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ANNEX A: NEW RESPONSIBILITIES FOR CONSTRUCTION EMPLOYERS

CONSTRUCTION INDUSTRY EMPLOYERS

1. For the purposes of these proposals, an employer means a construction industry business which employs others or lets sub-contracts to others in the construction industry in Northern Ireland. The construction industry would be defined broadly, to include almost anything that is done to a permanent or temporary building, structure, civil engineering work or installation. The new proposals would apply to those with construction industry work as their main business (including developers); but would not apply to an individual or a company which was simply a client of the construction industry.

NEW RESPONSIBILITIES

Licences

2. All construction industry employers would be required to apply for a licence, and it would be an offence for a licensed employer to sub-contract construction work to an unlicensed employer. There would be an opportunity for an employer to obtain a licence before starting a construction business. Each applicant for a licence would complete a detailed questionnaire. Licences would be subject to renewal, and employers would be bound to notify their loss, theft or destruction. A legitimate employer could therefore have confidence in dealing with another licensed employer, and he or she would have legal grounds to refuse to deal with an unlicensed employer.

Employees and Sub Contractors

3. Each licensed employer would have to ensure that his or her employees and sub-contractors were working honestly and were not using false identities. Many sub-contractors would, of

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course, be licensed employers in their own right. Their identity could be confirmed by reference to their licence details.

4. There would also need to be arrangements for identifying individual employees and sub-contractors not eligible for a licence. It is proposed to do this by placing on construction industry workers the responsibility to prove and register their identity, which would lead to the issue of a registration card. Construction industry employers would be required to confirm that all the individuals they employed or to whom they let sub-contracts had registration cards.

Payments

5. A related problem is to ensure that payments go to, and can be traced to the companies and individuals who are entitled to receive the monies. Each licensed employer and each registered worker would have to nominate a bank or similar account within Northern Ireland. Payments between licensed employers would have to be made by electronic transfer. All other payments of earnings would be made by electronic transfer to the nominated accounts of registered workers. The employer would complete a schedule detailing the names of the individuals or companies requiring payments to be arranged. Simple systems for paying by automated credit transfer are readily available from banks and equivalent organisations at a low cost; and larger construction companies already use more sophisticated electronic arrangements such as BACS for paying monies.
6. Employers would be required to pay for materials etc either by automated credit transfer or certified cheque and thereby create an "audit trail", an evidential link between payer and payee. This could be facilitated by the display of the employer's licence details on all his business stationery. Exceptional payments by cash would be allowed, but a maximum amount would be set for each such transaction and additional records would need to be maintained for audit purposes.

Records

7. Licensed employers would be required to maintain a comprehensive set of records of all payments in respect of materials, supplies, equipment, hirings, fees etc in a specified manner which would enable any extortion or suspicious payments to be identified on inspection. The specified records would form part of the employer's accounting system, and there would naturally be no objection to employers keeping additional records for their own purposes.

Returns

8. Employers would have to submit regular returns of workers' earnings (including details of third party payments) so that early attention would be drawn to possible malpractices. Failure to submit returns within a specified period would be an offence. For example, where a licensed employer failed to submit returns by the due date, and record of a receipt by that business had been notified, there might be concern that fraudulent activities were taking place or were in prospect; or that the business would be liquidated and the assets disposed of before revenue undertakings had been met. The situation would be of particular concern where either the sum of money was large or the business had only recently been established or where there were suspicions about possible terrorist exploitation of the business. Timely action would be essential if frauds were to be prevented and the system of regular returns would be intended to alert the inspectors.

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ANNEX B: NEW RESPONSIBILITIES FOR CONSTRUCTION WORKERS

CONSTRUCTION WORKERS

1. The Government's proposals would apply to "construction workers", that is employees of licensed employers, and individuals working independently in the construction industry in Northern Ireland who accept sub-contracts from licensed employers. A business which did not offer employment other than for its proprietor or proprietors, and did not carry out sub-contract work for construction employers would not be required to register or be licensed.

REGISTRATION

Means of identification

2. Employers could not comply fully with the proposed requirements, unless the true identities of workers were accurately recorded and verifiable. The use of false names is common in the construction industry, and when this is supported by cash payments it is almost impossible to establish (unless by surveillance) who is actually employed on a particular site. Both workers and employers need some form of acceptable and secure means of identification as a basis for recording personnel and wages data. It would have to be carried at all times when working. The minimum requirement would be for a standard form of identification which included a photograph of the individual, a signature and personal information related to the proposed arrangements. As there is no single form of identification available which meets these requirements, it is proposed that construction industry workers should apply to be registered, and be provided with a personal registration card.

Fraudulent applications

3. Existing technology would enable a card to be designed which

would be very difficult to forge. Cards could be made machine readable and, in that way, their validity could quickly be checked. But such a check could only demonstrate that the card had been issued by the proper authorities. It could not prove that the card had not been fraudulently applied for or that the information on the card was accurate. Individuals would need to present proof of identity to the registration authority. In addition, personal attendance to obtain a registration card would be necessary, because postal deliveries would leave open the possibility of greater abuse and heighten the risk of issuing invalid cards.

Payments

4. Even where real identities are established, cash payments can be used to conceal true earnings, and employers can claim that wages paid are below a level where records are required to be maintained. These fraudulent arrangements suit both employers and workers. The employer pays wages below standard rates as self employed and "casual" workers can evade paying tax, and workers engaged in social security fraud have their wages supplemented by the benefit paid. It is proposed that all payments of wages, self-employed earnings, fees etc by construction industry employers should be made by automated credit transfer into a nominated bank, building society or similar account in Northern Ireland. Details of the account including title, sort code and account number would be provided by applicants on their application forms for registration. These account details would be, in turn, printed on the registration card to ensure that only that account could be used for receiving construction industry earnings.

Use of registration card

5. Individuals would be obliged to present proof of identity - the registration card - on construction sites. Some individuals would be concerned at that requirement. But the registration

card would be not merely a guarantee of an individual's identity, it would serve also as a protection of that identity. It would stop fraudsters and terrorists from purloining the good names of honest workers to use as false identities for fraudulent purposes. It would mean that the terrorists would have less cause to seek to intimidate or cajole honest workers into participating in their frauds, because the workers' wages would be paid directly into their nominated bank or similar accounts as identified on their registration cards.

6. The registration card would not be an identity card. It would be designed and intended only for the purposes of the construction industry scheme. It would carry an independent serial number: it would thus have no direct connection with other official documents. Only those directly involved in operating the scheme - the inspectorate and an actual or prospective employer - would have the right to see an individual's registration card. It would always be open to the individual to confirm the accuracy of the material on the card. To make the registration card difficult to forge, the card would be machine readable. The machine readable portion need not, however, contain personal information additional to that on the face of the card.

Payment arrangements

7. Some individuals would find it easier than others to comply with the proposed arrangements. Many, especially directly employed staff, will already receive their earnings by cheque or electronic transfer. Most individuals will already have a current account with a bank or other financial institution, and will carry out the bulk of their transactions through it. They could easily arrange for their existing accounts to be treated as nominated accounts for the purposes of the proposed scheme. Nominated accounts need not be exclusively for the purposes of the scheme: other income could be lodged to such an account, if

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desired. Sub-contractors who benefit from the Inland Revenue's tax exemption arrangements are already required to operate their business substantially through a bank or similar account. For such individuals and small firms, the proposals would have a very limited impact.

8. There would be others, however, who do not have bank or similar accounts and would have to open them for the purposes of the scheme. Provided that they kept their accounts in credit, they should not attract charges other than for services consumed. They would, nevertheless face a degree of inconvenience in changing to a new way of managing their affairs. It would be open to an individual worker to decide whether or not the nominated account should be a joint account.
9. Self employed or casual workers could face particular inconvenience. They normally expect to receive payment on account (typically in cash) at the end of their first week's employment, which is adjusted as necessary in subsequent payments. It would be for each employer to decide whether or not to continue to make advance automated credit transfer payments under the new arrangements. Provided an employer was able to provide his or her own bank with a schedule of payments to workers two days in advance, there would be no difficulty about money being available for drawing from payees' accounts on their normal pay day. For understandable reasons, employers could be reluctant to lodge advances of earnings on a Tuesday or Wednesday for someone who had only started work on the Monday. Most employers are likely to shift to a "week in hand" basis, ie calculated on attendance and productivity in the previous week. Workers presently paid on account would suffer disruption through the introduction of the new arrangements, but it should be a once and for all disruption. Persons changing jobs within the industry or joining the industry from employment elsewhere should have the advantage of a week's pay in hand to fall back on.

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ANNEX C: A CONSTRUCTION INDUSTRY INSPECTORATE

1. No scheme will operate effectively if terrorists and other criminals believe that it is not supported by rigorous checks. It would be necessary therefore to visit sites and contractors' premises to demonstrate that the scheme was being policed and that offenders at all levels were being dealt with severely. If unregistered workers, workers using false identities or illegal cash payments were discovered then both the individual workers and the offending employers would be prosecuted. This would also be essential if builders are to have a firm basis to resist demands for extortion payments. The Government therefore proposes that there should be provision for inspection and enforcement in relation to the proposed licensing and registration schemes.

ROLE OF THE INSPECTORATE

2. There would be a statutory Construction Industry Inspectorate with wide ranging powers to enforce the new legislation. It would also act, in practice, as the registration and licensing administration, although the powers of registration and licensing would be accorded formally to the Secretary of State. Because of its explicitly anti-terrorist role, it could most conveniently function as part of the Northern Ireland Office. It would have 2 key functions:

- i) the issue of licences and registration cards; and
- ii) inspection and enforcement.

(i) Issue of licences and registration cards

3. The inspectorate would be responsible for the issue of licences and registration cards. That would include publicising the scheme, and advising participants in the industry on their eligibility and obligations. It would also include maintaining up to date lists of registrations and licences.

4. Completed application forms would require close scrutiny to identify unacceptable omissions or errors. All incorrectly completed forms would be returned to the applicants. A more intensive scrutiny of employers' application forms would be necessary to identify suspect concerns and those with previous records of involvement in tax and/or social security irregularities.

(ii) Inspection and enforcement

5. Inspectors would carry out inspection visits of fixed premises and transient sites. Employers would be required to notify the inspectorate of construction sites on which they were engaged. That would not alone afford a sufficient safeguard against dishonest employers. Those outside the construction industry letting substantial contacts would also be required to notify the inspectorate. The inspectors would have powers to enter - during normal working hours - construction sites and premises liable to inspection, require all those present to produce their registration cards, or state where they were to be found; and to seize registration cards where it was believed a breach of the registration scheme had taken or was taking place.
6. They would also be able to require production of a licence within 48 hours of requesting it. Inspectors would be able to enter premises of licensed employers during normal working hours, require production of records, inspect records, and take away records for detailed examination.
7. It is evident that the scheme could not work effectively without a computer system to monitor the registration and licence data base, and process the returns identifying workers and their earnings. A considerable amount of personal data would need to be held on the system, and the Northern Ireland Office will be consulting the Data Protection Registrar about the possible implications of the Data Protection Act 1984. The issues of obtaining, disclosure, relevance, accuracy, retention

and security would all be important, and the Government would wish to have regard to the Data Protection principles in that Act.

8. In order to establish an audit trail the inspectors would require access to records of the nominated accounts of both employers and individual workers. This could be accomplished by
 - a) a requirement for registered workers and licensed employers to retain statements sent to them by the financial institution about their nominated accounts, and to produce them to the inspectorate on demand; and
 - b) a power for the inspectorate to apply to a county court judge for a production order for records held by a financial institution or government department.

LINKS WITH OTHER BODIES

9. The inspectorate would have close links with the police, the Revenue Departments and the Social Security Agency. It is likely that there would be efforts by terrorist organisations to continue serious frauds. It would be for the police to investigate such matters, which could be drawn to their attention by the inspectors. The police have available to them ample investigative powers including, in the case of terrorist finance, powers under the Prevention of Terrorism (Temporary Provisions) Act 1989 and the Northern Ireland (Emergency Provisions) Act 1991.
10. The inspectors might be suspicious that a person or persons was involved in tax evasion or social security fraud. They would need to be able to confirm the financial transactions between employers and employees in the industry and whether such transactions had been correctly reported to the Inland Revenue, HM Customs and Excise, the Social Security Agency, and the Department of Social Security. Persons suspected of social

security fraud or tax evasion would be reported to the relevant Department for investigation and consideration of offence action.

- 11. At present, one of the main problems facing social security investigators is the lack of supporting payroll evidence showing how long a bogus claimant had been working. The return of workers and earnings provided by licensed employers would be made available for the purposes of prosecuting social security fraud. Legislation would provide that, in the absence of evidence to the contrary, it should be taken as evidence of employment and remuneration for the period stated. The individual concerned must have produced a registration card containing his or her photograph in order to gain employment, and all earnings would have been paid into the account nominated on the registration card. So the onus would be on the individual concerned to produce proof that he or she had not been working on a particular day. That would strengthen significantly the arrangements for prosecuting social security fraud.

ANNEX D: SANCTIONS

1. The Government is confident that it can count on the support and co-operation of the vast majority of employers and other participants in the construction industry. Nevertheless, an enforcement mechanism would be built into the new legislation to ensure that its aims were not frustrated either by a lack of commitment on the part of participants in the industry, or by the malicious actions of terrorists and other criminals. To ensure the fulfilment of obligations under the registration and licensing schemes, the enforcement mechanism would comprise 3 elements:

(i) specific criminal penalties for breach of specific duties;

(ii) special arrangements to deal with direct terrorist involvement; and

(iii) exclusion from registration or licensing for those in serious breach of their duties.

SPECIFIC DUTIES

2. Existing legislation contains offences which would deal with problems such as trafficking in stolen or forged registration cards and licences. The proposed legislation would, in addition, impose a number of specific duties on both employers and individual workers. Failure to comply with such obligations would be a criminal offence.

3. In general, it is difficult to foresee circumstances in which the registration scheme would need to be enforced other than by minor offences which could be prosecuted in the Magistrates Courts. Individuals would be subject to fines and possible imprisonment, but within strict limits laid down by statute.

4. The licensing scheme requires a different approach for two reasons. Firstly, the damaging consequences of a breach of the licensing scheme would be potentially much greater than a breach of the registration scheme. Secondly, the licensing scheme is directed at, among others, companies with substantial assets and it would be necessary to provide the courts with the capacity to award an appropriate penalty. Accordingly, it is proposed that the licensing scheme should be enforceable by offences triable either summarily or on indictment. Circumstances would determine whether or not a particular breach was triable on indictment, when the courts would have the discretion to award an unlimited fine (and possible imprisonment).

TERRORIST INVOLVEMENT

5. To deal with terrorist involvement, it is proposed that certain licensing offences should be scheduled and relevant for the purposes of the Northern Ireland (Emergency Provisions) Act 1991 confiscation scheme. "Scheduled" offences are those, primarily terrorist related, offences (listed under Schedule 1 of the Act) which are tried before non jury "Diplock" courts, unless the Attorney-General certifies that a particular case can be "certified out" and so be tried before a jury. This category of offences - and a non jury mode of trial - followed a recommendation of the Diplock Commission 1973 that terrorist related crimes could not safely be tried by jury without the risk of juror intimidation and the fear that perverse verdicts might result. Terrorist organisations might seek to sustain their income from construction industry abuses: they, or their "front" businesses, would inevitably flout the licensing scheme by operating without a licence; employing unregistered workers; making payments in cash; keeping fictitious records; or some combination of them. Those offences would therefore be scheduled, but if they were not terrorist related, the Attorney-General would certify out the offence, and it would be tried in the normal way.

6. The effect of making offences under the proposed scheme "relevant offences" (when tried on indictment and scheduled) would be to attract the hard-hitting confiscation scheme contained in the 1991 Act and devised to deal with terrorist finances.

DISQUALIFICATION

7. For the scheme to function effectively, the law would need to provide a wide range of sanctions. In particular, there would have to be a strong deterrent to forestall employers being tempted to flout the scheme by committing serious offences. There would also have to be an effective means of dealing with those who would be likely to commit repeated offences under the scheme. Some might do so because of a careless or casual attitude. Others would be hardened criminals. It would be important to ensure that such persons were deprived as early as possible of the opportunity to re-offend. Otherwise the scheme could fall into disrepute, and their actions would (as they do under existing schemes) mask the activities of the terrorists. Disqualification would serve not only as a deterrent, but also as a means of removing from the industry those who could be suborned into helping terrorists.
8. The right to trade and earn a livelihood in a particular way is not an unqualified right. A balance has to be struck between the public interest and the rights of an individual. Frauds in the construction industry in Northern Ireland are funding terrorism. Participating in, or facilitating, such frauds runs a grave risk of furthering terrorism and prolonging violence in Northern Ireland. That should be strongly discouraged. Where a person is engaged in an occupation or profession and is convicted of an offence relevant to the pursuit of that occupation or profession, it is neither unjust nor unreasonable to deprive that person of the right to be so engaged.

9. There are numerous precedents. Many professions which have their own disciplinary arrangements disqualify those who fall short of high standards of integrity and honesty. In other cases, there is statutory provision, which reflects the public interest in exercising proper control over those who are permitted to engage in a particular occupation, for example, that of driving a taxi. Companies legislation requires the disqualification of unfit persons from being a director, liquidator or receiver of a company, or in any way being concerned in the promotion, formation or management of a company.
10. Accordingly, it is proposed that a court should be able in certain circumstances to disqualify those who commit offences from holding a licence or a registration card. It is proposed that the court would be required to disqualify persons, unless it was satisfied that there were exceptional circumstances associated with their offence. The court would normally disqualify a person who was convicted of a serious offence. Where the court decided not to disqualify a person, it would be required to give written reasons for its decision. In the case of a serious matter, disqualification should be lengthy, say a minimum of 2 and a maximum of 5 years, serving as a remedy in the particular case and as a deterrent more widely. In addition, the court would be able to consider disqualification as part of the penalty for any offence.
11. A further concern is that persons might re-offend during the interval which must necessarily elapse between the inspectorate detecting an offence and trial. Where the offence detected was of a flagrant and serious nature, there should be effective provision to deter the culprit from committing further offences.

Effects of disqualification

12. Disqualification orders would apply to individuals. As appropriate, they would disqualify a person from being involved

in the employment of others in the construction industry, or from holding a registration card, or from both. Where a person was disqualified from being an employer, he or she would not be eligible to hold a licence in his or her own name, or to participate in the management of a company or firm holding a licence.

13. For an individual worker, the effect of disqualification from holding a registration card would be that a licensed employer could not employ him or her. Where the courts decided that a person should be barred from work in the industry, it would be wrong to leave open the option of the disqualified person obtaining a licence as an employer. So, while a person disqualified from holding a licence could apply for registration as an individual, someone disqualified from registration would not be able to apply for a licence. Nevertheless, a disqualified individual could continue to earn a living from construction work provided that he or she did not employ others or accept sub-contracts from others in the industry or be employed by a construction employer.