

MICROTRADE INVESTMENT PROPERTY EMPLOYMENT

ASSISTING MICROTRADE PREPARATION
INVESTMENT IN PROPERTY CHECKLIST
EMPLOYMENT LAW
CAPITAL GAINS TAX ON UK PROPERTY
IRISH TAX RESIDENTS BENEFIT



PROPERTY INVESTMENT CHECKLIST

Fergal McManus Partner in the Morgan McManus, Clones Office advises investors on matters which they should take into consideration when buying an investment property. It is not possible to list any specific, universally applicable rules to guide the Property Investor.

There are far too many different types of property and the rules investors follow should vary widely according to the type of property involved. None the less there are some general rules and pointers which provide a valuable checklist of things to do/and not to do for anyone who is thinking of making an investment in any kind of property.

INVEST MENT



1. Make a thorough study of the property market and its prospects in your area before you buy. Naturally, you should seek to buy when prices are low and the indications are that values will rise. Always take into consideration such factors as the rate of population increase and the general prospects of business in the area. There is no quicker way to lose money in property than by investing it in property located in declining areas.
2. Know or learn as much as possible about every aspect of particular use to which you intend putting the property you wish to buy. In other words, don't buy a residential investment unless you are certain that it's suited to the requirements of your prospective tenants and that it is well built. Don't plan on having a residential property built unless you know something about building/or at the very least until you have found an architect and a Building contractor in whom you have complete confidence. Don't consider buying, say, a Hotel unless you know enough about Hotel Management to have a fair chance of operating it profitably – or again at the very least, until you know enough to efficiently supervise anyone you hire to run the hotel for you.
3. Deal only through reputable Auctioneers and Estate Agents. Beware of the fast talking and high pressure sales men who promise everything/verbally. He is probably a fly-by-night who doesn't much care what he sells you or anyone else.
4. If you buy a property with a view to improving it or building on it, be certain that you have adequate capital or are able to obtain adequate financing to complete the project.
5. If at all possible, always obtain at least one impartial third party appraisal of any property before you buy it.
6. If buying a building of any kind, be it a Donegal cottage, a thousand room hotel or a factory – have it inspected carefully by qualified and disinterested Architects or Builders before entering into any building commitments. If buying an existing income property such as a multi-unit pre-63 house, have the owners books checked by a disinterested Accountant. If the owner of the building or the income property balks at such inspections, beware.
7. Whether you are in the market for a mobile home site or a sky-scraper, shop around widely and cautiously. Unless you happen to run across an irresistible bargain you must snap up immediately, take your time about making up your mind. Don't allow yourself to be stampeded into paying any deposits or binders until you are absolutely certain you found the property you want. Remember that the purchase of property usually involves heavy capital investment; don't take unnecessary chances with your money.
8. Make certain you have the best available legal advice before signing any agreements, contracts or other documents. This is not to suggest that there is anything dishonest or misleading in the majority of such documents. On the other hand, few lay men are able to follow the maize of legal terminology which are used in them. To avoid misunderstandings, it is always best to have a Solicitor translate the fine print clauses into coherent every day English. Even seasoned property investors sometimes fail to have this done – and the ensuing squabbles between buyers and sellers usually wind up in Court rooms.
9. Once you have bought your property, treat it as a long term investment, not as a short terms speculation. It is a widely held view that 99 times out of 100 you will make much greater profits that way. History has shown that if you wish to make money in property, always think in terms of investing and never in terms of speculating.

These 9 pointers do not, by any means, give an all inclusive guide to successful property investment. Nor does the individual who follows them – however faithfully – have any guarantee that he will make a profit when he invests his money in property. A person who observes these rules goes a long way to eliminating a significant proportion of the most common dangers inherent in any transaction involving property. That in itself should be sufficient to give him a headstart on the road to successful property investment.

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GAINS

CAPITAL GAINS TAX ON UK PROPERTY – IRISH TAX RESIDENTS BENEFIT

An increasing number of Republic of Ireland residents are acquiring investment property in the United Kingdom. All prudent investors should ascertain the potential tax implications prior to making any such investment. One of the most significant taxes in this regard is Capital Gains Tax. This tax arises in the future when an investor sells the investment property. Generally speaking, Capital Gains Tax rates are much higher in the UK than in Ireland.

Fergal McManus Partner in the Morgan McManus, Clones Office advises on the favourable tax treatment available to Irish Residents selling property in the UK.

The good news is that under the Irish UK Double Taxation Treaty an Irish Investor selling UK Investment Property is only subject to Capital Gains Tax in Ireland. As such, there will not be a penny tax to be paid to the Inland Revenue in the UK on such a sale. This is set out at Article 14 (1) of the Double Taxation Treaty.

This tax treatment is not generally well known and it is certainly good news to all Irish Resident Investors in UK Property. Effectively an Irish Investor will pay lower Capital Gains Tax on profits made on UK property than if that person resided in the UK itself. In effect the Irish Investor has a tax advantage over his UK counterpart.

It should be noted that this tax treatment is not reciprocated by the Irish government. If a UK Tax Resident Investor sells property in the Republic of Ireland, they are legally obliged to pay Capital Gains Tax to the Revenue Commissioners in the Republic of Ireland and thereafter they must make a Tax Return

to the Inland Revenue in the UK. The UK Revenue will assess the tax due to it by the UK taxpayer as if the property had been sold in the UK. The UK taxpayer must then pay the UK tax but they are entitled to claim a credit in respect of the tax already paid in Ireland. In the normal course this will mean that most of the tax is paid to the Irish Revenue and a smaller balance tax will be paid to the UK Inland Revenue.

How much longer this favourable tax treatment for Irish Residents selling property in the UK will continue is difficult to say. There is no guarantee that at some future stage the Chancellor of the Exchequer in the United Kingdom might not decide to change the law as it is probably only a matter of time before the Inland Revenue in the UK realise that they are losing out on a significant source of revenue by failing to tax the gains made on sales of UK property by Irish Resident Investors.

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**SEYMOUR
MAJOR**

**PROPERTY TRANSACTIONS IN
NORTHERN IRELAND**

Seymour Major Partner in the Enniskillen office of Morgan McManus Solicitors provides legal services to people buying and selling properties in Northern Ireland. In this Article he explains the differences between the conveyancing procedures in Northern Ireland and the Republic of Ireland.

Until 1922 the island of Ireland was a single jurisdiction and there were no distinctions between buying and selling property in the two parts of Ireland. Seymour Major explains that since that time many differences have developed in the conveyancing service which is delivered in the two jurisdictions.

Conveyancing practice in Northern Ireland has been influenced to some extent by what has been happening in England. A practice has now emerged whereby all of the property enquiries are carried out at the pre-contract stage of conveyancing. This was not always so. In the Republic of Ireland, most of these enquiries still take place subsequent to the contract being created. This will explain why transactions in Northern Ireland will complete sooner after the signing of the contract than in the Republic of Ireland. Seymour Major warns that purchasers in Northern Ireland must therefore be sure to have funds in place when signing the contract.

Both jurisdictions enjoyed a common system of registration of title at the Land Registry prior to 1922 but Land Registry rules and procedures have since evolved differently in the two jurisdictions. The Land Registry is the State organisation in each Jurisdiction which is responsible for the registration of transactions relating to land and property. Land Registration procedure in Northern Ireland has been influenced by developments in England. There has evolved a system of classes of titles very much along the lines of England. Since 2002, it is compulsory for any land in Northern Ireland not previously registered to be registered in the Land Registry, whereas in the Republic of Ireland it is generally only necessary to register title in the Land Registry by way of First Registration if that property is

within three designated counties. While this may have very little relevance to the buyer, it can add further cost to his legal bill as further work will be required to be undertaken by his Solicitor in that First Registration process. Some of the reforms, which have taken place in Family Law between the two jurisdictions, are very different. These have also resulted in procedural differences in Conveyancing practice between the two jurisdictions. For example, whereas in the Republic of Ireland Solicitors must deal with the Family Home Protection Act 1976, where a spouse's consent must be obtained for the sale or mortgage of the family home, no such provision exists in Northern Ireland law.

In Northern Ireland, the Home Charter Scheme applies. There is no equivalent of such a scheme in the Republic of Ireland. This Scheme is governed by the Northern Ireland Solicitors practice rules. Under those rules, it is compulsory for all Solicitors conducting residential conveyancing in Northern Ireland to abide by the code of practice under the Home Charter Scheme. The code of practice sets out a series of processes that must be followed. For example, each time a client enters into a mortgage, the Solicitor must provide an interview and certify that the client has been advised on certain aspects of the nature of a mortgage. The Solicitor is then required to keep a record of the interview note. Another cornerstone of the scheme is that all clients must be provided with a written estimate of costs by the Solicitor at the earliest possible opportunity after instructions are received.

Perhaps the most marked differences in conveyancing between the two jurisdictions are in relation to taxation. All Northern Ireland taxation law is UK taxation law. Whereas in the Republic of Ireland stamp duty (which is a government charge on the value of the property) can be as high as 9%, the highest stamp duty chargeable in Northern Ireland is 4% for properties worth more than £500,000. Since the UK Budget from the 17th March 2005 the following rates (fig1) apply :

The previous exemption for non-residential transactions in "designated disadvantaged areas" was discontinued as and from the 16th March 05. In Northern Ireland, stamp duty is now called "Stamp Duty Land Tax". For every conveyancing transaction, it is necessary for the new owner to have completed and personally signed a stamp duty Land Tax Return, which must be delivered to the Inland Revenue within 30 days. Failure to lodge the Return results in a £100 penalty.

Capital Gains tax is also calculated differently in the two jurisdictions. In Northern Ireland the rate can go up to 40% of chargeable gains. In the Republic of Ireland the rate is only 20%. It is worth noting also that Solicitors in the Republic of Ireland will usually not part with the proceeds of sale to a Northern Ireland tax resident seller until tax clearance for the sale has been obtained. There is not yet such a practice in Northern Ireland. Whereas in the Republic of Ireland Inheritance Tax is a tax on the beneficiary and is determined by reference to "relationship" tax thresholds, in Northern Ireland, Inheritance Tax is levied on the value of a deceased person's estate. The tax is on the estate and is payable at the rate of 40% of the excess over £275,000.

The practice to date for ROI residents purchasing property in Northern Ireland has been to go to their Solicitor in the Republic of Ireland, or indeed an Auctioneer in Northern Ireland, and sign a contract for the purchase of property without realising the different legal obligations which apply in Northern Ireland. Seymour Major advises that this is a recipe for disaster. He advises that persons interested in purchasing property in Northern Ireland should ensure to take legal advice from a Solicitor qualified in Northern Ireland before undertaking a property transaction. Naturally, the client should ensure that the Solicitor not only has a Practising Certificate in Northern Ireland but also has Professional Indemnity Insurance.

Seymour Major, Solicitor
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(fig1)

Rate	Land in disadvantaged areas		All other land in the UK	
	Residential	Non-Residential	Residential	Non-Residential
Zero	£0 - £150,000	£0 - £150,000	£0 - £120,000	£0 - £150,000
1%	over- £150,000 -£250,000	over - £150,000 -£250,000	over- £120,000 -£250,000	over - £150,000 -£250,000
3%	over- £250,000 -£500,000	over - £250,000 -£500,000	over- £250,000 -£500,000	over - £250,000 -£500,000
4%	over- £500,000	over - £500,000	over- £500,000	over - £500,000

Partner in Morgan McManus obtains Certificate in Mediation Training

Having completed seminar attendance and assignments at the Queens University of Belfast last year Brian Morgan, partner in Morgan McManus Solicitors was awarded a Certificate in "ADR and Mediation Training" on the 27th October 2004. The benefits of ADR (alternative dispute resolution) and mediation have been well recognised by the Courts. Continually, the

Courts are encouraging parties to avail of mediation in order to resolve disputes at minimum cost and expeditiously. Morgan McManus Solicitors have always been conscious of encouraging clients, whether they are in family disputes or business disputes, to resolve those disputes with least possible hurt to family or damage to business and the availability of this service to clients of Morgan McManus Solicitors will be of definite advantage.

MORGAN MCMANUS SOLICITORS ASSISTS MICROTRADE IN PREPARATION OF CROSS-BORDER TRADE ADVICE

A new initiative, supported by Enterprise Northern Ireland, InterTradelreland and the City and County Enterprise Boards within Northern Ireland and the Republic of Ireland, commenced by MicroTrade is aimed to build co-operation among Micro Enterprises (1-10 employees) throughout Ireland. MicroTrade has a website – www.microtrade.org - and one of the features on that website is the provision of a section on cross-border trade advice. This is currently being prepared by Morgan McManus Solicitors along with FPM Chartered Accountants of Newry and the National Irish Bank.

MicroTrade has organised an "All Island Networking Event" for Wednesday 13th April 2005 at the City West Hotel, Co. Dublin and Morgan McManus Solicitors have been invited to that event to assist companies attending with cross-border advice. Morgan McManus Solicitors are delighted to be part of this new initiative.

EMPLOYMENT LAW ROI

REPUBLIC OF IRELAND 2004 Employment Law Changes

Health and Safety Law: Safety, Health and Welfare at Work Bill 2004

Under the Safety, Health and Welfare at Work Bill 2004, the entire Health and Safety regime in the country will be revamped. There are new provisions for information and training, which must be given to employees.

Such information will include the provision to the employees of Risk Assessments upon which the Safety Statement of the company has been issued. Another new duty imposed under Section 8 is a supervisory duty on the employer, which involves the ongoing monitoring of the workplace and if necessary, disciplining of individual employees. The Bill also includes an express duty that employees are not to be under the influence of an intoxicant whilst at work. There is also a new requirement that an employee must submit to appropriate and proportionate tests by a competent person as may be prescribed. This will more likely include tests to be performed by a Medical Practitioner. Previously, the consent of the employee would have been required before such a medical examination could have taken place. There is also provision that a Safety Officer must be a 'competent person'; that is, he must have experience appropriate to the nature of the work to be undertaken. Risk assessments must be reviewed at least annually. A safety representative (who is appointed by the employees) will have the right to inspect the entirety of the premises either immediately after an accident or at any other time on giving reasonable notice to the employer.

Industrial Relations Acts

The Industrial Relations (Miscellaneous Provisions Act) 2004 shortens greatly the time needed from the issuing of voluntary proceeding to the Labour Relations Commission up to the issue of a binding labour court determination.

The Information and Consultation Directive

While the government has not yet produced a draft Bill the Directive, once transposed into Irish Law, will require employers of a certain size to inform and consult with the employees in respect of major business decisions. Please refer to an Article on this Directive by Brian Morgan in this newsletter.

Redundancy Payments Act 2003

While this Act has been law for quite some time, certain sections have not yet been implemented. Employers should however note that from the 1st January 2005 the weekly wage ceiling for the purpose of calculating redundancy payments was increased to €600.00 from the current €507.90.

Maternity Protection Act 2004

This introduced, among other things, new arrangements regarding prenatal classes and arrangements for breast-feeding mothers. This Act was covered by Brian Morgan in the September Edition of our Employment Law Bulletin.

The Equality Act 2004

The Equality Act 2004 came into force on 19th July 2004. This Act makes significant changes to both the Employment Equality Act 1998 and Equal Status Act 2000. We intend to do a separate article on this in one of the future editions of the Employment Law Bulletin.



BRIAN MORGAN

The Information and Consultation Directive 2002

The Effect of the Directive on existing Industrial Relations Law

INDUSTRIAL RELATIONS

Brian Morgan Partner advises that employers should not wait too long to consider the impact of legislation to be enacted under the Directive

Both Ireland and the UK (including Northern Ireland) are bound by the Directive 2002/14/EC of the European Parliament and the Council of 11th March 2002 establishing a general framework for informing and consulting employees in the European Community. They will be obliged to implement the Directive by the beginning of March 2005.

Speaking at a seminar in Dublin 2004, Anthony Kerr, lecturer in the Faculty of Law at UCD in Dublin opined that "the implementation of the Directive could be the most significant piece of employment legislation ever to be introduced in this jurisdiction." It will give many employees the right to be informed and consulted systematically through their representatives, in matters affecting their jobs and their future employment prospects. This will have a major impact, even in organised workplaces, because the introduction of these information and consultation rights could enable the trade unions to address work/life and organisation issues that traditionally have been beyond their reach.

Currently under Irish and UK Law, an employer is required to inform and consult its employees only in connection with certain events, e.g. collective redundancies and certain business sales. Outside of those particular circumstances, the only obligation to consult with employees arises under collective agreements, which covers a relatively small proportion of our workforce.

The Consultation Directive will require employers to enter into a written agreement with employees which will set down a formal procedure for informing and consulting employees or employer representatives on an ongoing basis on a broad range of issues affecting the business. The group which will participate in the group information and consultation procedure may be called a "Works Council" or "Employees Forum" or such title as may be agreed between the employer and the employees. In effect, the Consultation Directive will introduce into the national forum the type of employee consultation that is required by multi-nationals under the Council Directive 94/45/EC of 22 September 1994 on the establishment of a European Works Council (the "European Works Council Directive"). Only the UK has passed the legislation to transpose the Consultation Directive into domestic law. This legislation should have issued in the Republic of Ireland by now as both jurisdictions were required to bring the legislation into effect by 23rd March 2005. The Directive has been enacted in Northern Ireland under the Information & Consultation of Employees Regulations (NI) 2005. For a guide as to what the implementations will involve, one can read the Irish Consultation Paper which can be obtained on the website of the ROI Department of Trade, and Employment (www.entemp.ie) or the Regulations of the UK Department of Trade and Industry (www.dti.gov.uk). Further reading is also available on the website of the Northern Ireland Department for Trade and Learning (www.delni.gov.uk) All companies

which have in excess of fifty employees should be concerned about the implementation of procedures required under this legislation. While the Regulations will be phased and will only, from April 2005 apply to undertakings with in excess of 150 employees, from April 2007 it will apply to undertaking with in excess of 100 employees, from April 2008, the Regulation will apply to undertakings with in excess of 50 employees. This is a very low threshold.

In certain instances, there will only be obligations on the employer to inform. In other instances there will be obligations on the employer to inform and consult. While "consult" does not necessarily mean "negotiation or reaching agreement", it will involve the transmission by the employer to the employees representatives of data in order to enable them to acquaint themselves with the subject matter and to enter into dialogue with the employer on certain issues such as:

- The organisation within the enterprise including the transfer of production or posts to different locations or to different divisions
- Recruitment of new employees
- Redundancies (compulsory and voluntary)
- Staff turnover
- Structure of employment
- Geographic location of employees
- Re-organisation of posts within an organisation, redeployment of staff or transfer of posts.

Of particular concern would be the definition of employees' "representatives" who must be informed and consulted. The Irish Congress of Trade Unions are insistent that the legislation should enshrine the principle that information and consultation should be through the trade union representative where unions are recognised and otherwise through independent representatives elected by the employees. Congress is clearly concerned to secure, not only that the legislation provides robust rights to information and consultation, but also that it provides a platform for the further spread of trade union recognition. Employers would be vehemently opposed to a provision, which required a trade union official to be included as 'an employee's representative' in non-union operations. Apparently at the first Irish conference of the Amicus Trade Union, which took place at the end of August 2004 in Belfast, the Union announced its intention to roll out a major organising campaign, which will depend significantly on the organising initiative and activities of its membership, such as the formation of internal organising committees. Such bodies would be well placed to coordinate an election campaign for positions whose terms of office will have to be of sufficient length to enable the required information to be given and adequate studies thereof to be conducted and a consultation completed.

When a valid employee request to negotiate an Information and Consultation, agreement is made where the employer starts the process on his own initiative, the requirement to negotiate an agreement will be triggered. The Regulations will also provide for the retention of pre-existing agreements which have workforce support. Where the parties fail to negotiate an agreement, the Regulations will allow the standard information and consultation provisions to be applied. Where the standard information and consultation agreement does not suit the employers operation, it is in those circumstances that difficulties will arise for the employer – where it will be confined to procedures which do not suit its operation.

The smart employer should now seek to implement an information and consultation agreement which will be accepted by the workforce in the hope that the procedures in that agreement will in due be adopted as the formal agreement under the terms of the legislation when enacted.

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**DARINA
BLAKE**

EMPLOYEES

MAINTAINING CONTACT WITH EMPLOYEES ON LONG TERM SICK LEAVE

Darina Blake, Solicitor, examines the practicalities and importance of keeping in contact with employees absent from work on long term sick leave.

According to a survey carried out by the British Occupation Health Research Foundation, early and regular contact with employees who are absent from work on long term sick leave leads to a speedier return to work. Research maintains that keeping in contact with employees is particularly effective in cases of long term absence. However, there are also benefits associated with employees who are absent for only a couple of weeks.

• **WHAT CAN BE DONE?**

In the normal course of events managers do not normally feel comfortable about making home visits to employees who are absent from work

on long term sick leave. This is especially true in relation to employees who are absent with mental health or psychiatric problems. However, home visits are more common by organisations having occupational health support. Home visits can be beneficial. However, there is no doubt that they need to be handled with the utmost sensitivity.

Informal meetings can also be held in the work place. It is estimated that approximately 33% of employers actively encourage fellow employees to telephone colleagues at home. Arranging an appointment for an absent employee to be examined by a company doctor as early as possible is highly recommended.

• **COMPANY POLICIES**

Policy documents should clearly state how often and at what stage an absent employee can expect to be contacted by the employer. This should not be set in stone and will vary according to the employee. However, general rules should apply. If written policies are fully implemented fewer problems and misunderstandings should arise.

In the event that an employer does contact an employee during absence the employer needs to act fairly and reasonably at all times. Furthermore, he must work within any written policy which the employer has in place. Employees should be actively encouraged to disclose any reasons which might be prolonging their absence from work. It is essential that the employer does not harass the employee but instead makes him aware that he is there to help, if this is required.

• **RETURN TO WORK**

The report accepts that keeping in contact with employees is a major factor in encouraging return to work from long term absence. For many employers it is simply a case of striking a balance. Some employees feel pressurised if too much contact is made; others take exception if the employer does not make an effort to maintain contact. There is no doubt that the employee's well-being must be of paramount importance during all enquiries made by an employer in these circumstances.

NEW LAWS FOR RESOLVING WORKPLACE DISPUTES

Darina Blake, Solicitor, gives guidance on the new Legislation regarding workplace disputes.

New rights and responsibilities for employers and employees come into force on 3 April 2005 by virtue of the Employment (Northern Ireland) Order 2003, (Dispute Resolution) Regulations (Northern Ireland) Order 2004 ("The Legislation"). The purpose of the Legislation is to implement minimum procedures for both employers and employees when resolving employment disputes. These minimum procedures relate to disciplinary action by employers, grievances by employees and dismissal of employees from the workplace.

EMPLOYER'S OBLIGATIONS

An employer is obliged to supply a contract to each employee within two months of the commencement of employment. This contract of employment must include, among other things, details of the employer's disciplinary and grievance procedures. Under the Legislation employers and employees are obliged to follow these new minimum procedures.

Before resorting to the minimum procedures the employer and employee should attempt to sort problems out on an informal basis if and when possible.

In the event that an employer wishes to take disciplinary action against an employee he must begin a disciplinary or dismissal procedure. The employer is obliged to furnish the employee with a written statement of the reasons for this action. He must then arrange a meeting to discuss the matter with the employee.

In the event that the employee disagrees with the employer's decision in relation to the disciplinary action being taken, he will have a right of appeal. It is essential that this procedure is followed correctly. In the event that it is not it will have a direct effect on any future Industrial Tribunal award made.

EMPLOYEE'S OBLIGATIONS

In the event that an employee wishes to take a grievance in relation to his employment under the Legislation he is obliged to put a written statement of his grievance to the employer. The employer must then arrange a meeting to discuss the grievance and inform the employee of his decision.

The employee then has a right of appeal against the employer's decision at a further meeting. In the event that the employee does not appeal the employer's decision and instead makes an application directly to the Industrial Tribunal, the Tribunal will find that the employee had not completed the internal procedure.

The employer is only free to take the matter to the Industrial Tribunal after the outcome of the appeal hearing.

In the event that an employee is dismissed without the correct procedure being followed by the employer, he may make an application to the Industrial Tribunal. The fact that correct procedures outlined in the Legislation have not been followed will be reflected in compensation awarded to the employee. In the event that an employer takes alternative disciplinary action short of dismissal against an employee but does not follow the Legislation, an award made to the employee by an Industrial Tribunal can now be increased by 10-50%.

Employers should now take stock and update their current procedures to take account of the Legislation.

The essence of the new 3-step process set out in the Legislation is as follows;

1. Set out matter in writing
2. Meeting to discuss the problem
3. Hold an appeal meeting if required.



NEW LAWS



NORTHERN IRELAND 2004 Employment Law Changes

New Compensation Limits For Unfair Dismissal And Redundancy Payments:

Under the Employment Rights (Increase of Limits) Order Northern Ireland 2004 (SR 2004 No.64) certain limits on awards that can be made by the Industrial Tribunal have been raised. The cap on a week's pay, for the purposes of calculating statutory redundancy payments and the basic award for unfair dismissal, has risen from £260 to £270. The maximum compensatory award has risen from £53,500 to £55,000. For more details, the Order can be found at <http://www.northernirelandlegislation.hms.gov.uk/sr/sr2004/20040064.htm>

Minimum Wage:

The rates for the National Minimum Wage rose from 1 October 2004 following the recommendations of the Low Pay Commission. For workers aged 22 and over the new rate is £4.85, up from £4.50. The development rate, which applies to workers aged 18-21 inclusive, is now £4.10, formerly £3.80.

Asylum and Emigration:

On 1st May 2004 changes to section 8 of the Asylum and Immigration Act 1996 came into force. These changes relate to the type of documents which employers will be required to check and copy in order to avail of the statutory defence against a prosecution for employing an illegal worker. The documents include Category 1 documents such as a UK, or EEA Passport endorsed by the Home Office with an indefinite right to stay in the UK and Category 2 documents which may be documents such as a P45 or a work permit. It should be noted, however, that Category 2 documents must be accompanied by a passport, or other documentation confirming immigration status or a right to enter UK and stay in work.

Tribunal Reform:

Phase 1 of the changes to the rules of Procedure of the Industrial and the Fair Employment Tribunal were introduced in April 2004 by the Industrial Tribunals

(Constitution and Rules of Procedure) Regulations (Northern Ireland) 2004 (SR No. 65). The changes included introducing powers to strike out weak cases and a new system of case management. Please refer to an article by Donna Reilly in the November edition of our Employment Law Bulletin.

Disability Discrimination:

A number of measures on disability became operational in Northern Ireland on 1st October 2004. Many changes were embodied in the Disability Discrimination Act 1995 (Amendment) Regulations (Northern Ireland) 2004 (SR No.55). Furthermore anyone providing services to the public, whether for free or for payment, may now be required to make changes to the physical features of their premises to ensure that disabled people can access those services. Principal changes include inter alia that a new definition of direct discrimination "on grounds of a person's disability" is added to the existing three types of discrimination (unjustified less favourable treatment for a reason related to disability; unjustified failure to make reasonable adjustments; victimisation). Changes have been made to the burden of proof and the scope of the duty on the employer to make reasonable adjustments has been widened to 'any provision, criterion or practice applied by the employer.' Please refer to an article by Darina Blake in the September Edition of our Employment Law Bulletin.

Sexual Orientation Discrimination:

The Employment (Sexual Orientation) Regulations (Northern Ireland) 2003 came into force in December 2003. It implements the sexual orientation aspects of the EU Equality Treatment in Employment Framework Directive (EC0000/78) which established a framework for eliminating employment discrimination based on religion, belief, disability, age and sexual orientation. Please refer to an article by Darina Blake in the April Edition of our Employment Law Bulletin.

The Gender Recognition Act 2004 received Royal Assent on 1 July 2004. Its purpose is to provide transsexual people with legal recognition of their acquired gender, subject to some specified exceptions.

Equal Pay (Amendment) Regulations (Northern Ireland) 2004:

The Regulations which came into force on 28th April 2004 amended the time period within which a person can institute proceedings under the Equal Pay Act (Northern Ireland) 1970. Where there is a "stable employment relationship" between a woman and her employer, the time limit for bringing a claim is to be six months from the date on which the employment ended. The period in which back pay may be awarded is to be increased from two to six years, in line with the period applicable for breach of contract actions. The Equal Pay (Questions and Replies) Order (Northern Ireland) 2004 (SR No.322) came into force on 25th August 2004 and sets out a prescribed form through which an employee may question the employer concerning matters which the employee considers may breach the equal pay legislation.

Some Significant Case law:

In the eagerly awaited decision of *Dunnachie v Kingston upon Hull City Council* [2004] UKHL 36 the House of Lords has confirmed that compensation for non-financial losses such as injury to feelings cannot be awarded as part of the compensatory award in unfair dismissal cases. Compensation for unfair dismissal is recoverable only in respect of financial loss.

MORGAN MCMANUS SOLICITORS

IF YOU ARE INVESTING IN PROPERTY IN NORTHERN IRELAND, THE REPUBLIC OF IRELAND OR ENGLAND/WALES AND WANT TO BE KEPT INFORMED OF LEGAL DEVELOPMENTS, SUBSCRIBE TO OUR

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