



# **National Employment Rights Authority**

## **Inspection Procedures Manual**

1 May 2010

## CONTENTS

Foreword.....	3
Introduction to Inspection Section.....	3
Case Allocation (3.1) .....	5
Communication with Employers (3.2).....	7
Communication with Complainants (3.3).....	11
Research in Advance of Inspection (3.4).....	13
Arranging the Inspection (3.5).....	16
Sharing Information with Other Agencies (3.6) .....	18
Joint Investigations (3.7).....	20
Interviewing the Employer/Employer Representative (3.8) .....	21
Examining Records (3.9) .....	23
Interviewing Employees (3.10).....	25
Employment Permits Compliance Checks (3.11).....	26
PYP Inspections – Day (3.12).....	27
PYP Inspections – Night/Weekend (3.13).....	29
Labour Court Requests (3.14).....	31
Issuing a Caution (3.15).....	32
Recovery of Unpaid Wages (3.16).....	34
Provision of Information to Employers (3.17).....	37
Recommending a Case for Prosecution (Inspector) (3.18).....	38
Recommending a Case for Prosecution (ITM) (3.19) .....	39
Records to be included on File (3.20).....	41
Closing a Case (3.21).....	43
Case Reviews (3.22) .....	44
Reporting – Non-RECONCILE (3.23) .....	46
Reporting – Reconcile (3.24).....	47
File Management (3.25).....	48

## Foreword

NERA has developed a considerable number of procedures that are essential to carrying out our functions in accordance with the law in an ethical, consistent and fair manner. These procedures have developed over time and been notified to staff in various communications over the last three years. Given the number of procedures now in place, staff identified the need to collate the existing procedures into one information source. This Procedures Manual has been developed in response. It brings together in one volume all NERA procedures so that each member of staff will have easy access to them. In addition the need to inform staff of procedures in a structured manner was identified. In future revised procedures will be notified to all staff in a format that will update this Manual.

The manual is arranged in the following format for each procedure:

- Title of the procedure
- Purpose of the procedure
- Details of the procedure
- Other relevant supporting documents/legislation
- Date of issue of the procedure<sup>1</sup>
- Date the procedure becomes effective<sup>2</sup>
- The person who approved the procedure

All NERA activities must be carried out in accordance with the procedures as set out in this manual from the effective date. The implementation and application of these procedures will be audited on a regular basis.

## Introduction to Inspection Section

NERA carries out inspections to monitor and enforce compliance with certain employment conditions for all categories of workers in Ireland. The exercise of this function and the findings of an inspection can have serious consequences for an employer and/or his or her employees. It is essential that the powers conferred on NERA and its Inspectors are exercised in a fair, consistent and lawful manner. For this reason it is essential that every inspection is carried out to the highest professional standards and in full compliance with NERA procedures, and all other relevant requirements.

An Inspector is required to form an independent opinion in relation to the level of compliance with relevant employment law. It is therefore essential that an Inspector obtains all of the records, information and explanations necessary to provide him or her with sufficient evidence on which to base their opinions and reports.

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<sup>1</sup> The procedures in this first edition of the Manual issued at various dates throughout the last three years

<sup>2</sup>The vast majority of the procedures in this Manual became effective at various dates over the last three years. However for the avoidance of doubt in relation to the applicability of the procedures and to accommodate minor revisions of some procedures and ensure that reviews of the implementation of the procedures are carried out fairly 1 May 2010 has been recorded as the effective date.

Inspectors are required to act independently of the employer and employee and avoid being swayed by any improper attempts to influence their judgment in relation to the performance of an inspection or the content of any report on, or outcome of, the inspection. In addition it is important that employers and employees know what to expect from an inspection. Regardless of the origin or location of the inspection and regardless of which Inspector carries out the inspection, the same process must apply in all NERA inspections. In this regard, these procedures ensure that employers and employees can be assured that all inspections will be carried out in a consistent manner and without fear or favour.

Procedure 3.11 in relation to employment permits compliance checks will be issued at a later date.

<b>Procedure Title</b>	<b>Case Allocation (3.1)</b>		
<b>Procedure Ref:</b>	<b>3.1</b>	<b>Effective from:</b>	<b>May 1st 2010</b>
<b>Owner:</b>	<b>Inspection Services</b>		
<b>Issue No.</b>		<b>Date of Issue:</b>	<b>May 1st 2010</b>
<b>Approved by:</b>	<b>Fiona Flood - Assistant Director</b>		

**Purpose:**

To ensure the timely, cost effective and fair allocation of cases for inspection.

**Procedure**

Cases for inspection should not be self selected. In the case of Inspectors the Inspector Team Managers (ITM's) are responsible for the allocation and supervision of all inspection cases in their areas of responsibility. Regional Managers are responsible for the allocation and supervision of all inspection cases to be undertaken by ITM's. **Complaints have priority.** Once set up on the case management system, these cases will be allocated by ITM's within seven days of being opened. Details of cases not allocated will be monitored and circulated to ITM's on a weekly basis.

In relation to campaign cases, ITM's will provide individual Inspectors with details of cases, taken from the Revenue Lists and other information sources, in respect of which inspections must be carried out.

It is accepted that Inspectors will, on occasion, set up appointments and/or undertake inspections at short notice e.g. where an inspection at a remote location has not taken place or finished early. In order to facilitate this situation, ITM's will provide individual Inspectors with lists of cases, which may be inspected in such circumstances.

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.

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
- Prioritisation of complaints
- 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
- Any risk based policies that may be in place.

Regional managers may, from time to time, require re-assignment of cases/Inspectors across teams and/or regions.

In relation to night-time 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.

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 where advice or assistance is required to advance or complete the case.

### **Other Relevant Documents / Information Sources**

- List of unallocated cases
- List of cases on hands

<b>Procedure Title</b>	<b>Communication with Employers (3.2)</b>		
<b>Procedure Ref:</b>	<b>3.2</b>	<b>Effective from:</b>	<b>May 1st 2010</b>
<b>Owner:</b>	<b>Inspection Services</b>		
<b>Issue No.</b>		<b>Date of Issue:</b>	<b>May 1st 2010</b>
<b>Approved by:</b>	<b>Fiona Flood - Assistant Director</b>		

## **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 the legal status/structure (company, partnership, sole trader) of an employer, who is the subject of an inspection by NERA, should be established at the earliest practicable stage in the inspection process. In particular, these matters should be established before any correspondence issues from NERA to the employer in question. This is particularly important in the case of a registered company as the company has a distinct legal personality separate from that of its shareholders (owners) and its directors/officers. 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 Limited<sup>3</sup>  
Bunbury Lane  
Carlow

All company names should be registered with the Companies Registration Office. The spelling and format of the name as registered should be checked and used in correspondence. It is not advisable to rely on the format of a company’s name as used, for example, on payslips issued to employees. On such documents, companies frequently (and incorrectly) abbreviate their official names for ‘practical’ reasons e.g. because of the amount of available space on the document in question. The above-named company might, for example, use the following format on its payslips ‘GW Ltd, Carlow’. Technically, any correspondence to ‘The Secretary, GW Ltd, Bunbury Lane, Carlow’ would not be regarded as correspondence to ‘Green Widgets Limited, Bunbury Lane, Carlow.’

<sup>3</sup> 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’

***Address for Correspondence:*** The company's address is the address registered, for the time being, with the Companies Registration Office. This may be different from the actual trading address. For example, a company's registered address may be with an accountancy firm in Dublin while its trading address could be in Cork. In all cases, correspondence should be addressed to the Company Secretary at the address registered with the CRO. 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.

*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'

A partnership may consist of up to 20 partners, which can be a mix of natural persons and bodies corporate. A partnership does not have a legal personality separate and distinct from the various partners who comprise the partnership.

When corresponding with a partnership, particularly in a legal context, it is necessary to identify at least one subsisting (i.e. current) partner and address the correspondence specifically to that individual partner at the address from which the partnership carries on business<sup>4</sup>. In the case of individual partners who are bodies corporate the format for a registered company set out above should be followed. If there is any doubt about the continuing involvement of one or more of the partners in the business, it will be necessary to write to each partner separately. Where the number of partners is three or fewer, the Inspector should write to each of the partners individually.

In the case of the example given above, correspondence should issue in the following format and to each individual partner:

Mr J Baggins  
Bilbo Baggins & Co  
Bradley Lane  
Carlow

Ms P Bilbo  
Bilbo Baggins & Co  
Bradley Lane  
Carlow

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<sup>4</sup> 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.

### ***Making the Appointment***

- An appointment letter with notice of date and time of the proposed inspection should issue to the employer within four weeks of receipt of the case.
- This letter should include the Inspector's contact details and a copy of the *NERA Guide to Inspections*.
- The appointment must be confirmed with the employer prior to inspection time/date either by telephone, letter or email.
- This confirmation must be noted on the file.

### ***Disclosure of Information***

Where an employer requests information regarding inspections pertaining to their business or is looking for an update on their case, he/she should be directed to the Inspector dealing with the case. Inspectors who are contacted by an employer should satisfy themselves that the caller is entitled to receive information in relation to the case. If the caller is not recognised by the NERA staff member taking the call, their details should be taken and a return call made. 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 a Form of Authority confirming that NERA may disclose relevant information to the representative. The *NERA Form of Authority* should be used. In such cases, the information to be provided is that which the employer would receive in his/her own right.

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.

Where an 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. Copies of records or details that would identify complainants or people who supplied information in connection with the case will not be provided. Employers will not be required to go through the FOI/Data Protection process to receive information from their own inspection file. 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. 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. In particular, personal data should not be transferred by email outside the Department of Enterprise Trade and Innovation/ NERA and employers should not be requested to transfer personal data to NERA by email. In the event that an employer sends personal data by email unsolicited they should immediately be informed that this is not appropriate and should be requested not to do so again.

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**

- NERA Guide to Inspections
- Form of Authority
- Data Protection

<b>Procedure Title</b>	<b>Communication with Complainants (3.3)</b>		
<b>Procedure Ref:</b>	<b>3.3</b>	<b>Effective from:</b>	<b>May 1st 2010</b>
<b>Owner:</b>	<b>Inspection Services</b>		
<b>Issue No.</b>		<b>Date of Issue:</b>	<b>May 1st 2010</b>
<b>Approved by:</b>	<b>Fiona Flood - Assistant Director</b>		

### **Purpose**

To ensure clarity and fairness in all contact with complainants and that all reasonable requests for information pertaining to the complaint are responded to within a reasonable period and that complainants are regularly informed of the status and outcome of their complaint.

### **Procedure**

Complaints are received from the following sources:

- Complainants
- Agents, where there is a client/professional service provider relationship e.g. solicitor/accountant
- Other state organisations e.g. Department of Social and Family Affairs, Labour Court
- Representatives, i.e. union officials or political representatives.
- General complaints from individuals or representative bodies (union, employer bodies, or other sources) where no specific employee(s) are mentioned.
- Anonymous complaints

All complaints received must include precise details of the subject matter of the complaint. Complainants should be telephoned in all cases in advance of setting up an inspection, to confirm the details of the complaint, clarify issues and gather any additional information. It is not necessary that every complaint be on a complaint form.

All written complaints must be acknowledged within 5 working days of receipt. Where necessary, that letter should also advise of any issues that fall outside NERA's remit. This communication should include relevant forms and information for the complainant. 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.

Requests for information pertaining to activity undertaken as a result of a complaint must be responded to as soon as possible but not later than 10 working days after receipt of the request. Where a complainant requests information pertaining to activity undertaken as a result of their complaint, care should be taken to ensure that the information given is limited to the complainant's own circumstances. General information pertaining to the inspection must not be divulged.

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. In such cases, the information to be provided is that which the complainant would receive in his/her own right. No information can be provided relating to breaches discovered in respect of other employees or the broader information found during an inspection.

Where complaints are received of a general nature, for example alleging that an employer is not compliant but where no specific employee is named, no details of the inspection, information obtained, or findings made will be provided.

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 Employment/ NERA and complainants should not be requested to transfer personal data to NERA by email.

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

### **Other Relevant Documents / Information Sources**

- Employee Complaint form
- Form of Authority

<b>Procedure Title</b>	<b>Research in Advance of Inspection (3.4)</b>		
<b>Procedure Ref:</b>	<b>3.4</b>	<b>Effective from:</b>	<b>May 1st 2010</b>
<b>Owner:</b>	<b>Inspection Services</b>		
<b>Issue No.</b>		<b>Date of Issue:</b>	<b>May 1st 2010</b>
<b>Approved by:</b>	<b>Fiona Flood - Assistant Director</b>		

### 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.

<b>SYSTEM</b>	<b>CHECK</b>	<b>FILE</b>
Reconcile	<ul style="list-style-type: none"> <li>➤ If the entity was previously inspected. If entity was inspected within the last six months and found compliant, Inspector should discuss with ITM prior to proceeding with inspection</li> </ul>	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 on the Intranet	<ul style="list-style-type: none"> <li>➤ Legal Name of Entity</li> <li>➤ Legal Status of Entity, e.g. company, partnership, business name, sole trader</li> <li>➤ Names of directors and Company Secretary</li> <li>➤ Names of individual partners in the case of a partnership. (Note: one or more of partners may be a company)</li> <li>➤ Check if director's home address is the same as the registered office</li> </ul>	<p>Print the entity's details and place on the file</p> <p>If the entity is a chain 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"> <li>➤ Business relationships of directors and Company Secretary with other companies</li> </ul>	Note on file

<b>SYSTEM</b>	<b>CHECK</b>	<b>FILE</b>
Revenue and DSFA INFO systems	<ul style="list-style-type: none"> <li>➤ Employer details</li> <li>➤ Number of Employees</li> </ul>	Note on the file the employer number and the number of employees
Employment Permit Database	<ul style="list-style-type: none"> <li>➤ If any employees on the database are listed with the employer</li> </ul>	Note on the file the names of any employees listed with the employer
NERA S.3 list of Young Persons Licenses	<ul style="list-style-type: none"> <li>➤ If any Young Persons are licensed to work</li> </ul>	Note on the file the names of any employees listed with the employer
Internet	<ul style="list-style-type: none"> <li>➤ Conduct online research as appropriate including any information provided by the employer on their operations</li> </ul>	Print any relevant details and place on the file
Complainants	<ul style="list-style-type: none"> <li>➤ 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 or issues that may arise.</li> </ul>	Details of all contact with complainants should be recorded on file.

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 & Family Affairs, 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.

### **Other Relevant Documents/Information Sources**

- CRO Database
- Revenue Employer List
- DSFA INFO System
- Employment Permits Database
- Internet
- Reconcile

- Iris Oifigiúil

<b>Procedure Title</b>	<b>Arranging the Inspection (3.5)</b>		
<b>Procedure Ref:</b>	<b>3.5</b>	<b>Effective from:</b>	<b>May 1st 2010</b>
<b>Owner:</b>	<b>Inspection Services</b>		
<b>Issue No.</b>		<b>Date of Issue:</b>	<b>May 1st 2010</b>
<b>Approved by:</b>	<b>Fiona Flood - Assistant Director</b>		

### **Purpose**

To ensure that the inspection is carried out at the appointed time and that the employer or relevant person is present with all the appropriate records for examination.

### **Procedure**

In general, inspections should be arranged in advance. In some instances, however, the Inspector may have information or knowledge to hand that a cold call would be more beneficial. This should only happen in exceptional circumstances and where the action is cleared in advance with the ITM. The emphasis must always be on actual inspection activity. While it is appreciated that Inspectors need to undertake calls and visits as part of their work, all calls and visits should ultimately result in an inspection. In this regard, resources – both time and financial – must be used to best effect.

When all of the advance research is complete, the Inspector notifies the employer that s/he proposes to carry out an inspection. An appointment letter, giving a date and time for the inspection, allowing reasonable advance notice, is issued. The letter should be addressed as set out in procedure 3.2 and must be accompanied by:

- The template for employee details
- The *NERA Guide to Inspections*

The letter should request the employer to have the template, or this information in a similar format, completed and available for the day of the inspection.

The inspection must be confirmed in advance by the Inspector and confirmation recorded on the file. The following forms of confirmation are acceptable:

- Employer confirms by phone or in writing that the records will be available as arranged
- Inspector confirms by phone with the employer, that the records will be available as arranged.

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

The aim is to carry out a full inspection on a single visit. Multiple visits and interviews should only be required in exceptional circumstances. A maximum of three attempts should be made to effect an inspection after which the Inspector should issue a 14-day letter by registered post. Proof of service of this communication must be recorded on the file.<sup>5</sup> In the absence of a satisfactory outcome, the Inspector should refer the matter for prosecution.

If an Inspector is unable to keep an appointment, s/he should contact the employer (or employee as the case may be) as soon as possible with a view to arranging an alternative appointment. The Inspector should advise the ITM where an inspection appointment is to be cancelled and record same on file.

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<sup>6</sup>

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<sup>5</sup> Copy of details from An Post website of "Track & Trace" section showing the item history and acceptance by recipient.

<sup>6</sup> The *NERA Guide to Inspections* will be amended to include the details contained on the Inspector's warrants including the legislation under which the Inspector's powers are derived and the period for which records will be examined.

<b>Procedure Title</b>	<b>Sharing Information with Other Agencies (3.6)</b>		
<b>Procedure Ref:</b>	<b>3.6</b>	<b>Effective from:</b>	<b>May 1st 2010</b>
<b>Owner:</b>	<b>Inspection Services</b>		
<b>Issue No.</b>		<b>Date of Issue:</b>	<b>May 1st 2010</b>
<b>Approved by:</b>	<b>Fiona Flood - Assistant Director</b>		

### **Purpose**

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

### **Procedure**

Cases where information should be passed to Revenue and/or the Department of Social and Family Affairs 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
- 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 and Family Affairs related issues

Other issues outside of NERA's remit should be redirected to the appropriate agency e.g., internal Department of Enterprise, Trade and Innovation Agencies or External State Agencies such as the Health and Safety Authority, Road Safety Authority, GNIB etc.

### ***Private Security Authority (PSA) Section 13 Requests:***

Inspection Support Unit co-ordinates section 13 requests from the PSA on behalf of Inspection Services. Approval must be sought from the relevant Regional Manager before issuing the response to the PSA.

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

All communications should be noted on the file.

**Other relevant Documents / Information Sources**

- List of JIU contacts
- List of GNIB contacts

<b>Procedure Title</b>	<b>Joint Investigations (3.7)</b>		
<b>Procedure Ref:</b>	<b>3.7</b>	<b>Effective from:</b>	<b>May 1st 2010</b>
<b>Owner:</b>	<b>Inspection Services</b>		
<b>Issue No.</b>		<b>Date of Issue:</b>	<b>May 1st 2010</b>
<b>Approved by:</b>	<b>Fiona Flood - Assistant Director</b>		

### **Purpose**

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

### **Procedure**

In certain cases there may be merit in undertaking Joint Inspections, e.g. where the view is taken that there may be a significant risk of non-compliance across Revenue, Social Welfare and Employment Law areas. NERA, Revenue or the Department of Social Protection may initiate such inspections. When the need for a Joint Inspection is identified the following procedure is to be used:

- Consult with ITM who then consults with the Regional Manager to decide if case is appropriate for NERA
- If case is suitable for further action contact the relevant JIU officials in the other agency, inform them of the allegations/information available and establish if they consider it appropriate to undertake a joint investigation. Note responses on the file
- Seek a meeting 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

<b>Procedure Title</b>	<b>Interviewing the Employer/Employer Representative (3.8)</b>		
<b>Procedure Ref:</b>	<b>3.8</b>	<b>Effective from:</b>	<b>May 1st 2010</b>
<b>Owner:</b>	<b>Inspection Services</b>		
<b>Issue No.</b>		<b>Date of Issue:</b>	<b>May 1st 2010</b>
<b>Approved by:</b>	<b>Fiona Flood - Assistant Director</b>		

### **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 Warrant of Authorisation to the employer or their representative. The Inspector must explain the nature and purpose of the visit/inspection together with the legislative basis upon which s/he is acting.

Enquiries as to why an inspection is taking place should be responded to by advising that as a matter of policy, NERA does not provide details as to why any particular inspection is taking place. In the following specific limited circumstances, the Inspector may inform the employer that the inspection is as a result of a complaint:

- i. repeat inspection within six months of first inspection (during which breaches were detected) as a result of a complaint received subsequent to first inspection
- ii. Complainant's name is not on any records (this scenario must also be considered for JIU)
- iii. Employee asks Inspector to give name
- iv. Inspection is on foot of request to enforce the decision or determination of an employment rights body

The initial interview with the employer must be conducted using the appropriate NERA standard Inspection form. When the Inspector is satisfied that as much information as appropriate or possible has been provided by the employer, the relevant records should be requested for inspection.

After the Inspector has examined the records, carried out the necessary calculations and interviewed the employees, 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 3.15).

Inform the employer or their representative that a letter will issue setting out the findings of the inspection where there are breaches or alternatively concluding the case.

Should an Inspector perceive a threat to their personal safety at any stage during the inspection, he/she should discontinue the interview and submit a report on the matter to the Regional Manager through their ITM.

## Other Relevant Documents/Information Sources

- NERA Standard Inspection Check List
- NERA Guide to Inspections<sup>7</sup>

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<sup>7</sup> The *NERA Guide to Inspections* will be amended to include the details contained on the Inspector's warrants including the legislation under which the Inspector's powers are derived.

<b>Procedure Title</b>	<b>Examining Records (3.9)</b>		
<b>Procedure Ref:</b>	<b>3.9</b>	<b>Effective from:</b>	<b>May 1st 2010</b>
<b>Owner:</b>	<b>Inspection Services</b>		
<b>Issue No.</b>		<b>Date of Issue:</b>	<b>May 1st 2010</b>
<b>Approved by:</b>	<b>Fiona Flood - Assistant Director</b>		

### **Purpose**

To ensure that records are examined, verified and copies taken.

### **Procedure**

It is the responsibility of the employer to cooperate with the inspection process and to provide information and records in an appropriate format as requested by the Inspector in order to allow the Inspector make a determination regarding compliance.

Records provided should be in an appropriate format and capable of being verified by the Inspector. It is not acceptable for an employer to provide items of documentation with a view to the Inspector interpreting it and effectively creating the employment records. Inspectors should not engage in the reconstruction of records.

Inspectors should examine the following employment records (and place relevant samples on file) –

- The completed template sent with the appointment letter referred to at 3.5 or the same information provided in a similar format.
- Terms of Employment
- The rates paid per hour
- Records of annual leave and Public holidays taken by employees
- Employment permits or evidence that permit is not required as appropriate<sup>8</sup>
- Payroll and timesheet records required (at a minimum):
  - A recent fortnight's payroll and corresponding timesheets for all employees which includes a public holiday and
  - A second fortnight's payroll and corresponding timesheets for all employees including a public holiday dating from approximately twelve months before the date of the inspection and
  - The last pay reference period of the payroll and corresponding timesheets for all employees for the previous year (for comparison with the P35 data submitted to Revenue for the same period).

The Inspector draws a minimum sample of 20% (or 5 employees, whichever is the greater) from the pay periods above.

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<sup>8</sup> This will be a requirement for all inspections carried out following introduction of the Employment Permits Procedure

### ***No Breaches Detected***

Where no breaches are detected in the pay periods above, it is not necessary to inspect records going back 3 years unless there are reasonable grounds to suspect non-compliance for earlier years.

Copies of payroll and timesheet records retained for the file are the 20% (*or 5 employees, whichever is the greater*) sample taken from the pay periods above.

### ***Breaches Detected***

Where the breaches detected in the pay periods above involve **unpaid wages**, payroll records and corresponding timesheets for all employees for sample pay periods during the previous 3 years must also be inspected. Copies of payroll and timesheet records retained for the file are those for the pay periods examined.

Where the breaches detected in the pay periods above involve **non-pay breaches**, it is not necessary to inspect records going back 3 years.

Copies of relevant records demonstrating breaches should be placed on file.

While complaint cases should be treated in the same manner, care should be taken to ensure that the complainant's records are included in the sample taken.

### ***Procedures for obtaining records for the file***

Prior to leaving the premises, the Inspector should take copies of all records examined. On occasion an employer may not have the facility to copy records but may be willing to allow the Inspector to take the original records away to copy and return them. The Inspector should give the employer a receipt for any original records taken from the official NERA Receipt Book. If original records are taken, they should be returned by registered post within 15 working days. If an employer refuses to allow the originals to be taken and they do not have the facility to copy the records then the Inspector should arrange for alternate means by which a copy or transcript of the relevant records may be taken.

### ***Inspector's Calculations***

The Inspector should calculate, for the pay periods selected and based on the hours worked as per the employer's records, the pay due to employees under the statutory rates due in respect of those classes of employees. These figures should then be verified against the payslips provided to employees, based on the records 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 to show that he/she is in compliance.

### ***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 to ensure that the correct rates of pay and terms and conditions are being complied with.

### **Other relevant documents/Information Sources**

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

<b>Procedure Title</b>		<b>Interviewing Employees (3.10)</b>	
<b>Procedure Ref:</b>		<b>3.10</b>	<b>Effective from: May 1st 2010</b>
<b>Owner:</b>		<b>Inspection Services</b>	
<b>Issue No.</b>		<b>Date of Issue:</b>	<b>May 1st 2010</b>
<b>Approved by:</b>		<b>Fiona Flood - Assistant Director</b>	

### **Purpose**

To check the veracity of records and information provided by the employer.

### **Procedure**

Inspectors are entitled under Employment Law to interview any person, either employer or employee. While the permission of the employer to interview employees on site should be sought, an employer does not have the right to be present during interviews. In certain circumstances it may be necessary or more appropriate to carry out interviews off site.

A sample of at least **5%** or three of the employees (whichever is greater) must always be interviewed. The employees to be interviewed should be selected from the records examined. In circumstances where it is not possible to interview employees the employee questionnaires may be posted to the selected employees. In such cases, the fact that employees could not be interviewed at the time of the inspection should be recorded on the file. A record of those to whom questionnaires were sent should be recorded on the file.

### **Other relevant Documents / Information Sources**

- Employee Questionnaire
- Employee Questionnaire covering letter

<b>Procedure Title</b>	<b>Employment Permits Compliance Checks (3.11)</b>		
<b>Procedure Ref:</b>	<b>3.11</b>	<b>Effective from:</b>	<b>TBD</b>
<b>Owner:</b>	<b>Inspection Services</b>		
<b>Issue No.</b>		<b>Date of Issue:</b>	
<b>Approved by:</b>	<b>Fiona Flood - Assistant Director</b>		

**Purpose**

To ensure that Employment Permits compliance checks are undertaken effectively in line with the Employment Permits Act 2003 and 2006

**Procedure**

This procedure is being finalised and will be issued in due course.

<b>Procedure Title</b>	<b>PYP Inspections – Day (3.12)</b>		
<b>Procedure Ref:</b>	<b>3.12</b>	<b>Effective from:</b>	<b>May 1st 2010</b>
<b>Owner:</b>	<b>Inspection Services</b>		
<b>Issue No.</b>		<b>Date of Issue:</b>	<b>May 1st 2010</b>
<b>Approved by:</b>	<b>Fiona Flood - Assistant Director</b>		

**Purpose:**

To ensure compliance with the Protection of Young Persons Act, 1996 (PYP Act 1996).

**Procedure:**

The Inspector should inspect the Section 5.1(c) Register, which should contain the following particulars of each person under 18 years:

- Full name
- Date of birth
- Start and finish times each day
- The rates of wages or salary paid for the normal working hours each day, week, month or year, as appropriate
- The total amount of wages or salary paid to each person.

Where no Register is kept the employer should be asked if there are any young persons employed. The response should be noted on the relevant section of the Inspection form. This should be confirmed by examination of other relevant employment records.

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

- The Abstract (PYP Poster) is displayed
- 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

***Breaches detected***

If breaches are detected, the Inspector opens a file and issues a letter to the employer requesting written confirmation that they are aware of their obligations in relation to the PYP Act 1996 and that they will be compliant in future. 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.

### **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 Inspection form
- Any PYP licenses which may be in place for that employment

<b>Procedure Title</b>	<b>PYP Inspections – Night/Weekend (3.13)</b>		
<b>Procedure Ref:</b>	<b>3.13</b>	<b>Effective from:</b>	<b>May 1st 2010</b>
<b>Owner:</b>	<b>Inspection Services</b>		
<b>Issue No.</b>		<b>Date of Issue:</b>	<b>May 1st 2010</b>
<b>Approved by:</b>	<b>Fiona Flood - Assistant Director</b>		

### **Purpose**

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

### **Procedure**

Inspectors should record the following on the standard checklist:

- start and finish time of interview/inspection
- name and address and telephone number of premises
- contact name of person dealt with on the night of the interview
- whether any young persons are employed at the premises
- details of interviews with employees, where the Inspector has reason to believe that under-18s are employed
- details of any breach of the Act detected
- confirmation that employer/person in charge was informed of breaches

Where young persons are employed, the Inspector should:

- Record details of employer and 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

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

Where no breaches are detected on the night but the Inspector has reason to believe that young persons are employed, place the employer on the re-inspection list

Where breaches are found, the Inspector arranges to carry out a full inspection

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

### ***Breaches detected***

If breaches are detected, the Inspector carries out a full inspection. With regard to the specific PYP breach, the Inspector issues a letter to the employer requesting written confirmation that they are aware of their obligations in relation to the PYP Act 1996 and that they will be compliant in future. The letter issued must advise the employer that, if PYP breaches are detected in a future 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.

**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 Inspection form
- Any PYP licenses which may be in place for that employment

<b>Procedure Title</b>	<b>Labour Court Requests (3.14)</b>		
<b>Procedure Ref:</b>	<b>3.14</b>	<b>Effective from:</b>	<b>May 1st 2010</b>
<b>Owner:</b>	<b>Inspection Services</b>		
<b>Issue No.</b>		<b>Date of Issue:</b>	<b>May 1st 2010</b>
<b>Approved by:</b>	<b>Fiona Flood - Assistant Director</b>		

### **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 Inspection 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 Inspection Support, together with any updated or corrected details

### **Other relevant Documents / Information Sources**

- CIMA request form

<b>Procedure Title</b>		<b>Issuing a Caution (3.15)</b>	
<b>Procedure Ref:</b>		<b>3.15</b>	<b>Effective from: May 1st 2010</b>
<b>Owner:</b>		<b>Inspection Services</b>	
<b>Issue No.</b>		<b>Date of Issue:</b>	<b>May 1st 2010</b>
<b>Approved by:</b>		<b>Fiona Flood - Assistant Director</b>	

### **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**

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.

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

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***

A caution should be issued to an employer or an officer of the company [i.e. a company director or secretary]. An employee (e.g. bookkeeper) or agent of the employer should **not** receive a caution. The sole exception to this rule is where it is suspected that an employee or agent of the employer has produced fraudulent records in the course of the inspection. In these rare circumstances, a caution should be given to the employee or agent producing the records. In general, there is no need to caution employees prior to 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”.

### ***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.

<b>Procedure Title</b>	<b>Recovery of Unpaid Wages (3.16)</b>		
<b>Procedure Ref:</b>	<b>3.16</b>	<b>Effective from:</b>	<b>May 1st 2010</b>
<b>Owner:</b>	<b>Inspection Services</b>		
<b>Issue No.</b>		<b>Date of Issue:</b>	<b>May 1st 2010</b>
<b>Approved by:</b>	<b>Fiona Flood - Assistant Director</b>		

### **Purpose**

To seek payment of unpaid wages identified as due to employees under statute (both current and former employees).

### **Procedure**

NERA's policy is to inspect records and seek recovery of unpaid wages for all employees (both current and former employees) in respect of whom breaches involving monetary loss have been detected. In all cases, unpaid wages must be sought for the period of three years prior to the date of the inspection. The onus rests with the employer to calculate the extent of any unpaid wages due to employees.

### ***Calculation of Unpaid Wages***

There is no set format for the employers to calculate unpaid wages, but it should include the following for each employee (both former and current employees):

- 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 sum of unpaid wages if applicable
- Any deductions made by the employer for board and lodging

### ***Verification of Employer's calculations***

The Inspector must verify 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
- 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

Where complex calculations for large numbers of employees are involved, Inspectors and ITMs should consult with NERA's accountant.

### ***Compromise Sums***

NERA has no statutory authority to agree compromise sums in respect of unpaid wages, or to negotiate in relation to an employee's statutory entitlements.

### ***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.

### ***Instalment Arrangement***

An employer may propose to pay unpaid wages 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 NERA 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. Unpaid wages must not be accepted by NERA on behalf of any employee or former 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 employers who enter into an instalment arrangement should be listed for re-inspection.

### ***Employer Returns***

Employers who have made unpaid wages payments must complete the standard NERA Unpaid Wages Payment Form and submit it to the appropriate Inspector. Copies of the forms must be retained on the file.

### ***Unpaid wages received by post***

Cheques received by post 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 the last fortnight's records and inspect a sample of at least 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.

### **Other Relevant Documents / Information Sources**

- Unpaid Wages Payment Form

<b>Procedure Title</b>	<b>Provision of Information to Employers (3.17)</b>		
<b>Procedure Ref:</b>	<b>3.17</b>	<b>Effective from:</b>	<b>May 1st 2010</b>
<b>Owner:</b>	<b>Inspection Services</b>		
<b>Issue No.</b>		<b>Date of Issue:</b>	<b>May 1st 2010</b>
<b>Approved by:</b>	<b>Fiona Flood - Assistant Director</b>		

**Purpose:**

To provide employment rights information to employers

**Procedure:**

Inspectors should determine if an employer needs information in relation to employment law. Where possible, such information should be given at the time of inspection. Alternatively, the Inspector or Information Services can forward the information subsequently to the employer. A record of the information supplied should be recorded on the file.

In addition, all employers inspected should be directed to NERA's website, [www.employmentrights.ie](http://www.employmentrights.ie)

**Other Relevant Documents/Information Sources**

- List of Information brochures/guides available from NERA

<b>Procedure Title</b>	<b>Recommending a Case for Prosecution (Inspector) (3.18)</b>		
<b>Procedure Ref:</b>	<b>3.18</b>	<b>Effective from:</b>	<b>May 1st 2010</b>
<b>Owner:</b>	<b>Inspection Services</b>		
<b>Issue No.</b>		<b>Date of Issue:</b>	<b>May 1st 2010</b>
<b>Approved by:</b>	<b>Fiona Flood - Assistant Director</b>		

### **Purpose**

To ensure that cases recommended for prosecution are complete before being forwarded to the ITM.

### **Procedure**

The Inspector must examine the file to ensure that it is complete and includes sufficient, admissible, and reliable evidence supporting the contention that an offence has been committed. The Inspector must also ensure that the offence(s) are not statute barred

### ***Evidence Required***

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
Inspector's Report (signed and dated) with the relevant legislation quoted.
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 Welfare or other relevant evidence)
Any other relevant evidence

When the Inspector is satisfied that the file is in order for prosecution, it should be forwarded to the ITM immediately or not later than seven months from date of offence.

### **Other relevant Documents / Information Sources**

- ITM Checklist
- Appointment letter
- Copy of legislation and any applicable ERO's/REA's
- Questionnaires
- Copies of any advice received

<b>Procedure Title</b>	<b>Recommending a Case for Prosecution (ITM) (3.19)</b>		
<b>Procedure Ref:</b>	<b>3.19</b>	<b>Effective from:</b>	<b>May 1st 2010</b>
<b>Owner:</b>	<b>Inspection Services</b>		
<b>Issue No.</b>		<b>Date of Issue:</b>	<b>May 1st 2010</b>
<b>Approved by:</b>	<b>Fiona Flood - Assistant Director</b>		

### **Purpose**

To ensure that cases recommended for prosecution are complete, before being passed to the Regional Manager.

### **Procedure**

The ITM must examine the file to ensure that it is complete and includes sufficient, admissible, and reliable evidence supporting the contention that an offence has been committed. The ITM must also ensure that the offence(s) is/are not statute barred

### ***Evidence Required***

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
Inspector's Report (signed and dated) with the relevant legislation quoted.
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 Welfare or other relevant evidence)
Any other relevant evidence
ITM's recommendation

The file should be checked against the ITM checklist. Incomplete files should be returned to Inspectors with appropriate instructions and time limits for return of file to ITM. When the ITM is satisfied that the file is in order, the Inspector's report should be signed by the ITM, confirming that the file is ready for prosecution. The hard copy file should then be forwarded to the Regional Manager.

### ***Timescales***

- Not later than seven months after date of offence – files should be forwarded to ITM.
- Not later than eight months after date of offence - files should be forwarded to Regional Manager for their approval
- Not later than nine months after date of offence – files should be forwarded for prosecution.

### **Other relevant Documents / Information Sources**

- ITM Checklist
- Appointment letter
- Copy of legislation and any applicable ERO's/REA's
- Questionnaires
- Copies of any advice received

<b>Procedure Title</b>	<b>Records to be included on File (3.20)</b>		
<b>Procedure Ref:</b>	<b>3.20</b>	<b>Effective from:</b>	<b>May 1st 2010</b>
<b>Owner:</b>	<b>Inspection Services</b>		
<b>Issue No.</b>		<b>Date of Issue:</b>	<b>May 1st 2010</b>
<b>Approved by:</b>	<b>Fiona Flood - Assistant Director</b>		

### **Purpose**

To ensure that inspection case files contain 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 Revenue & 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 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 3.9 - all records to be date stamped and initialled by the Inspector.
- Note of records required by statute but not kept/produced by the employer
- Employee questionnaires: 5% of employees (Minimum three, whichever is the greater) 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

#### ***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
- ITM Checklist
- Inspection Form

<b>Procedure Title</b>	<b>Closing a Case (3.21)</b>		
<b>Procedure Ref:</b>	<b>3.21</b>	<b>Effective from:</b>	<b>May 1st 2010</b>
<b>Owner:</b>	<b>Inspection Services</b>		
<b>Issue No.</b>		<b>Date of Issue:</b>	<b>May 1st 2010</b>
<b>Approved by:</b>	<b>Fiona Flood - Assistant Director</b>		

## **Purpose**

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

## **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 3.20)
- 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"
- The ITM returns the file to the Inspector who should issue a closing letter to the employer and, where the inspection was the result of a complaint, to the complainant

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

## **Timescales**

- Regular cases should be closed within 4 months of being opened
- Irregular cases should be discussed regularly at case review meetings in order to progress them.

## **Other Relevant Documents / Information Sources**

- ITM Checklist
- Reconcile Manual (instructions on closing a case on Reconcile).

<b>Procedure Title</b>	<b>Case Reviews (3.22)</b>		
<b>Procedure Ref:</b>	<b>3.22</b>	<b>Effective from:</b>	<b>May 1st 2010</b>
<b>Owner:</b>	<b>Inspection Services</b>		
<b>Issue No.</b>		<b>Date of Issue:</b>	<b>May 1st 2010</b>
<b>Approved by:</b>	<b>Fiona Flood - Assistant Director</b>		

### **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***

- Inspection Support provides each ITM with a list of active cases on a bi-monthly basis
- The ITM identifies cases over four months old with each Inspector on their team
- 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 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. Expert advice services, including accounting and legal, are also available via the ITM.

#### ***Reviews by Regional Managers***

- Inspection 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
- 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***

Inspection Support provides a list of cases on a bi-monthly basis of all cases over nine months old, to the relevant Assistant Director.

#### ***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

#### ***Periodic Audits***

Periodic audits of sample files selected randomly will take place to examine the extent to which individual Inspectors comply with NERA procedures in carrying out inspections.

#### **Other Relevant Documents / Information Sources**

- Cases on hands report
- Review form

<b>Procedure Title</b>	<b>Reporting – Non-RECONCILE (3.23)</b>		
<b>Procedure Ref:</b>	<b>3.23</b>	<b>Effective from:</b>	<b>May 1st 2010</b>
<b>Owner:</b>	<b>Inspection Services</b>		
<b>Issue No.</b>		<b>Date of Issue:</b>	<b>May 1st 2010</b>
<b>Approved by:</b>	<b>Fiona Flood - Assistant Director</b>		

### **Purpose**

To capture the number and type of inspections carried out on a weekly basis for input to statistical requests and policy development.

### **Procedure**

The following returns, in addition to those required under Reconcile procedures, should be made in accordance with the timelines indicated below.

- Time Recording (electronic) Daily
- Time Recording Out of Hours (electronic) Daily/Weekly
- Electronic Calendar Weekly
- Work Returns Weekly
- Night Work Returns Weekly
- Travel Claims Weekly
- T&S Database Weekly
- Employment Permits Returns Monthly
- Unpaid wages Monthly

### **Other relevant Documents / Information Sources**

- Case allocation spreadsheet (complaints)
- Re-inspection spreadsheet
- DX record of file transfers
- JIU activity spreadsheet

<b>Procedure Title</b>	<b>Reporting – Reconcile (3.24)</b>		
<b>Procedure Ref:</b>	<b>3.24</b>	<b>Effective from:</b>	<b>May 1st 2010</b>
<b>Owner:</b>	<b>Inspection Services</b>		
<b>Issue No.</b>		<b>Date of Issue:</b>	<b>May 1st 2010</b>
<b>Approved by:</b>	<b>Fiona Flood - Assistant Director</b>		

**Purpose**

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

**Procedure**

Refer to Reconcile manual.

<b>Procedure Title</b>	<b>File Management (3.25)</b>		
<b>Procedure Ref:</b>	<b>3.25</b>	<b>Effective from:</b>	<b>May 1st 2010</b>
<b>Owner:</b>	<b>Inspection Services</b>		
<b>Issue No.</b>		<b>Date of Issue:</b>	<b>May 1st 2010</b>
<b>Approved by:</b>	<b>Fiona Flood - Assistant Director</b>		

## **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 documents created have the file pathname on the bottom of the document and all documents are attached to the relevant file
- 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, with all critical documents tabbed (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 tab containing 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.

<b>Documents on Left Hand Side of File</b>	<b>Documents on Right Hand Side of File</b>
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
Confirmation from employer that breaches have been rectified	Review Forms
Details of any caution issued	Inspector's Reports

Employer's calculations or rationale of unpaid wages	Note of any hostile or potentially dangerous situation
Evidence that the Inspector verified unpaid wages calculations	Details of householder's consent
Copy of unpaid wages form or equivalent	Closing letter to complainant, employer and/or agent/representative
Copy of any instalment agreements	ITM checklist

**Other Relevant Documents / Information Sources**

- Inspectors Report
- Unpaid wages Form
- Breach letter
- 14 day letter
- ITM Checklist
- Inspection Form