



National Employment Rights Authority

Case Management Manual

This Version (1.1 1st May, 2011)
Previous Version (1.0 1st March, 2011)

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Schedule of Amendments

The Schedule below tracks amendments to the original Case Management Manual which became effective from 1st March, 2011.

Procedure/Section	Effective Dates		Purpose
	Previous	Revised	
3.6-Sharing Information	1/3/2011	1/5/2011	A new bullet point inserted regarding cases where information should be shared with Revenue. Now includes where an Inspector uncovers a large number of employees being paid in cash.
3.8(2) - The Inspection Process - Examining Records	1/3/2011	1/5/2011	Amendment to this section covering the selection of records and the examination of records only. The Inspector still selects three sample periods. However, the Inspector is only required to carry out an examination of the first two sample periods. The last sample, (Sample C), covering the period of the last pay reference period, is only to be selected and retained on file for comparison with Revenue P35 data, if required.
3.13 - Recovery of Unpaid Wages / Awards	1/3/2011	1/5/2011	Under the heading "Verification of employer compliance post-inspection" the original document made reference to "the Inspector requesting the last fortnight's records". This has been amended to read "the last pay reference period".
Annex I	NA	1/5/2011	Annex I is new. The File Checklist had not previously been part of the Manual.

Procedure Title & Ref:	3.1 Case Allocation
Effective from:	March 1 st 2011

Purpose

To ensure the timely, cost effective and fair allocation of cases for inspection in accordance with NERA's risk-based enforcement policy, which should effectively target potential non-compliance and ensure that compliance costs are proportionate to the regulatory outcome.

Procedure

The risk team will rank cases based on risk and lists of such cases will be provided to the Inspector Team Managers (ITM's). ITM's allocate and supervise inspection cases in their areas and Regional Managers will allocate and supervise inspection cases to be undertaken by ITM's.

Case assignment guidelines

ITM's have responsibility for the efficient and effective management of their teams. It is essential that Inspectors' caseloads should not exceed a level that might adversely impact on the timely completion of cases. In general, no Inspector should have a caseload exceeding 35 cases at anytime. This guided maximum is subject to review by management.

ITM's should have regard to, among other matters, the following criteria in relation to the allocation of cases:

- The current level of activity of individual Inspectors
- The nature and complexity of cases
- The capacity to take on additional work
- The need to give priority to completing existing cases over opening new ones
- The risk rating of the case
- Maximising value for money (including Inspectors' time and T & S expenditure)
- The experience of their respective team members and the range of cases assigned
- The number of Inspectors required on any inspection

NERA management may, from time to time, direct that specific cases or groups/types of cases will be allocated other than on a geographic basis. In addition Regional managers may re-assign cases/Inspectors across teams and/or regions.

Inspectors have primary responsibility for their cases and should be aware of the status of each one. Inspectors should advise ITM's of any situation that might lead to cases not being dealt with appropriately or expeditiously, or where advice or assistance is required to advance or complete the case.

In relation to nighttime and weekend PYP Cases, the ITM's allocate areas in which inspections are to be undertaken to pairs of Inspectors. Pairing of Inspectors is subject to ITM approval

Interim measure

Until the risk team is fully functional and providing sufficient lists of cases to the ITMs, the ITMs will continue to select cases for assignment giving priority to complaints.

Other Relevant Documents / Information Sources

- List of unallocated cases
- List of cases on hands
- Risk criteria template
- Risk Register (by region)

Procedure Title & Ref:	3.2 Communication with Employers
Effective from:	March 1 st 2011

Purpose

To ensure:

- Clarity and fairness in all contact with employers
- All reasonable requests for information pertaining to activity and inspections undertaken are responded to within a reasonable period
- NERA communicates with the correct legal entity.

Procedure

Legal Name and Status:

The correct legal name and status of an employer, who is the subject of an inspection by NERA, should be established at the earliest stage in the process and used in all correspondence. A letter addressed to an individual director, shareholder, manager or other employee of the company is not considered to be a letter to the company.

The following are the appropriate forms of address that should be used in correspondence:

Registered company: e.g. ‘Green Widgets Limited’

The Secretary,
Green Widgets Limited¹
Bunbury Lane
Carlow

Sole Trader: e.g. John Black T/A as Black’s Corner Shop

Mr John Black
John Black T/A Black’s Corner Shop
Purple Street
Carlow

Partnership: e.g. ‘Bilbo Baggins & Co Solicitors’

Mr J Baggins
Bilbo Baggins & Co
Bradley Lane
Carlow

Ms P Bilbo
Bilbo Baggins & Co
Bradley Lane
Carlow

¹ Only registered companies that are ‘limited’ will have ‘Limited’ or ‘Ltd’ in their name. Public companies will have ‘Plc’ as part of their official name. Unlimited companies will have no additional words apart from the actual registered name, e.g. ‘The Red Widget Company’

All company names are registered with the Companies Registration Office. The spelling and format of the name as registered should be checked and used in correspondence.

Address for Correspondence: The company's address is the address registered, for the time being, with the Companies Registration Office. In the case of a company that trades from an address different to its registered address, the correspondence should also be copied to the trading address.

When corresponding with a partnership, particularly in a legal context, it is necessary to identify at least one current partner and address the correspondence specifically to that individual partner at the address from which the partnership carries on business². In the case of individual partners who are bodies corporate the format for a registered company set out above should be followed. Where the number of partners is three or fewer, the Inspector should write to each of the partners individually.

Disclosure of Information

Where an employer requests information regarding inspections pertaining to their business or is looking for an update on their case the Inspector assigned should satisfy themselves that the caller is entitled to receive information in relation to the case. A quality response should be provided to any written correspondence and e-mails as soon as possible but not later than 10 working days from date of receipt (return phone calls to be made within 2 working days).

Employers may be represented by agents. Where there is a client/professional service provider relationship e.g. solicitor/accountant (including receivers/liquidators), such agent is entitled to receive the same information as the employer. Correspondence sent to an agent should be copied to the employer. A Form of Authority is not required. In this instance, information provided will relate to the status of the case including an inspection scheduled, completed, breach letter issued, breaches rectified, unpaid wages paid (i.e. the information that the employer would receive in his or her own right).

In all other situations where a representative is seeking information, the employer is required to complete the NERA Form of Authority confirming that NERA may disclose relevant information to the representative. Such representations would include employer representative or employment consultants.

Employers, who are or were the subject of an inspection, and their agents and representatives, should have direct access to the appropriate Inspector for the purposes of obtaining updates on the case. All correspondence from Inspectors must contain the Inspector's contact details (land-line and e-mail address). Mobile number may be provided at the Inspector's discretion.

² Sometimes, it may be difficult to establish the full details of what parties comprise a particular partnership, as not all partnerships are obliged to register their business name with the Companies Registration Office. 'Bilbo Baggins & Co' is an example of the type of partnership business name that must be registered with the CRO, as it includes words other than the surnames of the partners.

Where employer requests information or copies of material from the file created in respect of an inspection of their business, including the Inspector's Report after an inspection is complete, these records will be provided (other than records that would identify/compromise a complainant and records that would show how the case was selected for inspection). All requests for such information should be in writing to the relevant Regional Manager. Information from the file should only be released on the approval of the Regional Manager. The Regional Manager should ensure that no legally privileged material is released. Care should be taken in all communications to ensure that any personal information transmitted is done so in a secure, safe and confidential manner consistent with the requirements of Data Protection legislation.

All employers inspected must be advised by letter of the conclusion of the inspection as soon as the case is closed.

Other Relevant Documents/Information Sources

- Form of Authority
- Data Protection

Procedure Title & Ref:	3.3 Communication with complainants³
Effective from:	March 1 st 2011

Purpose

To ensure clarity and fairness in all contact with complainants and to ensure that they are responded to within a reasonable period and that they are regularly updated on the status and outcome of their case.

Procedure

Complainants should be telephoned (where applicable) prior to the inspection, to confirm the details of the case, clarify issues and gather any additional information.

Complaints and applications for enforcement of an award of an employment rights body must be acknowledged, by the regional office, within 5 working days of receipt. Where necessary, that letter should also advise of any issues that fall outside NERA's remit, including where an application for enforcement of an award of an employment rights body cannot be progressed by NERA and why this is the case. This communication should include relevant forms and information for the complainant regarding other possible redress mechanisms, if appropriate.

Inspectors should update complainants at least every 8 weeks by either letter or telephone (evidence of this required on file) until such time as the case is concluded.

Where a complainant seeks an update in their case, the Inspector responds as soon as possible but not later than 10 working days after receipt of the request, ensuring that the information given is limited to the individual's own circumstances.

Where complainants are represented by an agent (e.g. solicitor/accountant) with whom they have a client/professional service provider relationship, such an agent is entitled to receive the same information as the complainant. A Form of Authority is not required.

Where a representative making a complaint or enquiry on behalf of a complainant does not have a client/professional service provider relationship, the complainant is required to complete a Form of Authority confirming that NERA may disclose relevant information to the representative. The NERA Form of Authority should be used and the completed form must be placed on file.

Where individuals or organisations make allegations of a general nature (e.g. alleging that an employer is not compliant but where no specific employee is named), NERA will treat this as a complaint. However, no details of the inspection can be provided to those individuals or organisations making such allegations.

³ Complainants include applicants for enforcement of an award of an employment rights body

Employees, agents and representatives of a complainant making enquiries should be directed to the appropriate Inspector for the purposes of obtaining updates on the case. All correspondence from Inspectors must contain the Inspector's contact details (land-line and e-mail address). Mobile number may be provided at the Inspector's discretion.

Care should be taken in all communications to ensure that any personal information is transmitted in a secure, safe and confidential manner consistent with the requirements of Data Protection legislation. In particular personal data should not be transferred by email outside the Department of Enterprise Trade and Innovation / NERA unless using the secure document uploading mechanism and complainants should not be requested to transfer personal data to NERA by email. If email is received despite being advised, this should be noted on file.

All complainants and/or their agents or representatives must be advised by the inspector, by letter of the outcome of their complaint.

Other Relevant Documents / Information Sources

- Employee Complaint form
- Form of Authority

Procedure Title & Ref:	3.4 Research in Advance of Inspection
Effective from:	March 1st 2011

Purpose

To ensure that Inspectors inform themselves and have details of an entity’s operations, ownership and structure before carrying out an inspection.

Procedure

Inspectors must prepare in advance for an inspection by undertaking the following checks in all cases.

SYSTEM	CHECK	FILE
Risk Based	<ul style="list-style-type: none"> ➤ If the entity was previously inspected. If entity was inspected within the last twelve months and found compliant, Inspector should discuss with ITM prior to proceeding with inspection 	If a previous inspection was carried out obtain the file and review. Place a copy of the Inspector’s report from the previous inspection on the file.
CRO Database (available on NERAnet)	<ul style="list-style-type: none"> ➤ Legal Name of Entity ➤ Legal Status of Entity, e.g. company, partnership, business name, sole trader ➤ Names of directors and Company Secretary ➤ Names of individual partners in the case of a partnership. (Note: one or more of partners may be a company) ➤ Check if director’s home address is the same as the registered office 	<p>Print the entity’s details and place on the file</p> <p>If the entity is a chain with numerous branches/locations, the inspection should be carried out by the regional office in which the HQ is based</p> <p>Take the appropriate steps for dealing with a private residence</p>
CRO Database	<ul style="list-style-type: none"> ➤ Business relationships of directors and Company Secretary with other companies [Notify the risk team if necessary] 	Note on file

SYSTEM	CHECK	FILE
DSP INFOSYS	<ul style="list-style-type: none"> ➤ Employer details ➤ Number of Employees 	Note on the file the employer number and the number of employees
NERA S.3 list of Young Persons Licenses	<ul style="list-style-type: none"> ➤ If any Young Persons are licensed to work 	Note on the file the names of any employees listed with the employer
Internet	<ul style="list-style-type: none"> ➤ Conduct online research as appropriate including any information provided by the employer on their operations 	Print any relevant details and place on the file
Complainants	<ul style="list-style-type: none"> ➤ Complainant should be contacted by telephone, in advance of the inspection to verify the information contained in the complaint form and to clarify any other relevant matters 	Details of all contact with complainants should be recorded on file.
Where cases arise from application for enforcement of an award of an employment rights body	<ul style="list-style-type: none"> ➤ Check that employer named on decision / determination is legal employer: If Yes, proceed with inspection ➤ If no: inform applicant in writing that s/he must provide NERA with two certified copies of amending/correcting decision/determination from appropriate body 	

At research stage the Inspector forms a preliminary view which piece(s) of legislation governs the inspection (eg, ERO, REA, NMW etc.). Further intelligence gathering may be required at the inspection (see 3.8)

The Inspector should establish in advance whether the inspection is to take place in a private residence and take the appropriate steps, as set out in procedure 3.5.

Co-operation with other agencies

Inspectors should consider if a joint investigation is necessary with the Revenue Commissioners, the Dept of Social Protection, or any combination of the three

organisations. (See Procedure 3.7). On occasion, it may also be appropriate to consult with or involve the GNIB/ Local Immigration Officers.

Other Relevant Documents/Information Sources

- CRO Database
- Revenue List of Employers
- DSP INFOSYS
- Employment Permits Database
- Internet
- Reconcile

Procedure Title & Ref:	3.5 Arranging the Inspection
Effective from:	March 1st 2011

Purpose

To ensure that the inspection is carried out at the appointed time in accordance with Inspector's appointment letter.

Procedure

When all of the advance research is complete, the Inspector notifies the employer that s/he proposes to carry out an inspection.

- The Inspector sends an appointment letter with notice of date and time of the proposed inspection to the employer within four weeks of receipt of the case.
- Alternatively the appointment may be scheduled by telephone with follow up confirmation by letter and further confirmation by telephone close to the scheduled date.
- The letter should include the Inspector's contact details, a copy of the *NERA Guide to Inspections* and template for employee(s) details to be completed and available at the inspection
- The appointment should ideally be confirmed with the employer prior to inspection time/date either by telephone, or email.
- This confirmation or evidence of attempt to contact the employer must be noted on the file.

Where the inspection includes an application for enforcement of an award of an employment rights body, the appointment letter serves also as a letter of demand in respect of the determination/award that is being enforced. The Inspector should:

- Inform the employer that the inspection originates from an enforcement application
- Refer to the outstanding determination/award and request the employer to comply immediately with it
- Request that an update in respect of same be available at the inspection

Where all attempts to contact the employer prior to inspection fail, the Inspector may, having documented his/her efforts to contact the employer and with the approval of the ITM, decide to proceed with the inspection without having confirmed the appointment in advance.

If an Inspector or employer is unable to keep an appointment, arrangements must be made to make an alternative appointment as soon as possible. The Inspector should advise the ITM where an inspection appointment is to be postponed and record same on file.

Where an employer does not cooperate and fails to facilitate an inspection, a maximum of three attempts should be made to effect an inspection. In such cases the Inspector should issue a letter by registered post, informing the employer that if, at the end of the 14-day

period the matter has not been resolved, the case will be referred for the initiation of legal proceedings. Proof of service of this communication must be recorded on the file.⁴

Where an employer is refusing to cooperate or frustrating the inspection process consideration should be given by the Inspector in consultation with their ITM to proceeding with employee interviews and contacting Revenue and Social Protection with a view to establishing as much information as possible in relation to compliance with employment law and other issues.

Inspectors should consider, where appropriate, notifying the Garda Síochána when operating in a city, town or region. Should an Inspector encounter a hostile or potentially dangerous situation, he/she should use their discretion as to whether it is appropriate to commence or continue an inspection. ITM's and the appropriate Regional Manager must be notified as soon as possible after any such situation and the matter should be recorded on the file.

Entering A Private Residence

An Inspector does not have a legal entitlement to enter a private residence without the householder's consent or a court warrant. Details of such consent should be recorded on the file. Where the inspection is to take place in a private residence, the Inspector may arrange to be accompanied by a colleague.

Other relevant Documents/Information Sources

- Standard Appointment Letter
- Template for completion by employer prior to inspection
- NERA Guide to Inspections

⁴ Copy of details from An Post website of "Track & Trace" section showing the item history and acceptance by recipient.

Procedure Title & Ref:	3.6 Sharing Information
Effective from:	May 1st 2011

Purpose

To provide for secure and beneficial exchanges of certain information between NERA, the Department of Social Protection, the Revenue Commissioners and other public bodies.

Procedure

Cases where information should be passed to Revenue and/or the Department of Social Protection include:

- Non-registered employees not on the employer's records
- Allegations of employee income suppressed
- Employees registered as self-employed
- Payments to employees outside payroll e.g. overtime/extra duties paid in cash
- Large number of employees being paid in cash
- Identity fraud
- No employment records
- Unusual or Irregular expenses payments to employees
- Subsistence used to make up wages
- Allegation of fraudulent claiming of Social Welfare entitlements
- Benefits not reflected on the payroll e.g. use of vans/accommodation
- Large unpaid wages paid to employees (to be done centrally by Inspection Support Unit)
- Any other Revenue/ Department of Social Protection related issues

Other issues outside of NERA's remit should be directed to the Regional Manager who may refer the matter to the appropriate agency e.g., Department of Enterprise, Trade and Innovation (DETI), DETI Agencies or other State Agencies such as the Health and Safety Authority, Road Safety Authority, GNIB etc.

Methods of communication may include:

- A telephone call to the relevant official with the appropriate agency
- By post
- In the case of the Revenue Commissioners, emails must be sent via the secure e-mail facility
- Copies of the documentation should be scanned and emailed via this secure email facility. Confidential information must not be emailed to any other individual or agency outside of DETI

Private Security Authority (PSA) Section 13 Requests:

Operations Support Unit co-ordinates section 13 requests from the PSA to NERA.

Approval must be sought from the relevant Regional Manager before issuing the response to the PSA. All communications should be noted on the file.

Other relevant Documents / Information Sources

- List of JIU contacts
- List of GNIB contacts

Procedure Title & Ref:	3.7 Joint Investigations
Effective from:	March 1st 2011

Purpose

To carry out inspections in cooperation with the Revenue Commissioners and the Department of Social Protection where appropriate.

Procedure

NERA, Revenue or the Department of Social Protection may request a joint inspection.

The following procedure is to be used in cases where a request for a joint inspection is received from Revenue or DSP or where NERA is of the view that a joint inspection is necessary.

- ITM decides in conjunction with Regional Manager whether NERA should participate in or request a joint investigation.
- The organisation initiating the Joint Investigation (NERA, Revenue or Social Protection) must be noted on file.
- Communicate with the relevant officials with a view to sharing information in advance of the inspection. Identify each agency's desired outcome
- Gather intelligence and conduct surveillance in advance of the inspection as appropriate
- Carry out the inspection. Participating agencies retain their individual powers and should only act in accordance with their own legal powers and procedures
- Liaise with partner agencies to review progress
- Case to be progressed in line with standard procedures

Other Relevant Documents/Information Sources

- List of JIU contacts

Procedure Title	3.8 (1) The Inspection Process–Interviewing Employer/Employer Rep
Effective from:	March 1st 2011

Purpose

To ensure the interview is carried out thoroughly, consistently and fairly.

Procedure

Prior to the commencement of an inspection, Inspectors should identify themselves and produce their Certificate and Warrant of Authorisation to the employer or their representative. Employers are not allowed to take a copy of the Inspectors Certificate and Warrant of Authorisation but should be directed to the copy provided on the NERA website and the details provided in the Appendix to the *Employer’s Guide to NERA Inspections*.

Generally, NERA does not provide the reason as to why any particular inspection is taking place. However, the Inspector may inform the employer as to the reason for the inspection in the following specific limited circumstances:

- i. repeat inspection within twelve months of first inspection as a result of a complaint received subsequent to first inspection
- ii. Complainant’s name or details are not included on any records. Where this is the case the complainants written consent should be secured prior to informing the employer.
- iii. Employee asks Inspector in writing to give name
- iv. Inspection is on foot of an application for enforcement of an award of an employment rights body

The initial process is as follows:

- The Inspector uses the appropriate NERA Inspection Form and informs the employer/representative of the Inspectors intention to interview employees during the course of the Inspection. See 3.8(3)
- Once the Inspector is satisfied that as much information as appropriate or possible has been provided, the inspector informs the employer/representative which piece(s) of legislation governs the inspection.
- Where the employer disputes the inspector’s opinion on the applicability of the legislation governing the inspection, the employer/representative should be advised to make a written submission to NERA outlining their alternative view. (see Section 33/57 referrals below)
- The Inspector should proceed with the inspection and the relevant records should be requested for inspection.
- Inspector checks if Employer requires any other employment rights information and provides it, where appropriate.

Referrals to the Labour Court Under Sections 33 and 57 of the IR Act 1946

Inspectors are obliged to form an opinion as to the applicability of REAs and EROs to employers being inspected. Where an Inspector is in any doubt or requires a second opinion s/he should consult with their ITM who in turn may consult the Regional Manager.

Where the employer disputes the inspector's opinion on the applicability of an REA or ERO they should be advised of the option available to them of seeking a determination of the Labour Court under Sections 33 or 57 of the Industrial Relations Act 1946.

However, as Labour Court Cases can involve the input of significant resources and time for both the employer and NERA, it is important that full engagement takes place between the Inspector, the employer and the employees so that the Inspector has as much information as possible available in reaching an opinion. Employee interviews are an essential component in reaching an opinion on the applicability of REAs and EROs.

Where an employer signals an intention to refer a case to the Labour Court the Inspector must emphasise the opportunity for engagement with NERA in advance of any Labour Court application and the employer should be requested to first make a written submission to NERA outlining their alternative view with as much supporting facts/documentation as possible for consideration by NERA Management.

If an Employer decides to proceed with an application to the Labour Court the Inspector informs the ITM and the Regional Manager.

Other Relevant Documents/Information Sources

- NERA Standard Inspection Check List
- NERA Guide to Inspections

Procedure Title	3.8 (2) The Inspection Process–Examining Records
Effective from:	May 1st 2011

Purpose

Records are examined and verified in order to determine compliance and copies are taken.

Procedure

Examining records is a key element of determining compliance. Inspectors should ensure that they examine a sufficiently broad range of employee records, with a particular focus on low-paid, migrant or otherwise potentially vulnerable employees, in order to be confident that they have a true and accurate picture of the level of compliance. The Inspector should endeavour to complete all checks while on site during the inspection and seek the assistance of the employer/representative with this exercise, as required, in order to resolve any deficits in the information available. As a minimum, Inspectors should examine the following employment records (and place relevant samples on file) without engaging in the reconstruction of records:

- The completed template sent with the appointment letter referred to at 3.5 or the same information provided in a similar format.
- Employer Registration number with the Revenue Commissioners.
- Terms of Employment issued by the employer for a sample of employees
- Payroll details (Gross to net, Rate per hour, Overtime, Deductions, Shift and other Premiums and Allowances, Commissions and Bonuses, Service Charges etc)
- Copies of Payslips
- Annual Leave and Public Holiday entitlements received by each employee
- Hours of work for each employee (including start/finishing times, meal breaks and rest periods).
- Register of Employees under 18 years of age.
- Experience of workers
- Whether board and lodgings are provided and relevant details
- Any other documentation that may be necessary to demonstrate compliance.

The records selected should, as set out below, be drawn from the 12 months immediately prior to the date of the inspection⁵. With regard to complaints, records covering each complainant must be included in the sample records selected and examined taking into account. Referral timescales for prosecution (See 3.14 (1)) should be taken into account when examining records.

Circumstances may arise whereby it is appropriate for Inspectors to take more than the minimum sample and the Inspector should exercise his/her judgement as to which additional records it may be necessary to select and examine.

The records selected must include:

⁵ NERA retains the power to examine records and seek arrears (in relevant cases) for a three-year period. However this should only be done in exceptionally serious cases with the prior agreement of the Regional Manager.

Sample A - a recent payroll incorporating a public holiday (whether weekly, fortnightly, monthly) appropriate to the applicable legislation (NMW, ERO, REA) together with the corresponding timesheets for all employees and

Sample B - a second payroll and the corresponding timesheets for all employees dating from approximately twelve months before the date of the inspection (but still within the twelve months) and

Sample C - the last pay reference period of the payroll and corresponding timesheets for all employees for the previous year-end, (selected and retained on file for the purposes of comparison with Revenue P35 data, if required).

The examination will then proceed as follows:

1. The Inspector examines the appropriately selected informed sample of up to 20% (or 5, whichever is the greater) of employees' records from Sample Periods A and B above. This Employee Sample should include the complainant(s) where applicable. The informed sample must include but is not limited to records for those employees who may potentially fall below the relevant SMR and/or other premia/overtime, where applicable.
2. The Inspector calculates the statutory minimum rate due to the employees for the pay periods selected based on the hours worked and classes of employees (per the employer's records). The Inspector then verifies these figures against the payslips provided. These calculations should be signed by the Inspector and placed on file as evidence of the records and pay periods examined. Where there is an apparent underpayment, the onus is on the employer/representative to show that he/she is in compliance (see 4 below).
3. Where no breaches are detected copies of the records examined at 2 above are taken for the file and no further examination of the payroll records is required.
4. Where breaches involving unpaid wages are detected in the initial examination at 2 above, copies of the records of **all** employees for all sample periods should be taken and the Inspector should advise the employer that s/he is required to provide calculations of underpayments in respect of all employees for the period of 12 months prior to the date of the inspection. The Inspector may select an alternative period having regard to the pattern of non-compliance s/he detected during the examination of the relevant Sample Periods (e.g. if Sample Period B is compliant but A is non-compliant because the employer did not implement a pay increase under an ERO, the relevant period would be from the date of the rate change (i.e. new ERO) to the date of the inspection).
5. A copy of all records (including payroll and timesheets) examined during the course of the inspection is taken for the file.

Obtaining records for the file

- The inspector should take copies of all records examined on site, or
- The Inspector takes original copies away to copy and a receipt is issued to the Employers using the NERA receipt book. Original records should be returned by registered post within 15 working days or by other secure means, or
- If an employer refuses to allow the originals to be taken and does not have the facility to copy the records, the Inspector should arrange for alternate means by which a copy or transcript of the relevant records may be taken eg hand written transcription, secure email facility and hiring of copier equipment.

Employer fails to cooperate in calculating unpaid wages owed

Where NERA contemplates the prosecution of an employer for non-payment of the statutory minimum rate of pay/remuneration, the critical issue is that NERA has sufficient documentation and evidence to calculate, and, where appropriate, seek a Court Order for the recovery of, the total unpaid wages due.

The Inspector relies on the calculations done in respect of the sample periods above and on any evidence and documentation secured / intelligence s/he may have been able to get (e.g. Tax deduction cards, interviews with employees, employee witnesses willing to take the stand) and presents the Court with an estimate of the amount due and the associated assumptions and methodology used to arrive at this estimate.

Failure to keep records

Where no records are kept, or records are not kept in the prescribed form, the Inspector should continue with an inspection of the data available and seek the appropriate information from employees at the interview stage to determine compliance.

PYP Inspection Process

Where it is established that young persons are employed, the Inspector should establish that:

- The employer keeps a register of each person under 18 employed containing, full name, date of birth, start and finish times each day, rate of wages or salary paid for the normal working hours each day, week, month or year, as appropriate and the total amount of wages or salary paid to each person.
- The Abstract (PYP Poster) is properly displayed (section 12)
- With regard to under 16s, that written permission from a parent or guardian has been received by the employer
- The employee has been given a copy of the official summary of the PYP Act 1996, together with other details of their terms of employment, within one month of commencement of employment
- The employer has complied with the relevant terms in relation to maximum hours of work per week, hourly thresholds permitted and rest breaks

Conclusion of Onsite Inspection

- A final meeting/interview with the employer should be held before leaving the premises. Any final queries should be made and the employer should be advised

of the preliminary findings. It may be necessary at this stage (or earlier if necessary) to caution the employer (See Procedure 3.12).

- Inspection should not be concluded and premises not left without getting all information and questions answered.
- Inform the employer/representative that a letter will issue setting out the findings of the inspection where there are breaches or alternatively concluding the case.

Breach Letter

If breaches are detected, the Inspector issues a letter to the employer within 10 days of the inspection, setting out details of the breach(es) and giving a deadline (generally 21 days) by which the employer must respond, either demonstrating compliance or setting out how s/he intends to become compliant.

Breach letter – PYP

In addition to the above, where PYP breaches are detected, the letter must advise the employer that, if breaches are detected in a follow-up inspection, the matter will be referred for legal action. In the case of inspections where previous breaches have been identified, the matter should be referred to the Regional Manager.

Breach letter –Application for enforcement of an award of an employment rights body

Where the inspection determines that the employer has not complied with the determination/award, this is stated in the breach letter.

Reminder letter

Inspector may if appropriate issue a reminder letter.

14-Day Letter

If the employer fails to respond satisfactorily to the breach letter within a reasonable timeframe, the Inspector issues a 14-day letter by registered post, informing the employer that if, at the end of the 14-day period the matter has not been resolved, the case will be referred for the initiation of legal proceedings.

In cases of an enforcement of an award of an employment rights body, where the award remains outstanding, the Inspector issues the 14-day letter to the employer and notifies the applicant in writing, requesting him/her to let the inspector know if s/he receives payment of the award.

Other relevant documents/Information Sources

- Standard Appointment Letter
- Breach Letter
- 14-day Letter
- Template for completion by employer prior to inspection
- Code of Practice Concerning the Employment of Young Persons in Licensed Premises
- Any PYP licences which may be in place for that employment
- Employee Questionnaire

Procedure Title	3.8 (3) The Inspection Process–Interviewing Employees
Effective from:	March 1st 2011

Purpose

To ensure that the case is carefully and fully investigated and to check, in so far as is possible, the veracity of records and information provided by the employer and by employees⁶.

Procedure

Securing information from employees is a key element of the inspection process. A number of employees (ideally somewhere between 3 and 10 depending on the number employed) must always be interviewed. In circumstances where the inspector may consider it necessary to interview more or less than this number, the ITM should be consulted. An informed sample of employees must be selected based on criteria such as level of pay and job description.

Employee interviews should normally take place on the day, in conjunction with the examination of records. However, there may be instances where it is necessary to carry out the interviews prior to or after the examination of records, for example where:

- An employer requests a late cancellation on the day(s) prior to the inspection.
- An Inspector is already en-route to an inspection and receives a late call for cancellation.
- Employees are not located at the venue where the inspection is taking place.
- Employees are not available on the day of the inspection
- For investigative purposes the Inspector feels it more appropriate to interview employees in order to gain further information prior to the inspection or the Inspector feel that better quality information may be forthcoming if the interview was held at another time and/or place

Interviewing employees prior to the examination of records in the above-mentioned examples allows an Inspector to progress a file in a timely manner until such time as the full examination of records can take place.

The approval of the ITM should be sought to interview employees on a day other than the day of the inspection.

Postal questionnaires should only be used as a last resort where attempts to interview employees has been unsuccessful. This should be reflected on file. Where no postal questionnaires have been returned within three weeks and no prior interviews have been conducted, the Inspector should make fresh arrangements to interview employees. Where postal questionnaires are used and there is any doubt as to the veracity of the

⁶ Powers of examination and enquiry is conferred on Inspectors, inter alia, by Section 52 of Industrial Relations Act of 1946, Section 9 of Payment of Wages Act of 1991, Section 22 Protection of Young Persons (Employment) Act 1996, Section 8 Organisation of Working time Act 1997, Section 33 National Minimum Wage Act 2000.

information supplied, a sample of the employees who submitted the questionnaires should be contacted to verify the information supplied.

Other relevant documents/Information Sources

- Employee Questionnaire

Procedure Title	3.9 Employment Permits Compliance Checks
Effective from:	March 1st 2011

These revised procedures are been put in place on an interim basis pending the introduction of a full employment permit inspection procedure in 2011

Purpose

To give guidance with regard to employment permit issues encountered during inspections

1. No new employment permit inspections are to be carried out until further notice
2. When interviewing employers/representative (see Procedure 3.8) Inspectors should advise employers of the need to ensure that all Non EEA citizens, as well as Bulgarians and Romanian nationals are legally employed and that the employer must satisfy themselves that their employees have the correct documentation pertinent to their status.

Procedure Title	3.10 PYP Inspections – Night/Weekend
Effective from:	March 1st 2011

Purpose

Onsite visits outside of normal working hours to verify compliance with the Protection of Young Persons Act, 1996 (PYP Act 1996).

Procedure

For health & safety reasons, PYP night work must be carried out in pairs. Advice of planned dates for PYP night work should be given to the relevant ITM.

Inspector's complete PYP Night Inspection form

Where young persons are employed, the Inspector should:

- Record details of young person/s
- Where appropriate, establish if the Code of Practice Concerning the Employment of Young Persons in Licensed Premises is in place and signed by the parents (in relation to licensed premises)
- Carry out further checks of relevant records as required, including an examination of the roster for that night
- Detail any breach of the Act detected
- Record that the Inspector informed the person in charge of the breaches, where this is possible

Where no breaches are detected i.e. no U18s employed, close the case

Where breaches are found, the Inspector,

- Informs the employer/ person in charge, of the working hours permitted for young persons under the Act, and,
- Seeks immediate compliance with the PYP Act.
- The Inspector carries out a full inspection (at a later date)

Other relevant Documents / Information Sources

- Protection of Young Persons Act, 1996 (PYP Act 1996).
- Code of Practice Concerning the Employment of Young Persons in Licensed Premises
- PYP Night Inspection form
- Any PYP licenses which may be in place for that employment
- PYP Inspection Process (see 3.8.1)

Procedure Title	3.11 Labour Court Requests
Effective from:	March 1st 2011

Purpose

To provide copies of records or transcripts in response to a request from the Labour Court in respect of matters before it.

Procedure

An inspection must be carried out and the relevant information provided to the Labour Court as a priority. Where delays occur in obtaining such information, the Inspector should notify Operations Support. Where breaches are detected in the course of such an inspection, the normal procedure in relation to rectification of breaches should be followed.

Where the Inspector identifies **incorrect details** on the Labour Court request (e.g. incorrect address), the inspection should nonetheless be carried out in the normal manner. Upon receipt from the employer, the information should be submitted to the Labour Court via Operations Support, together with any updated or corrected details

Other relevant Documents / Information Sources

- NERA Inspection Report Sheet

Procedure Title	3.12 Issuing a Caution
Effective from:	March 1st 2011

Purpose

To protect the employers' right not to incriminate themselves as a result of anything they might say, without first being advised of the fact and advised that what they say may be used as evidence.

Procedure

It is not necessary to issue the caution at the outset of an inspection. It is also unnecessary to caution an employer where neither the records presented, nor any correspondence from the employer, indicate breaches may have occurred.

Where evidence is discovered to suggest an offence/offences may have occurred and where it is intended to question the employer about suspected offence(s), a caution must be issued prior to commencing the interview.

Wording of Caution

“ I must inform you that you are not obliged to say anything unless you wish to do so. However, anything you do say will be taken down and may be given in evidence”.

The Inspector must record on the file that a caution was given. This record should indicate the date and time at which the caution was given.

Who to caution

- An employer
- An officer of the company (i.e. a company director or secretary).
- An employee or agent of the company suspected of producing fraudulent records in the course of the inspection

In general, there is no need to caution employees prior to interview.

General Notes regarding Caution

- It is not necessary to take verbatim notes following the issue of a caution.
- Contemporaneous notes that confirm when and how the caution was given and the general content of the employer's responses must be kept.
- An employer who has been cautioned is under no obligation to provide responses
- An Inspector has no right to put persons in situations where they may incriminate themselves (employers and employees)
- Hand written notes should be signed, dated and easily legible
- A copy of the appropriate records containing the breaches (or a note to confirm that no or insufficient records were produced), which gave rise to the need to question the employer and thus the need for a caution, must be placed on the file.

Procedure Title	3.13 Recovery of Unpaid Wages / Awards
Effective from:	May 1st 2011

Purpose

To seek payment of unpaid wages identified as due to all employees under statute or cases where an application is being pursued for the payment of an award by EAT, Labour Court or a Rights Commissioner.

Procedure

Inspector inspects records and seeks recovery of unpaid wages for all employees in respect of whom breaches involving monetary loss have been detected. The Inspector requests the employer to calculate the extent of, and pay, any unpaid wages due to employees for a period of one year immediately prior to the date of the inspection⁷. Normally the date of the inspection is the date of the first visit. Employers should be informed that such wages are subject to the normal statutory deductions

In the case of applications for the enforcement of an award of an employment rights body the Inspector also seeks payments of any outstanding award.

Calculation of Unpaid Wages

The employer's calculations should include:

- Name and PPS number of the employee
- A breakdown of the hours worked per relevant pay period/s into normal, overtime, Sunday premium etc.
- The rate of pay relevant to the above hours
- The total sum payable
- The total sum actually paid
- The remainder of unpaid wages if applicable
- Any deductions made by the employer for board and lodging

Checking Employer's calculations

The Inspector must check the veracity of the employer's calculations of unpaid wages as follows:

- select a sample of at least 20% (minimum of 5, whichever is the greater) of employees to whom unpaid wages are due
- for the above sample, check the calculations provided by the employer against the records collected during the inspection. If these calculations do not agree, the Inspector must contact the employer to discuss the differences

⁷ For cases on hand where the inspection took place prior to the coming into operation of these procedures only unpaid wages relating to the period of 12 months prior to the inspection will be sought. Where this period extends prior to the 1st of January 2010 the Inspector/ITM should consult with the Regional Manager. Where legal proceedings have been initiated (i.e. summons already issued) and notice of intent to seek the recovery of unpaid wages has been submitted to court, no change will be made insofar as the period over which the unpaid wages are being sought.

- where the employer's calculations are incorrect, the employer must be requested to recalculate the unpaid wages for all employees. A sample of 20% (minimum of 5, whichever is the greater) of these calculations must subsequently be verified as above
- where there are no records of time worked, the employer must provide a written note of the rationale used to calculate the unpaid wages due. The employer's rationale should be verified with a sample of at least 20% (minimum of 5, whichever is the greater) of employees. Where this is not possible, the reason should be noted on file
- all calculations completed by the Inspector must be signed, dated and filed

Instalment Arrangement

An employer may propose to pay unpaid wages / awards by instalments. This is a matter solely for agreement between the employer and the employee/s. The employer should be advised to submit copies to the Inspector of any agreement entered into with the employees.

This agreement must contain the employees' written consent and should also include:

- Employer name, address and registered number
- Employee name, address and PPS number
- Total of unpaid wages due
- Breakdown of unpaid wages due into Wages/Salary, Sunday premium, Public Holidays, Annual Leave etc.
- Exact dates and sums of when each payment (instalment) is to be paid
- Method of payment, cash, cheque, EFT or other

The agreement must be signed and dated by both the employer and the employee/s affected. The Employer should also be advised that NERA reserves the right to prosecute for a breach of employment rights, irrespective of whether or not the unpaid wages due have been paid. A copy of the Agreement entered into should be placed on the file.

Where one or more of the employees do not agree to the proposed instalment arrangement, and the employer fails to pay the unpaid wages to them, the file should be forwarded to the ITM for consideration for legal action.

In the case of employees who have ceased employment and are due unpaid wages, the employer must be directed to pay the unpaid wages directly to the employee. Where an employer is unable to locate a former employee, the Inspector must issue a letter to the employee informing him/her to contact the employer.

All names of employers who enter into an instalment arrangement are sent to the risk team.

Employer Returns

Employers who have made payments of unpaid wages or EAT, Labour Court or Rights Commissioner award payments should complete the standard NERA Unpaid Wages/Awards Payment Form and submit it to the appropriate Inspector. Copies of proofs must be retained on the file. Copy of signed payslip showing payment or copy of EFT is also acceptable.

Unpaid wages received by NERA

Cheques/monies sent to NERA must be returned to the employer by registered post. A photocopy of the cheque and proof of delivery of the registered letter must be placed on the file.

Verification of employer compliance post-inspection

Following an inspection where the employer has rectified breaches, the Inspector should request records for the last pay reference period and inspect a sample of up to 20% (minimum of 5, whichever is the greater) of employees' records to demonstrate that the employer is compliant going forward. These could include payslips, timesheets, etc.

Employer Cannot/Will Not Pay Unpaid Wages

Where an employer pleads inability to pay or refuses to pay unpaid wages, the Inspector must notify the employer that failure to pay the unpaid wages may result in the case being referred for legal action.

Other Relevant Documents / Information Sources

- Unpaid Wages/Awards Payment Form

Procedure Title	3.14 Case Reviews
Effective from:	March 1st 2011

Purpose

- To monitor cases and ensure they are being processed within the relevant time frame and in the appropriate manner.
- To provide assistance and make decisions on cases where necessary

Procedure

Formal Review

- Operations Support provides each ITM with a list of active cases on a monthly basis
- The ITM identifies cases over four months old with each Inspector on their team this should take place every 6 – 8 weeks
- The Inspector completes a case review form in respect of each case over four months old, giving details of the current status of the case
- The ITM reviews the progress of each case and agrees with the Inspector on further action required
- The agreed action, together with the associated deadlines, is noted on the case review form, which is signed by the ITM and placed on file.
- Where action cannot be agreed at the review meeting, the ITM/RM should revert to Inspector within four weeks.

Informal Review

Informal requests for assistance, advice and decisions should be referred to the ITM. Where necessary the ITM may refer the request to the Regional Manager. Legal advice is also available via ITM. This should be noted on file.

Reviews by Regional Managers

- Operations Support provides each Regional Manager with a list of active cases for their region on a bi-monthly basis.
- The Regional Manager identifies cases over six months old and selects a sample of cases for examination.
- The Regional Manager notifies the ITM of each case to be examined.
- The Inspector completes a case review form in respect of these cases, giving details of the current status of the case and may be requested to attend meeting with Regional Manager and ITM.
- The Regional Manager reviews the progress of each case and agrees with the ITM on further action required

- The agreed action is noted on the case review form, which is signed by the Regional Manager and placed on file.

Assistant Director Review

Inspectors prepare a brief overview of their cases that are open nine months or longer on a monthly basis using the template available. This overview will form the basis of the Assistant Director's review of such cases.

The Assistant Director will provide the Regional Manager with a copy of his or her completed case reviews.

Review of Closed Cases

- Inspection Support provide list of cases closed within the previous two months, on a bi-monthly basis, to each Regional Manager.
- Regional Managers will select and review a sample of the closed cases

Audits

Audits of compliance with the Case Management Manual will form an integral part of case reviews above.

Other Relevant Documents / Information Sources

- Cases on hands report
- Review form
- Template for overview of cases over nine months (to be completed monthly)

Procedure Title	3.15(1) Recommending a Case for Prosecution-Inspector
Effective from:	March 1st 2011

Purpose

To ensure that a prosecution will only be commenced or continued by NERA where there is sufficient, admissible, relevant and reliable evidence that indicates an offence may have been committed, and to ensure that files are complete before being forwarded to the ITM.

Procedure

The Inspector checks all of the following:

That there is sufficient time remaining to prosecute the case (i.e. case does not risk becoming statute-barred from date of offence or date of complainants cessation of employment if applicable)
Inspector's Report (signed and dated) with the relevant legislation quoted.
Proofs that support the view that an offence has been committed (tabbed appropriately)
Date of Offence(s) clearly outlined
Copy of Complaint (if any)
Copy of all Correspondence including notes of telephone calls, copies of emails
Unpaid wages Calculation (If any), signed, dated and verified
Signed Statement of Employee/s (If applicable)
Recent CRO printout
Evidence that the named employee are/were actually employed by the employer named (payslip, employer records, Social Protection or other relevant evidence)
Company still actively trading
Any other relevant evidence

Timescales for referral

Where:

- an employer fails to co-operate or comply with a reasonable and lawful request from and Inspector and/or
- an employer fails to supply statutory employment records or supplies false or misleading records and / or
- NERA staff, carrying out their statutory functions, are the target of threatening behaviour, obstruction, or assault and
- the Inspector is satisfied that the file is in order for prosecution, s/he forwards it to the ITM together with his/her recommendation immediately and generally not later than **five** months from date of offence⁸/date of inspection, or date employee has ceased employment whichever is the later.

⁸ In re. SMR the date of offence is the date of payment

In re. OWTA the date of offence is the date of the inspection

[http://neranet.dete.local/neranet/cms_procedur.nsf/d541103323565e518025789b00530292/\\$file/case management](http://neranet.dete.local/neranet/cms_procedur.nsf/d541103323565e518025789b00530292/$file/case management)

In addition, where an employer is the subject of an application for enforcement of an award of an employment rights body or a repeat offender fails to comply, the Inspector refers the case for initiation of legal action immediately on expiry of the 14-day letter deadline.

Where breaches of employment law have been identified and notified to the employer, and the Inspector forms the view that further efforts are warranted and worthwhile in order to achieve compliance, the five-month deadline may be extended to a maximum of seven months, subject to ITM approval at case review stage. A decision in this regard should be recorded on the Review form.

Other relevant Documents / Information Sources

- File Checklist (Annex I)
- Appointment letter
- Copy of legislation and any applicable ERO's/REA's
- Questionnaires
- Copies of any advice received

In re. NMW date of the offence is the date on the payslip

In re. Offences in IR (1946) (failure to produce/non-cooperation, etc) date of the offence is 15 days after the 14-day letter

In re. PYP, date of the offence is the date on which a young person was working in contravention of the Act

[http://neranet.dete.local/neranet/cms_procedur.nsf/d541103323565e518025789b00530292/\\$file/case management](http://neranet.dete.local/neranet/cms_procedur.nsf/d541103323565e518025789b00530292/$file/case management)

manual_version1_1_may2011.doc[http://neranet.dete.local/neranet/cms_procedur.nsf/D541103323565E518025789B00530292/\\$file/Case Management Manual_Version1_1_May2011.doc](http://neranet.dete.local/neranet/cms_procedur.nsf/D541103323565E518025789B00530292/$file/Case Management Manual_Version1_1_May2011.doc) Page 36 of 58

Procedure Title	3.15(2) Recommending a Case for Prosecution-ITM
Effective from:	March 1st 2011

Purpose

To ensure that a prosecution will only be commenced or continued by NERA where there is sufficient, admissible, relevant and reliable evidence that indicates an offence may have been committed, and to ensure the file is complete before forwarding to the Regional Manager.

Procedure

The ITM examines the Inspector's recommended selection of offences having regard to:

- the relative seriousness of the alleged offences – the most serious offences will be prioritised
- the quality of the evidence available for each offence and
- the willingness or otherwise of witnesses to give evidence (where necessary or appropriate).

The ITM then recommends the charges to be included on the summons, focussing on how to bring the case against the employer in a clear and simple fashion based on the strength of evidence available. Where the evidence suggests multiple breaches of employment law, in respect of several employees or over an extended period, the ITM must decide which offences are practicable and appropriate to recommend for prosecution/inclusion on the summons.

The file should be checked using the File checklist (Annex I). Incomplete files should be returned to Inspectors with appropriate instructions and time limits for return of file to ITM.

Timescale for referral

On completion of the above s/he forwards the hard copy case file, with his/her recommendation, to the Regional Manager in time for consideration by the Regional Manager prior to the **next LPC meeting** (i.e. generally the fourth Monday of the month).

Where an employer is the subject of an application for enforcement of an award of an employment rights body and fails to comply, the ITM refers the case immediately to the Regional Manager for the next LPC meeting. Where necessary the enforcement element may be referred independently from other possible employment law breaches or potential prosecution actions in the case.

Other relevant Documents / Information Sources

- File Checklist (Annex I)
- Appointment letter
- Three copies of legislation and any applicable ERO's/REA's
- Questionnaires
- Copies of any advice received

Procedure Title	3.15(3) Review by Regional Manager and issuing of solicitor's letter
Effective from:	March 1st 2011

Purpose

To review cases and decide whether a solicitor's letter should be sent to the employer to give a final opportunity to that employer to rectify breaches.

Procedure

The Regional Manager reviews the file with a view to issuing the solicitor's letter. Having considered the recommendation and evidence s/he may:

1. Arrange to have a solicitor's letter issued
2. Decline to progress the case

Where the decision is to issue a solicitors letter the Secretary to the Legal Proceedings Committee, at the direction of the Regional Manager, will arrange for a solicitor's letter to be sent to the employer requiring within a specified number of working days the s/he respond to the Inspector, failing which the case will be referred to the LPC recommending the initiation of legal proceedings. A copy of the solicitor's letter- and any response thereto – is forwarded to the inspector who places it on the case file.

Where the Regional Manager finds that a file is incomplete or contains errors, s/he requests the ITM to rectify it. Where his/her decision is to decline to progress the case they shall return the file to the Inspector/ITM informing them of the reasons why the case was declined for legal action

Refer to Procedure 3.13 in the event that the employer undertakes to rectify breaches and make good underpayments of unpaid wages in response to the solicitor's letter.

Other Relevant Documents/Information Sources

Standardised version of Inspectors Report

Procedure Title	3.16 Consideration by Legal Proceedings Committee
Effective from:	March 1st 2011

Purpose

To ensure that NERA’s decisions to commence legal proceedings are transparent, consistent, impartial, objective and resources are targeted to best effect.

Procedure

The LPC will consider the strategic and policy decisions regarding legal proceedings.

As the necessary documents, evidence, proofs, etc. will have already been checked, the LPC function will be to approve or reject a recommendation to commence legal proceedings having regard to:

- the public interest
- the current inspection campaigns being undertaken by NERA
- NERA’s risk-profiling of sectors/employers
- the potential deterrent/publicity effect of securing a conviction
- geographic spread
- the agreement and likelihood of witnesses to testify in support of individual cases
- NERA’s legal services resources
- any other relevant factors (previous history, etc)

When a decision is made, the relevant Regional Manager refers to Annex I of the relevant LPC draft minutes for the record of decisions and the reason(s) behind the decision (where the decision differs from the recommendation). This is placed on the file, which is returned via the Regional Manager and ITM to the Inspector for any follow-up action [using a standard pro-forma document] within two weeks of the Legal Proceedings Committee Meeting at which the decision was made.

The Inspector in consultation with ITM then issues letters to the Complainant/ Applicant for enforcement of an award of an employment rights body advising of the outcome of LPC’s deliberations in the case.

If LPC has decided to proceed with enforcing the award of an employment rights body, the Inspector then refers it to the relevant Assistant Director. If it decided not to proceed the inspector closes the file.

Cases which are in breach but a decision has been taken not to prosecute at present will be referred by the secretary of the LPC to the risk team with a view to re-inspect at a future date.

Other Relevant Documents/Information Sources

Standard pro-forma document for conveying decision of LPC

Procedure Title	3.17 Providing Instructions to the Prosecuting Solicitor
Effective from:	March 1 st 2011

Purpose

To provide instructions to the prosecuting solicitor based on the evidence available.

Procedure

The Regional Manager, will advise Inspector/ITM, on the solicitor to be instructed for the purposes of the prosecution. The Inspector completes the standard template letter instructing the prosecuting solicitor and submits to the ITM for approval.

On approval, the Inspector will arrange for copies of the relevant documentation to be attached to instructions and forwarded by DX to the local prosecuting solicitor including:

1. Copy of all Correspondence [Three copies]
2. Inspector’s Report
3. Certified company printout
4. Signed & sealed short Certificate of Incorporation (if Limited Company)
5. Unpaid wages Calculation (If any)
6. Social Protection Papers (If applicable)
7. Employee’s Signed Statement (If applicable)
8. List of witnesses (if applicable)
9. Copies of the proofs of the offences
10. Birth Certificates (for PYP cases)

Inspector requests the CRO to ensure that the company is blocked from enforcement measures and removed from the strike-off list if applicable.

- Notify Legal Proceedings Committee secretary of return date⁹ on summons
- Further update Legal Proceedings Committee secretary of subsequent court dates.

Other Relevant Documents/Information Sources

- Template of e-mail to instruct CRO to block limited company
- Template Instruction Letter to Prosecuting Solicitor
- Template of email requesting certificate of incorporation from CRO
- Template of letter to General Registrar’s Office requesting Birth Certificates (PYP only)

⁹ The return date is the date (stated on the face of the summons) on which the accused/defendant is obliged, on foot of the summons served on him/her, to appear in court to answer the charges on the summons.

Procedure Title	3.18 Preparing the Summons(es)
Effective from:	March 1 st 2011

Purpose

To ensure that all summonses reflect accurately the instructions of the Legal Proceedings Committee to the Prosecuting Solicitor, and to eliminate drafting errors before service.

Procedure

The Inspector:

- follows up with the solicitor within seven working days after issuing instructions (see 3.17) to seek draft summons
- checks this draft summons against the decision of the Legal Proceedings Committee and the relevant legislation and
- forwards the summons (with amendments, if any) to the ITM for approval.
- returns the summons (by secure email or DX facility), as approved by the ITM, to the local Prosecuting Solicitor within 7 working days of receipt

The ITM:

- reviews and, if necessary, amends, the draft summons (ITM may consult RM and NERA's in-house Solicitor as required).
- signs off on, and returns, draft summons to the Inspector.

The Inspector then:

- Follows up with prosecuting solicitor to obtain copy of final summons
- verify with prosecuting solicitor that summons has been issued and served
- notify LPC Secretary of return date on summons
- Further updates LPC Secretary of subsequent court dates.

Procedure Title	3.19 Meeting with Prosecuting Solicitor in Advance of Court Date
Effective from:	March 1st 2011

Purpose

To ensure that all necessary preparation is undertaken both by the solicitor and by the NERA inspector and that each is fully briefed of any relevant development with regard to e.g. possible pleadings, consideration being given by NERA to reducing the number of summonses and/or charges etc

Procedure

Inspector to ensure that meeting with Prosecuting Solicitor is scheduled to take place at least 5 working days before the return date¹⁰ on the summons. The ITM, RM and NERA Solicitor may also attend this meeting.

The Inspector shall inform the ITM and Regional Manager immediately if the Prosecuting Solicitor fails to respond in a timely fashion to the Inspector’s request for an advance meeting or cancels same at short notice.

The Regional Manager shall log details of all cases of unsatisfactory service from a prosecuting solicitor and advise the Secretary to the Legal Proceedings Committee in this regard.

Other Relevant Documents/Information Sources

- Database of Contact details for all NERA external solicitors
- Database of Complaints regarding quality of service from external solicitors

¹⁰ The return date is the date (stated on the face of the summons) on which the accused/defendant is obliged, on foot of the summons served on him/her, to appear in court to answer the charges on the summons.

Procedure Title	3.20 Dealing with Witnesses
Effective from:	March 1st 2011

Purpose

To ensure witnesses are aware in advance of the court hearing and understand the nature of the proceedings.

Procedure

The Inspector’s Report and LPC submission should clearly identify the names of those who have indicated to the Inspector their willingness to testify should, in particular, be noted.

Once the Legal Proceedings Committee has approved a particular case, the potential witnesses should be made aware by the Inspector and asked to confirm/re-confirm their willingness to testify in writing. This information should be added to the file immediately.

Where a witness is no longer available, or are unavailable on the proposed date of the hearing, the matter should be referred immediately to the Regional Manager and the ITM with a view to deciding whether/how to proceed.

When the Inspector makes contact with the prosecuting solicitor, in advance of the return date on the summons, s/he must advise the solicitor that there are potential witnesses in the case and enquire as to the usual procedure followed and requirements of the District Judge in whose District the case will be heard. A minority of District Judges require all witnesses to be available on the return date. Most District Judges will not require the presence of witnesses until the date on which case is listed for hearing. The Inspector will advise potential witnesses accordingly and ascertain their availability for the relevant date(s).

Appropriate arrangements should be made to facilitate a briefing with the Solicitor on the hearing day. Following the hearing the Inspector will explain the outcome to the witnesses.

It is of the utmost importance that witnesses in prosecution cases arising from non-compliance with an REA are clearly instructed that NERA does not have any statutory basis for seeking a Court Order directing the repayment of any underpayment or the making of compensation for the employer’s failure to provide the relevant minimum terms and conditions to employees.

Other Relevant Documents/Information Sources

Procedure Title	3.21 Employer Seeks to Resolve Matters Prior to Court
Effective from:	March 1st 2011

Purpose

To resolve matters prior to the Court case.

Procedure

If an Inspector is contacted by an employer after the summonses have issued, the employer must be informed that NERA has no statutory power to compromise employees’ legal entitlements. If the employer confirms in writing that he or she is willing to rectify all outstanding breaches, the Inspector will escalate the Employer’s request to resolve the matter prior to the Court hearing to the ITM and the Regional Manager. The Regional Manager may direct the Inspector to advise the Prosecuting Solicitor to seek an adjournment with liberty to re-enter of the hearing in order that the Inspector may verify that all other breaches have been dealt with and the correct money has been paid.

When the Inspector has received confirmation that the employer has resolved all outstanding issues, the Regional Manager will make a decision, in conjunction with the Inspector and ITM, as to whether some or all of the charges on the summons should be withdrawn. The Regional Manager will report in writing his/her decision and the reasons for same to the Secretary to the Legal Proceedings Committee.

Other Relevant Documents/Information Sources

Procedure Title	3.22 Accepting ‘Guilty Plea’ in Return for Reduction in Number of Charges
Effective from:	March 1st 2011

Purpose

To state NERA’s policy in responding to requests from an employer on whom a summons has been served and who has requested NERA to withdraw some or all of the charges on the summons.

Procedure

Where an Inspector receives information that the employer proposes to enter a guilty plea, in return for a reduction in the number of charges, the matter should be escalated immediately via the ITM to the Regional Manager, setting out in full the details of the defendant employer’s request.

Unpaid wages breaches

The employer should be informed that no consideration will be given to amending the summons unless evidence of rectification of the underpayment is received.

When evidence of rectification of underpayment received and verified, the Regional Manager may consider the employer’s request in consultation with the Prosecuting Solicitor.

Where an employer offers to rectify unpaid wages breaches by way of an instalment arrangement with employees, NERA applies for a stay/adjournment with liberty to re-enter the case should the employer defaults in making the repayments.

Non-pay breaches

Where the question of underpayment of employees does not arise in the case in question, and it is the first occasion on which NERA has issued a summons against the particular employer, NERA – on the instruction of Regional Manager, having consulted with the local Prosecuting Solicitor – may consider withdrawing the less serious charge(s) in return for a firm undertaking from the defendant’s solicitor that the employer will plead guilty to the remaining and most serious charge(s).

The relative seriousness of the breaches alleged against a particular employer shall be determined having regard to the respective maximum fines which may be imposed by the Court on conviction.

Procedure Title	3.23 Request for Adjournment
Effective from:	March 1st 2011

Purpose

To provide for an appropriate adjournment policy in order to ensure credible scheduling.

Procedure

If, for any reason, an adjournment is sought, the Inspector informs the Regional Manager, ITM's and all relevant parties. This could include the Prosecuting Solicitor, the Legal Proceedings Committee Secretary, witnesses, etc. When communicating with the LPC, the Inspector should refer to the adjournment number (e.g. 1st, 2nd etc).

Where the defendant seeks the adjournment the Inspector, together with the ITM and Regional Manager, decides whether to accept adjournment request, recording the following:

- Reason given by the defendant for seeking adjournment;
- Whether other adjournments have been granted in the case and if so, how many
- Reasons for accepting or rejecting adjournment.

If a witness has already been notified of a court date that will now be adjourned, it is vital that the Inspector notifies them, *as soon as possible*, verbally, by letter or by telephone, whether their attendance is necessary or not, and note this on file.

Where NERA seeks the adjournment, the Inspector or ITM requests the prosecuting solicitor to seek the adjournment, providing the solicitor with the following details:

- Reason NERA is seeking adjournment;
- Whether NERA has sought other adjournments in the case and if so, how many.

Other Relevant Documents/Information Sources

Procedure Title	3.24 On the Day of the Hearing
Effective from:	March 1st 2011

Purpose

To ensure the efficient and professional conduct of proceedings.

Procedure

The Inspector brings the file relating to the case and all applicable legislation, including amendments, in the format as published by the Stationery Office¹¹.

The Inspector meets the prosecuting solicitor and witnesses who have confirmed attendance on the day of the hearing

The Inspector will be in a position to advise the Court of maximum fines and other details relevant to the legislation under which the case is being prosecuted.

Where an employer proves, beyond doubt, that compliance has been effected and proposes settlement on the hearing day, and has written proof of outstanding unpaid wages to all affected employees (i.e. not just those explicitly named on the summons as issued), having consulted with the ITM, the Inspector will agree to have proceedings struck out.

Where an employer proposes to pay all outstanding unpaid wages, either by instalment or in lump sum, NERA will apply to the Court for an adjournment/stay with liberty to re-enter the case should the employer default.

No consideration will be given to compromising a case where the employer is willing to pay unpaid wages only to employees named on the summons or in respect only of sample dates stated on the summons. The Inspector will escalate the employer's request to resolve the matter at this stage to the ITM and the Regional Manager for decision. The Regional Manager may direct the Inspector to advise the Prosecuting Solicitor to seek an adjournment of the hearing. NERA will not agree to withdraw the prosecution until such time as the employer's undertaking has been effected.

The Inspector is required to have knowledge of any of the employer's previous convictions under employment law (see Reconcile), however this should not be offered to the Court unless specifically asked for.

Other Relevant Documents/Information Sources

- Various training materials on Inspections Services Folder
- Original legislation and amendments

¹¹ The Court will only accept either an original of an Act or of an SI as published by the Stationery Office or a clear photocopy of same. It is best practice to have a copy or original of the entire Act or SI in Court. The Court will not accept, for example, a photocopy of an extract from Kerr's 'Irish Employment Legislation' or a printout of Irishstatutebook.ie.

Procedure Title	3.25 Judge Requests Parties to Reach Mutual Agreement
Effective from:	March 1st 2011

Purpose

To put in place appropriate protocols when a District Judge instructs the parties in a NERA prosecution case to resolve matters by mutual agreement.

Procedure

The prosecuting solicitor should take the lead in any discussions with the Defendant's solicitor/representative. However, the prosecuting solicitor must be advised from the outset that nothing is to be agreed without the express approval of the Regional Manager (or other member of the Legal Proceedings Committee if the relevant Regional Manager is not available). Procedures 3.22, 3.23 and 3.25 inform NERA's position in such discussions.

Where the matter is resolved between the parties, the prosecuting solicitor shall advise the court accordingly and seeks adjournment with liberty to re-enter if the defendant defaults on the agreement reached.

Confidentiality Agreements

Under no circumstances should NERA accept the inclusion of a confidentiality agreement as part of an agreement with a defendant and NERA's solicitors should be advised of this at the outset.

Other Relevant Documents/Information Sources

Procedure Title	3.26 Completing the Report of the Case Outcome
Effective from:	March 1st 2011

Purpose

To provide for the timely reporting of Court outcomes to the Legal Proceedings Committee; to ensure accurate recording of statistics on convictions, fines and acquittals.

Procedure

The Inspector shall inform the ITM and Regional Manager of the outcome of the Court hearing by the close of business on the next working day following the Court hearing and instruct the CRO to remove blocks placed on the company (if limited).

The prosecuting solicitor must notify the NERA Inspector in writing of the Court outcome within 5 working days of the hearing. The solicitor's report shall be forwarded via the ITM and Regional Manager for the attention of the Legal Proceedings Committee. The Inspector will inform any witnesses of the outcome.

Other Relevant Documents/Information Sources

Procedure Title	3.27 Records to be included on File
Effective from:	March 1st 2011

Purpose

To ensure that case files contain a chronological and full record of all correspondence, contacts and documentation relating to cases including all the physical evidence necessary to prove compliance or non-compliance.

Procedure

Documentation itemised below should be set out in the file in **chronological order**:

Pre-Inspection

- Print out of company/ business details from website
- Printout of Inspector's report, if previously inspected
- CRO printout, notes of & Infosys & Work permits database checks
- Appointment letter including Inspector contact details (phone / fax and email)
- If inspection arranged/confirmed by phone, record of telephone call, date & time of inspection
- If a Complaint, evidence that the Complainant was contacted to verify information
- Proof that inspection was confirmed in advance of the Inspection

Inspection

- Appropriate NERA Inspection Form including date, start & finish times of inspections/interviews
- Inspector's notes & calculations signed and dated
- List of employees & their job classification
- Sample records as set out in Procedure 3.8(2) - all records to be date stamped and initialled by the Inspector.
- Note of records required by statute but not kept/produced by the employer
- A number of Employees should always be interviewed. Record:
 - employees interviewed on the day
 - employees to whom questionnaires were issued or posted
 - employee questionnaires returned
- Evidence of caution if applicable

Follow up

- Evidence of having verified records, including calculations
- Eight-week letter (or note of phone call) updating complainant / complainant's representative
- Completed File Review Form(s) showing progress of the case
- *Regular*: evidence of employer's compliance with the legislation and Inspector's notes / computations confirming same.
- *Breach detected*: evidence of the breach demonstrating the offence and the date the offence was committed
- A copy of breach letter
- Confirmation from employer that breaches have been rectified

- Copy of 14-day letter if no response to breach letter, with copy of proof of delivery

Unpaid Wages

- Evidence that the Inspector verified employer's unpaid wages calculations
- NERA "unpaid wages form" or equivalent evidence
- Payslips covering payment of the unpaid wages
- Copy of any instalment agreements

Prosecution Records

- LPC submission
- LPC decision
- Solicitor's Letter (per 3.15(3))
- Covering Letter to Solicitor (per 3.17)
- Copy of Summonses

Records Relating to Applications for Enforcement of an Award of an Employment Rights Body

- Application Form for enforcement of award and all associated documents
- Decision of LPC
- Solicitor's Letter
- Closing letter to Civil Enforcement Applicant

Closing File

- Copies of employer records /proofs on the left hand side of the file tabbed and in pockets and referenced in Inspector's report (see below). Large amounts of records should go in a separate file.
- Copies of all other documentation and correspondence on the right hand side of the file.

Other relevant Documents / Information Sources

- Inspectors Report
- Unpaid wages Form
- Breach letter
- 14 day letter
- File Checklist (Annex I)
- Inspection Form

Procedure Title	3.28 Closing a Case
Effective from:	March 1st 2011

Purpose

To ensure that case objectives have been achieved and the case properly concluded and that there is sufficient and reliable evidence to support the inspection opinion and case outcome.

Procedure

The ITM must examine the case to verify that it is complete and includes the necessary evidence in order for the case to be approved for closure.

Steps

- Inspector gives paper file to the ITM for verification
- ITM checks that file has all necessary documentary, physical evidence on file.
- ITM examines all records on file (see Procedure 3.27)
- ITM refers incomplete files or files containing errors back to Inspector with appropriate instructions.
- ITM closes complete files, signing and dating the Inspector's report "approved to close"
- Using Reconcile procedures, The ITM approves and closes the case and the closing letter is issued.

In relation to ITM cases the same procedure must be followed, with the Regional Manager being responsible for approval for closure of files.

Timescales

- Cases found to be compliant should be closed within 4 months of being opened
- Non-Compliant cases: see 3.15(1)

Other Relevant Documents / Information Sources

- File Checklist (Annex I)
- Reconcile Manual (instructions on closing a case on Reconcile).

Procedure Title	3.30 Reporting – Reconcile
Effective from:	March 1st 2011

Purpose

To ensure that all Inspectors and ITM's are consistent in the input of data to Reconcile.

Procedure

Refer to Reconcile manual.

Procedure Title	3.31 File Management
Effective from:	March 1st 2011

Purpose

To ensure that all files are maintained in a consistent manner.

Procedure

Inspectors and ITM's should ensure that

- All files created on RECONCILE have a corresponding paper file. Each paper file must have a label affixed on the front cover containing the FRN number, the Employer Name and Address, and the date the file was opened
- All electronic information and correspondence must be printed and attached to the relevant paper file in accordance with the Department's Print and File Policy as set out at 3.2 in the Records Management Policy Guidelines
- All manual reports and calculations created by Inspectors are signed, dated and placed on the physical file
- All records / documents are filed in a timely fashion so that records are kept up to date and complete
- Any person in possession of an Inspection file stores the file in a secure manner
- All staff familiarise themselves with the Records Management Policy Guidelines which may be accessed on the Intranet

Physical File

Documents to be filed on the left and right-hand side of the physical file are listed in the table below.

The right-hand side of the file should be in chronological order, (e.g. evidence of a breach, breach letter, employer latest response etc.). Each breach listed in the Inspector's report should be cross-referenced to the evidence of the actual breach.

Where the volume of the file becomes cumbersome the left-hand side of the file should be placed on a separate file.

Documents on Left Hand Side of File	Documents on Right Hand Side of File
Completed template by employer or similar format including, employee names, job classification and rates of pay	Details of Complaint & Correspondence with Complainant
Payroll Records, including payslips Timesheet Records	Reconcile, CRO, Infosys, Revenue List, Internet, Work Permits database and S.3 List of Young Persons Licences check/printouts
Terms & Conditions of Employment	Appointment letter
Annual and Public Holiday Records	Proof inspection confirmed prior to inspection
Employee Questionnaires	Appropriate NERA Inspection Form/s
Note of records required by statute but not kept / produced by employer	Copy of breach letter, 14 day letter, and all other correspondence with and from the employer
Inspector's notes & calculations, signed and dated	All correspondence with and from third parties e.g. accountants, representatives etc
U18 Register and Copy Birth Certificates	All correspondence with and from other agencies, including the Labour Court
Copies of Employment Permits / Greencards / Passports etc or evidence not required	NERA form of authority
P45s / P35's & Listings	Any letters returned undelivered
Fás records for apprentices and Structured training documentation	Proof of delivery of registered letters
Evidence of a breach and the date it was committed (proofs for prosecution)	Telephone call logs (signed and dated)
Evidence that the Inspector verified unpaid wages calculations	Review Forms (signed and dated)
Copy of unpaid wages form or equivalent	Inspector's Reports, LPC submissions
Documentation relating to an enforcement of an award of an employment rights body	Note of any hostile or potentially dangerous situation

Copies of representations from Third Parties	Details of householder's consent
	Closing letter to complainant, employer and/or agent/representative
	Confirmation from employer that breaches have been rectified
	Details of any caution issued
	Employer's calculations or rationale of unpaid wages
	File Checklist
	Copy of any instalment agreements

Significant documentation (e.g. case source, file checklist, breach letter, employer responses, LPC submission, Inspector's report) on the right-hand side of the file should be tabbed.

Other Relevant Documents / Information Sources

- Inspectors Report
- Unpaid wages Form
- Breach letter
- 14 day letter
- File Checklist (Annex I)
- Inspection Form

Annex I-File Checklist

FRN :

File Name:

	YES	NO	N/A	COMMENT
Advance of Inspection				
If a complaint, did complainant receive acknowledgement letter?				
Was contact made with complainant prior to inspection & updating every 8 weeks whilst case ongoing or/and 10 working days where request received?				
Is research in advance of inspection on file?				
Was appointment letter issued to correct legal entity?				
Was confirmation of appointment made with employer prior to inspection?				
Inspection Records on File				
Inspection Form completed				
Completed employee template (or same information in similar format)				
Copy of Terms of Employment				
Copy of Annual Leave / Public Holiday records				
Copy of payroll records and corresponding timesheets				
Calculations for the pay periods selected signed by Inspector				
Employees Interviewed				
Copy of recent records where breaches rectified and inspectors calculations				
Breaches Detected				
Copy of breach letter sent to correct legal entity				
Copy of 14 day letter issued with proof of delivery				
Signed Inspector's report with date of offence/s clearly outlined and proofs of same on file				
Unpaid Wages				
Copy of employer calculations and Inspector's verification of 20%(5 employees whichever is the greater) of the employer's calculations				
Copy of Unpaid wages payment form and payslip or equivalent evidence				
Copy of instalment agreement, signed and dated & details where employee/s do not agree to the instalment proposal.				
Note of any employee the employer cannot contact				
Communication				
Written record of all telephone calls and other subsequent meetings				
General				
Completed File Review Forms				
All Reconcile Fields fully completed				

The file checklist shows the actions taken on a file from the date it is created to the date it is closed. It is not intended that any one person complete this checklist; rather, it should be updated by any officer – Inspector, ITM, Regional Manager etc - who takes action in respect of a case.