of knowledge of English language has also proved to be an essential prerequisite to accessing employment. O'Donaghue, Director of the Migrant Rights Centre Ireland, denounced abuses based on migrant workers' poor English:

[...] the recruitment process is absolutely critical. The level of misinformation that gets communicated to people about their rights and entitlements before they come here and when they get here is something that holds a person in a very exploitative job. We've also seen the deliberate recruitment of people who are particularly vulnerable. We've seen people recruited because they have no English. It's a very effective way of keeping people from being able to access their rights." (O'Donaghue 2006, p.20).

The language barrier can prevent migrant workers from getting a job, but also impacts on a whole range of every day life activities linked to employment, like filling administrative documents (ie., bank forms).⁵⁹ Furthermore, Potter (nd) found that once the language barrier was overcome, accents seemed to be a problem. Referring to an experience in Northern Ireland, one interviewee stated:

The accent is a barrier - it is difficult to understand. This is a communication barrier. It is not good to say 'excuse me' all the time. There are idioms I don't understand (Potter, nd, p.26).

Another interviewee reported that their own accent was a problem to accessing employment:

People have a preconceived idea that I will not be understood. (Potter, nd, p.26).

Some interviewees who managed to access employment, found that reluctance to engage with them came from outside of their work place:

⁵⁹ See for example, Potter, nd, p.26.

People phone up where I work and ask: Is there anyone else there I can speak to? There is an accent barrier. How could I start a business? (Potter, nd, p.26).

I was offered supply teaching, but a friend said that the children would not understand me. How will they learn to understand others if they never get the chance to meet other kinds of people? (Potter, nd, p.26).

Attempts to address the language barrier have been made notably by organisations working with migrant workers, who have translated into an increasing number of languages leaflets detailing the rights of migrant workers, and obligations of the employment agencies and businesses, as well as employers. Animate, Law Centre (NI) and Northern Ireland Human Rights Commission produced a handbook entitled ‘Your Rights in Northern Ireland’, which was translated into Portuguese, Tetum, Russian, Chinese, Polish, Latvian, Lithuanian and Slovak (Animate et al., 2008). Information Briefing for A2 workers was translated in Romanian (Law Centre, 2007)⁶⁰. The National Consultative Committee on Racism and Interculturalism (NCCRI) has produced bilingual handbooks for Polish migrant workers in Ireland, and Chinese students in Ireland (NCCRI, 2006, a, b).

Although there is no legal obligation on employment agencies and employment businesses to provide translators or to produce leaflets in different languages, good practice would suggest that the sector ensures migrant workers have access to the leaflets mentioned above, which can be obtained free of charge.

Some companies provide language courses for migrant workers, as well as language classes for English-speaking personnel. In Belfast, one of the employment agencies surveyed by Byrne and Jarman (2007, p.31) reported that companies were starting to enquire about English as a Second Language (ESOL) classes for migrant workers they employed. Moy Park provides English classes for migrant workers on site, as well as foreign language classes for managers (Business in the Community, nd, a, p.2). The results of skills monitoring survey 2002-2005 indicate that there are very few

⁶⁰ The leaflet in Romanian is available from:
<http://www.lawcentreni.org/Publications/Migrant%20Workers/A2%20Romanian.pdf>

opportunities for training in foreign languages in Northern Ireland. In fact, training in foreign languages constitutes only 1% of the training offered by employers, job specific training being the most important. Furthermore, training in foreign languages is one of the only two types of training that have not increased in uptake between 2002 and 2005, training in the health sector being the other.

6.3 Transferability of skills/qualifications/work experience

The problem of transferability is twofold. Firstly, the skills, qualifications and work experience are not recognised by local employers in the same way or at the same level as in migrant worker's country of origin (LOCUS, 2008, p.6; Holder et al., 2006). Holder and Lanao (2005) report:

The experience of many is that processes, particularly in cases where professional bodies set their own criteria, are overly bureaucratic and difficult to complete leading often to persons having to retrain and re sit tests for skills that they already have to their detriment, and that of their prospective employer. There have also been incidents of condescending attitudes to non local qualifications, this includes an example of a person who had studied in respected third level institution in Brazil being told they could not accept qualifications from a 'jungle university'. (Holder and Lanao 2005, pp.24-25)

This practice contradicts Race Relations and European legislation, which stipulate that equivalent qualifications should be recognised. Furthermore, the local exam board (CCEA) provides an equivalence database. (Holder and Lanao 2005, pp.24-25)

Secondly, when qualifications are accepted by employers, translations into English standards has proven time consuming:

Agencies stated that although they accepted qualifications from different countries, obtaining confirmation of these could be time consuming and problematic, especially in terms of getting them translated into English. (Jarman and Byrne 2007 pp. 30-31).

6.4 Changes in the labour market

The jobs filled by migrant workers are, as those filled by resident populations, subject to fluctuations in the labour market and changes to its structure. The Migrant Rights Centre for Ireland (MRCI) put forward the idea that ongoing changes in the Irish labour market follow a Western trend of labour markets reshaping:

Shift to short-term contracts, reliance on agency staff, increase in low paid service type jobs, informal working practices alongside the growing in high skilled, high paid employment opportunities in IT and so on. What is also clear is that indigenous Irish people are increasingly less inclined to work in unattractive jobs, and that migrant workers will continue to be recruited into the future (MRCI 2008 p.13).

Similar changes can be observed in Northern Ireland. Tayra McKee, from the Transport and General Workers Union (T&G), explained during a conference organised by Animate, South Tyrone Empowerment Programme (STEP) and the National Consultative Committee on Racism and Interculturalism (NICCRI) in May 2006, that the reshaping of the labour market and not the arrival of migrant workers impacted negatively on local populations:

Some employers are slowly replacing directly employed workforces for subcontracted labour. It's a mistake to see this as a 'migrant worker issue'. These practices have been around for a long time well before current inward migration. The real issue is about practices such as sub-contracting that undermine permanent workforce terms and conditions needing to be challenged to protect all workers –local and migrant (McKee 2006, p.36).

McKee gave the example of Dungannon Meats, who announced 46 redundancies in 2006. The reason for these redundancies was the new strategy of the factory, which was to replace the workforce with employment agency workers (McKee 2006, p.36).

However, as emphasised in the report, migrant workers are the first to be affected by changes in the system:

[...] it may well be that the majority of subcontracted workers who will replace the full time employees might be migrants because they're the most disadvantaged and vulnerable. But [...] the majority of the permanent workforce that was to be sacked is also migrants (McKee 2006, p.36).

Employment agencies based in Belfast and surveyed in 2007 confirmed that short-term contracts constitute the majority of working arrangements:

Whilst a significant number of agencies stated that many of the new migrants registered with them had high standards of education, short term or temporary contracts prevailed and long term contracts in skilled employment were only a minority (Jarman and Byrne 2007, p.30).

6.5 Forced labour

The barriers to accessing employment mentioned above can lead to exploitation of migrant workers. The International Labour Organisation (ILO) Convention No. 29, defines 'forced or compulsory labour' as:

[...] all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.⁶¹

Guidelines from the ILO outlined six 'coercive' elements that can be indicators of situations of forced labour:

- a. Physical or sexual violence and/or threats;
- b. Restriction of movement of the worker;
- c. Debt bondage/bonded labour;
- d. Withholding of wages or refusal to pay wages;
- e. Retention of passports and identity documents;

⁶¹ Available from: <http://www.unhchr.ch/html/menu3/b/31.htm>

f. Threat of denunciation to authorities.

In a recent case in the Republic of Ireland, a worker who was legally entitled to work in the country was considered to be working under exploitative conditions:

A Dublin restaurant has been ordered by a Rights Commissioner to pay compensation totalising €116,000 to a former employee, for gross breaches in employment law [...] The man, a migrant worker from Pakistan [...] worked extreme hours with virtually no days off and was paid €150 per week, of which €100 was deducted by the employer for his accommodation. He claimed that the employer held his passport and threatened him with revoking his work permit, loss of his accommodation and deportation if he complained. When he eventually took the risk of making a complaint the employer dismissed him (MRCI, 2008).

The MCRI, who were representing the victim, further commented on the need for clarification:

MRCI advocates that it is not sufficient to include all the elements of trafficking for labour exploitation into the national criminal legislation, without also including an appropriate definition of this complex phenomenon, to ensure that human trafficking for labour exploitation can be criminalised at the national level [...] Both 'forced labour' and 'coercion' need further clarification (MRCI, 2008).

7 Equality and the recruitment sector

7.1 Attitudes toward migrant workers

Linked to the barriers discussed above are issues of negative attitudes, racism and discrimination that have been observed in relation to the treatment of migrant workers in the area of employment. O'Donaghue commented on the relationship between racism, exploitation and discrimination:

Racism and discrimination is definitely a feature and is becoming hard to define because people are saying that there is a difference –saying it isn't racism, that it's exploitation. What we are seeing in the MRCI is that employers believe that not only do they own the labour but they own the person (O'Donaghue 2006, p.21).

Racism is defined at Article 2 (1) and (2) of the UNESCO Declaration on Race and Racial Prejudice, 1978, as:

Any theory which involves the claim that racial or ethnic groups are inherently superior or inferior, thus implying that some would be entitled to dominate or eliminate others, presumed to be inferior, or which base value judgements on racial differentiation, has no scientific foundation and is contrary to be the moral and ethical principle of humanity. Racism includes racist ideologies, prejudiced attitudes, discriminatory behaviour, structural arrangements and institutionalised practices resulting in racial inequality as well as the fallacious notion that discriminatory relations between groups are morally and scientifically justifiable; it is reflected in discriminatory provisions in legislation or regulations and discriminatory practices as well as in anti-social beliefs and acts; it hinders the development of its victims, perverts those who practice it, divides nations internally, impeded international co-operation and give rise to political tensions between peoples; it is contrary to the fundamental principles of international law and, consequently, seriously disturbs international peace and security.

Recent findings from the Northern Ireland Omnibus Survey on attitudes towards migrant workers showed that only 12% of respondents thought that Northern Ireland people were not prejudiced. The majority of respondents (60%) thought that Northern Ireland people were a little prejudiced and 24% of the respondents thought that people were very prejudiced. In contrast, when questioned about their own feelings towards migrant workers, only 3% of the interviewees reported that they were very prejudiced, whilst 28% said they were a little prejudiced. The vast majority - 68% - said they were not prejudiced at all towards migrant workers (NISRA, Northern Ireland Omnibus Survey, 2007).

In 2003, research by the Institute of Conflict Research (Bell et al 2004) identified problems with racist harassment and discrimination of migrant workers in the workplace and elsewhere, and highlighted examples of physical and verbal attacks in ‘day-to-day’ life, as well as direct and indirect discrimination by employers or co-workers.

Research that followed identified some mechanisms through which this attitude towards migrant workers becomes ‘legitimised’:

On another part of the spectrum to actual physical attacks migrant workers seem subject to widespread clichéd myths and rumours at level of social discourse. Such myths are often repeated without conscious malicious intention. [...] the myths are in fact the base of racism and create demonisation and hostility that can lead to the climate of hostility where people are demonised as being less human than others [...] (Animate 2004).

A number of organisations and authors in recent years raised the issue of differential treatment of and racism towards migrant workers as one requiring urgent attention (Betts and Hamilton 2006; Holder 2007; McVeigh 2006; Watt and McGaughey 2006). In Northern Ireland, behaviours fuelled by prejudice include denial of access to employment rights, difficulties with accessing health service provision, and exploitation on the housing market (Martynowicz and Jarman, forthcoming).

Direct discrimination

Discrimination against migrant or minority ethnic background work seekers can be practiced in a direct way and in an indirect way. In a direct way, some employment agencies and businesses, and some employers have been reported to:

- a) Retain passports during the period of employment;
- b) Deduct housing rent from wages, and provide very poor standards of housing (Bell et al. 2004 p.77; Concordia 2006 p.7; House of Lords, 2008). In relation to housing,

Concordia (nd) pointed to lack of enforcement of the regulations governing Houses of Multiple Occupation (HMOs); a lack of any right to emergency re-housing by certain categories of migrant workers, where they are in tied accommodation, and either lose or leave their job; as well as a lack of any right to Housing Benefit for certain categories of migrant workers (Concordia, nd, p.7).

c) Retain salary or not allow fair wages (which should be estimated according to the skills and experience of the worker, in relation to the salary received by a ‘non-migrant’ or local worker, but also in comparison to permanent employees’ salary) (Bell et al., 2004; ICTU 2008, p.14; McVeigh 2006).

d) Impose long work hour shifts and bad working conditions, and deny holiday entitlement (Animate 2005).

e) Alter the terms and conditions of the contract on arrival in Northern Ireland. There are many examples of such situations, especially in relation to housing offered through employers or the employment sector, working conditions and pay:

Instead of a house with a room for himself, he was given a flooded house with no heating (the local Council had to intervene on that matter). Nor, as promised, was he paid the large amount of money he was due for the flight home and for hours that he had worked (Holder and Lanao 2005, pp.30).

When I started working I did it through an agency. I worked for this agency for five weeks. To start with I had to sign a contract which I was very unhappy about as it contained a very strange clause relating to something known as a flexible finish this means that the finishing time for each worker is determined according to the needs and wishes of the employer. I had to work on Sundays until 11pm or midnight, but I didn’t receive any overtime. I was only paid these hours at the normal rate (Holder and Lanao, 2005, pp.34).

f) Apply discriminatory disciplinary measures. It should be noted that this latter practice concerns employers, not the employment agencies or employment businesses. Holder and Lanao (2005) reported the case of factory workers who, with

other non-migrant workers, clocked-in late at work. Whilst local workers faced no disciplinary measures, migrant workers were issued with a written warning, which Holder and Lanao explained,

is more serious (than a verbal warning) and means that the employee would be suspended should there be a subsequent warning, this leading to dismissal should a third infraction be committed. (Holder and Lanao 2005, p. 24)

Another interviewee had a similar experience:

Despite the fact that both of us made the mistake, I was the only one to be sacked. I don't know what criteria the manager used to dismiss me but not my colleague. I don't wish my colleague any harm but I believe that I was treated in a discriminatory way. The situation only demonstrates how some employers do not care about us as migrant workers; they do not care what will happen to our lives when they have people queuing up to do my job. This all happened because I was a person from abroad willing to do a job that many locals would not do for the money on offer (Holder and Lanao 2005, p. 27).

Disciplinary sanctions have a direct impact on work seekers' chances of finding employment. The case of two Portuguese men working in a Cookstown-based building company illustrated that idea very clearly:

Antonio's colleague was dismissed from his work. The reason given for this was that he went to the toilet too many times during the working day. Antonio was then also dismissed. The reason given by the building firm for his dismissal was that he would be the only Portuguese man left on the job... the building firm informed the local Social Security Office that Antonio had left his employment voluntarily. This removed Antonio's entitlement to Job Seeker's Allowance (Holder and Lanao 2005, p. 33).

Indirect discrimination

Migrant workers face indirect discrimination, particularly in relation to recruitment processes. In that respect, the Equality Commission for Northern Ireland suggests that employers should:

- a) Encourage applications from black and minority ethnic (BME) (including Traveller) work seekers, through clearly indicating in all advertisements that they are welcome; advertising in places such as community media, job fairs, schools and other training and educational institutions, and in relevant housing areas; translating job advertisements and application forms into relevant languages;
- b) Improve employability of BME (including Traveller) applicants through providing training, scholarships, schools funding, and mentoring systems;
- c) Provide help with selection procedures such as training for interviews; cultural awareness; recognition of qualifications; inclusion of representatives of ethnic minorities on interview boards. (Equality Commission for Northern Ireland, 2005, pp.22-24).

The European Commission also gives several examples of good practices in this area:

- a) stimulating applications from immigrants, who either perceive some employers as ‘unapproachable’, or do not have sufficient knowledge of the employment market;
- b) identifying immigrant role models, like the EQUAL project ‘Migrant integrate Migrants’ (run throughout 2002-2004 in Ostwestfalen-Lippe, Germany) which built up a network of female immigrant mentors; or like the ‘mission locales’ in France;
- c) public employment services giving better guidance, like the Employment Services for Immigrants of the Ministry of Labour and Social Policy in Italy, which placed computer information points in public spaces such as railway stations;
- d) making the recruitment process anonymous up to the short-listing stage, to counter direct and indirect discrimination;
- e) reforming supposedly ‘objective’ test systems, like those used by Dutch companies, that employ abstract and complex language in the instructions, or

use local expressions and proverbs that immigrants cannot understand. (European Commission, 2007, p.60-62).

7.2 Additional Factors

Gender

Because of social structures and gender based stereotyping, some issues linked to employment practices and access to the labour market impact disproportionately on women.

The need for women to provide childcare or care for older family members is most often regarded as an impediment to accessing employment, and is linked to a combination of other factors:

The lack of affordable and accessible childcare has a major impact [...] this issue combined with the greater likelihood of fewer or no family support networks, manifests itself in a number of ways. Firstly in complete exclusion from work due to no prospect of childcare, secondly in the extra stress on parents through having to make less than satisfactory arrangements for childcare and thirdly in the lack of support options to cope with unexpected care needs (such as child being sick). (Holder 2007, p.48)

Similarly, conducting a survey of minority ethnic women entrepreneurs in Northern Ireland, Potter (nd) found that:

The lack of family support to provide care is an inhibitor to participation for a number of reasons, particularly traditions of not accessing childcare outside the family or community, fears of racism towards children being cared for or a lack of existing childcare facilities to cater for particular cultural needs of the children. (Potter nd, p.39).

Gender stereotyping plays a significant role:

[...] the flexibility in caring for children is assumed to be a women's role and a business run by a woman is regarded as secondary to employment or business conducted by a man. (Potter, nd, p.35).

Sex discrimination, or “*discriminatory employment practices whereby individuals are treated less favourably due to their gender, ethnicity or a combination of both*” (Holder 2007, p.48), are at the root of infringement on women's access to the labour market. Potter notes that:

Attitudes towards women affect their status in employment and business. Evidence from the research suggests that women are often paid less, are expected to charge lower fees as businesswomen, are often expected to work on a voluntary basis more than a man and are often assumed to have less commitment to business because they may take time out to have children, leading to the imposing guilt on women if they are engaged in partnership in business. In addition, there is evidence that women often have to prove themselves more than a man, as they are regarded as less competent or less reliable.” (Potter, nd, p.35).

One interviewee in Potter's research stated:

Women have enough trouble getting on top, but they are not acknowledged as doing so by themselves. It is difficult enough being a woman, but being from a minority ethnic background makes it even more so.” (Potter, nd, p.38).

In that respect, Potter remarks that as more women from a minority ethnic background become involved in business, changes in attitudes towards them will follow:

The fact of more women from minority ethnic communities becoming involved in business (i.e. gaining status) will play a significant part in the changing of attitudes as the visibility of difference and recognition of skills and expertise increase. (Potter, nd, p. 39)

Another key concern is the lack of involvement of women with trade unions:

[...] a number of sectors of the economy where migrant worker women are concentrated are those which are least likely to be unionised and have protections over terms and conditions. (Holder 2007, p.48)

Lack of Information and Fear

Although the lack of information is widely criticised as inhibiting migrant workers from claiming their rights, fear is an important factor determining migrant workers' passive attitude to discrimination:

Migrant workers can be more vulnerable than other sorts of workers, and therefore can be taken advantage of by bad employers. Increased vulnerability comes from often having few other options other than the current employment, lack of knowledge of or paths to access rights and fear of repercussions. For other non-EU migrant workers the lack of a benefits safety net and the right to change employer can also lead people to be trapped in exploitative circumstances (Holder and Lanao 2005, p.28).

If I had a problem with the system, complaining about it wouldn't do me any favours as previous examples had shown that making a complaint was tantamount to asking for dismissal (Holder and Lanao 2005, p.34).

7.3 Issues specific to the recruitment sector

In Northern Ireland, very little research focuses specifically on migrant workers and the employment agencies and businesses. The relationship between migrant workers and the industry came into public debate with the publication of a report commissioned by the Irish Congress of Trade Unions (ICTU) (McVeigh, 2006)⁶². The report highlighted two key problems that migrant workers had faced when dealing with employment agencies and businesses.

⁶² See for example, BBC News, 2006 (December, 18). 'NI migrant workers 'exploited''. Available from: http://news.bbc.co.uk/1/hi/northern_ireland/6189749.stm

Firstly, expectations of workers were not met. Those expectations were grounded on promises (mostly regarding rates of pay and working conditions) made to them before they travelled to Northern Ireland to take on a job, and impacted on their decision to leave. One interviewee was reported as saying:

Before we came here we got a contract from the company but then they changed the contract. (McVeigh 2006, p.46).

Secondly, the report highlighted the fact that employment agencies charged migrant workers inappropriately, for services like medical check-ups or administrative work.⁶³ In both cases, the fear of losing their job prevented migrant workers from making a complaint:

We went on like this for a year because we were afraid ... I was really afraid because I didn't know what would happen. (McVeigh 2006, p.46)

[...] if you are working for an agency they can fire you, they can sack you anytime because you don't have a contract with the company you are working for, you have a simple contract with the recruitment agency. So the agency can say the company doesn't need you so we don't need you'. (McVeigh 2006, p.47)

They sent me a letter threatening all the things they would do - I would lose my job. My friends went and paid because they didn't want to lose their jobs. (McVeigh 2006, p.47)

Although the report emphasised that forming a union of workers could be one way to influence agencies and employers' practices, it concluded that:

⁶³ Summarising the findings of research he conducted in Staffordshire in 2006, French similarly found that “employers, notably agencies, have used deductions from salary for a variety of reasons, notably, accommodation, to significantly reduce the pay of migrant workers” (French 2008, p.459). See also, for the UK: Low Pay Commission (2008), pp. 91-97.

[...] however good or bad a particular agency is, the use of agency labour places workers in a more vulnerable situation than when they are directly employed by a particular employer. (McVeigh 2006, p.47).

In 2006, a survey was commissioned by the Belfast City Council to look at the situation migrant workers in Belfast (Jarman and Byrne 2007). The research included a qualitative survey of 33 Belfast-based employment agencies.

The research found that until recently only a small part of the total population of migrant workers was seeking employment through agencies, in the past two to three years an increasing number had been enquiring about vacancies through them. Furthermore, whilst the traditional way of operating is for agencies and businesses to source labour abroad, and bring the workers to Northern Ireland,⁶⁴ in Belfast, some of the employment agencies surveyed in 2007 pointed out that more and more people were coming directly to them. Employment agencies now seem to be a necessary gateway to employment for individuals who arrive in Northern Ireland with no established social network:

A growing number of migrants also appear to be arriving in Belfast with no pre-existing social networks, but often they are self-dependent and rely on recruitment agencies and advertisements for employment. (Jarman and Byrne 2007 p.34).

The role of the recruitment sector has also expanded to providing workers in all fields of employment, whilst for many years it had been supplying mainly domestic workers and entertainers. The majority of migrant workers registered in the Belfast-based employment agencies and businesses were working in the healthcare system, the construction industry, the hospitality industry, or as manual or casual labour. According to Jarman and Byrne (2007), it was the ‘type’ of employment agency or business that determined their involvement with migrant workers, with agencies offering consultancy and executive postings having no registration of migrant workers on their books:

⁶⁴ See for example, Business in the Community (nd).

It became apparent that the type of recruitment agency affected whether or not they had any registered migrant workers. Consultancy and executive recruitment agencies had little or no engagement with migrant workers, whereas those agencies that offered a range of different forms of employment had more migrant workers registered. (Jarman and Byrne 2007, p. 30).

Employment agencies that had no involvement with migrant workers argued this was due to migrant workers themselves feeling they did not have the skills or knowledge to gain employment from them:

The consultancy and executive agencies felt that migrant workers themselves perceived they did not have the skills or knowledge to gain employment in these particular sectors and did not approach them for work. (Jarman and Byrne 2007, p. 30)

The report concluded that:

[...] the recruitment agencies are supplying a specific employment niche and are drawing on a pool of migrants who are prepared to take up a variety of forms of work on a casual or short term basis. In contrast, migrants with specific skills, or who seek employment commensurate with their skills, appear to find employment through other means.” (Jarman and Byrne, 2007, p. 30).

Furthermore, Jarman and Byrne (2007) found that in Belfast, agencies were becoming more selective, and that selection practices had changed. The selection was now based on the level of knowledge of English, academic standards and job suitability, and face-to-face interviews and pre-registration forms had replaced telephone interviews.

7.4 Comparative data

In 2007, ICTU conducted a survey of job seekers’ perceptions of recruitment practices of employment agencies in the Republic of Ireland. The results show that over 45% of the 280 people surveyed believed that *employers would use employment*

agencies to filter out prospective employees on a discriminatory basis (ICTU 2008, p.11).

Further results show that 86% of the people surveyed believed that discrimination was operated on the basis of nationality, and 63% believed that skin colour would influence the decision to select someone for an interview.

Based on this survey, ICTU has been calling for the adoption of a Statutory Code of Practice for employment agencies operating in the Republic of Ireland, to stop unfair practices from taking place. The major issues identified as needing codification were:

- *agencies charging workers for any of the costs associated with their recruitment work or work placement. Many agency work contract contain clauses allowing the agency to make deductions from the workers' wage for travel, registration fees, bogus training courses;*
- *agencies stopping the agency worker taking up a permanent job with the employer, again many contracts contain provisions that are detrimental to workers working elsewhere, such as penalty or 'transfer fees';*
- *prohibit employment agencies withholding payment from workers* (ICTU 2008, p. 14).

A number of issues have been raised in the available literature of the topic in relation to inequalities of treatment of agency workers in comparison to permanent employees in the UK. In a report published in December 2007, TUC warned:

*Migrant agency workers can be particularly vulnerable, as a limited knowledge of UK employment rights and advice agencies is often compounded by limited understanding of the English language. This makes it hard for these workers to establish what their rights are and to find support and advice to enforce their rights.*⁶⁵

The report went on to state:

⁶⁵ TUC *Migrant Agency Workers in the UK*, quoted in: Keter, V. (2008).

[...] there is much confusion and misunderstanding around the UK's system of tax, National Insurance, benefits and pensions entitlement and many of the Eastern European workers who contacted the TUC complained of employer abuses, particularly at the hands of agencies. Some of the abuses included:

- *Charging individuals to find them work (a practice that is illegal in the UK)*
- *Docking money from workers wages when paying them by cheque*
- *Paying lower hourly rates than initially promised*
- *Non payment for hours worked*
- *Excessive working time with inadequate breaks between shifts, overtime paid only at the standard rate*
- *Poor and substandard accommodation provided.*⁶⁶

The TUC also points to examples of unequal treatment highlighted by research undertaken by various academic and other institutions. Among these it highlights examples of pay well below the National Minimum Wage in the hospitality sector; discrepancies in pay between the 'in-house' staff and agency workers; the fact that migrant workers are more likely to work in sectors or occupations where there are more acute health and safety concerns (such as the construction sector, or food production) without proper training or even appropriate skills.

7.5 Trade Unions

While concluding that being placed in employment by an agency made workers more vulnerable than when they were employed directly by an employer, McVeigh pointed out that one way of controlling employment agencies' practices was for workers to organise and form a union. This proved successful in influencing companies and factories to choose one employment agency to be their main supplier of labour (McVeigh 2006, p.47).

However, it was found that some agencies and employers prohibited migrant workers from joining a union, and that unions' work was not as efficient in protecting migrant workers as it was with other workers:

⁶⁶ Ib.id.

Alvaro was not allowed to be a member of a union by the agency he worked for, so he only joined once he had left the agency [...] he wanted to make a complaint against the agency to recoup his money, and was told by the union representative that there was a good chance of them reaching a settlement quickly [...] nearly three years have passed and Alvaro hasn't received any satisfactory outcome. He feels frustrated and thinks the union has shown no desire to resolve the matter, nor has he even been provided a satisfactory explanation. According to Alvaro, the employment agency must be putting pressure on the union not to take any further action. (Holder and Lanao 2005, p. 30).

Some progress has, however, been made in this area. Tayra McKee, member of the Transport and General Workers Union (T&G) stated in May 2006 that over the year, the T&G recruited a thousand new members, 40% of them being migrant workers. Two hundred of the new recruits were migrant workers from employment agencies, and over two hundred more were directly employed (McKee 2006, p.35).

7.6 Good practice

In recent years, many organisations working with migrants published leaflets outlining migrants' rights and providing useful contacts to help address the issues that migrant workers face when dealing with the employment agencies and businesses. Although sporadic, a response has also come from the sector itself.

The Business in the Community, a 'movement of over 800 of the UK's top companies'⁶⁷, developed a *Voluntary Code of Good Practice*, which sets out workers' rights and employers' responsibilities and is available for signature on the website. In addition, members of Business in the Community and of Opportunity Now have access to an online guide for Employers on 'Employing Migrant/Overseas Workers'.⁶⁸

⁶⁷ See the BITC website:
http://www.bitc.org.uk/what_we_do/where_we_work/northern_ireland/getting_involved/in_the_workplace/diversity/migrant_workers.html

⁶⁸ The Guide is available from: <http://guide2migrantworkers.org.uk/>

Tim Lewis Recruitment was one of the first employment agencies in Northern Ireland to sign up to the Code of Practice, and to adapt its work practice to the new requirements (Jarman and Byrne 2007, p.30). Northbrook Technology, which won the People Development award from Belfast Business Award in 2007, has also adapted to the needs of migrant workers:

When we recruit workers from Poland, for example, we know the cost of coming to Northern Ireland can be prohibitive for them, as the average wage in that country is much lower than ours [...] so we pay their flights and provide them with accommodation for the first six months, the first month of which is free. We'll also help them to arrange bank accounts, to obtain their National Insurance number and to register under the Worker Registration Scheme. (Jim Norris, Senior Human Resource Manager for Northbrook, as quoted in Concordia, nd, p.13).

In 2006, FPM Accountants of Belfast won the corporate award from the Small Voice Business award scheme. This scheme was set up by the CBI Northern Ireland and Connect, who publish *Glosik*, the first Polish magazine in Northern Ireland to highlight good practice of businesses and service providers who encouraged migrant workers' integration (Jarman and Byrne 2007, p.30).

Another way of working towards 'social integration of overseas workers', as reported by Business in the Community, is for companies to build links with community centres, as it was successfully done by the Foyle Group and by Teletech:

Teletech's management team is now 20% migrant worker based and the company has built links with the Indian Centre and Polish Community Centre to help ensure safe integration (Business in the Community, nd, p.2).

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