Draft Regulations laid before Parliament under section 3 of the Employment Relations Act 1999, for approval by resolution of each House of Parliament. These draft Regulations supersede the draft Regulations laid on 5th January 2010 and is being provided free of charge to all known recipients of those Regulations.

DRAFT STATUTORY INSTRUMENTS

2010 No. 0000

TERMS AND CONDITIONS OF EMPLOYMENT

The Employment Relations Act 1999 (Blacklists) Regulations 2010

Made - - - -	*[date]*
Coming into force - -	*[date]*

The Secretary of State for Business, Innovation and Skills makes the following Regulations in exercise of the powers conferred by section 3 of the Employment Relations Act 1999(**1**).

In accordance with section 42 of that Act, a draft of these Regulations was laid before Parliament and approved by a resolution of each House of Parliament.

Introductory provisions

Citation, commencement and extent

1. These Regulations—

(a) may be cited as the Employment Relations Act 1999 (Blacklists) Regulations 2010,

(b) come into force on the day after the day on which they are made, and

(c) extend to Great Britain.

Interpretation

2.—(1) In these Regulations—

"employment agency" means a person who, for profit or not, provides services for the purposes of finding employment for workers or supplying employers with workers, and does not include a trade union by reason only of the services a trade union provides only for and in relation to its members;

"office", in relation to a trade union, means any position—

(**1**) 1999 c. 26; to which there are amendments not relevant to these Regulations.

(a) by virtue of which the holder is an official of the trade union, or

(b) to which Chapter 4 of Part 1 of the Trade Union and Labour Relations (Consolidation) Act 1992(**2**) (duty to hold elections) applies,

and "official" has the meaning given by section 119 of that Act;

"prohibited list" has the meaning given by regulation 3(2);

"services", in relation to an employment agency, means services for the purposes of finding employment for workers or supplying employers with workers;

"use", in relation to a prohibited list, includes use of information contained in the list.

(2) References in these regulations to information supplied by a person who contravenes regulation 3 include information supplied by a person who would contravene that regulation if that person's actions took place in Great Britain.

General prohibition

General prohibition

3.—(1) Subject to regulation 4, no person shall compile, use, sell or supply a prohibited list.

(2) A "prohibited list" is a list which—

(a) contains details of persons who are or have been members of trade unions or persons who are taking part or have taken part in the activities of trade unions, and

(b) is compiled with a view to being used by employers or employment agencies for the purposes of discrimination in relation to recruitment or in relation to the treatment of workers.

(3) "Discrimination" means treating a person less favourably than another on grounds of trade union membership or trade union activities.

(4) In these Regulations references to membership of a trade union include references to—

(a) membership of a particular branch or section of a trade union, and

(b) membership of one of a number of particular branches or sections of a trade union;

and references to taking part in the activities of a trade union have a corresponding meaning.

Exceptions to general prohibition

4.—(1) A person does not contravene regulation 3 in the following cases.

(2) The first case is where a person supplies a prohibited list, but—

(a) does not know they are supplying a prohibited list, and

(b) could not reasonably be expected to know they are supplying a prohibited list.

(**2**) 1992 c. 52; section 46 was amended by sections 52, 57(2) and Schedule 2 of the Employment Relations Act 2004 (c. 24.); section 119, to which there are amendments not relevant to these Regulations; section 140 was amended by section 1(2)(a) of the Employment Rights (Dispute Resolution) Act 1998 (c. 8), and by section 240 and paragraph 56(1) and (6) of Schedule 1 to the Employment Rights Act 1996 (c.18); section 149 was amended by section 1(2)(a) of the Employment Rights (Dispute Resolution) Act 1998 (c. 8), and by section 2 and Schedule 2 of the Employment Relations Act 1999 (c.26); section 207A was inserted by section 3(1) and (2) of the Employment Act 2008 (c. 24); section 288 was amended by sections 1(2)(a) and (c), 8(3), 9(1) and (2)(c), 10(1) and (2)(c), 15 and paragraph 9(1), (2) and (3) of Schedule 1 to the Employment Rights (Dispute Resolution) Act 1998 (c. 8), by section 57, paragraph 19 of Schedule 1, and Schedule 2 of the Employment Relations Act 2004 (c. 24), by section 43 and paragraph 8(a) and (b) of Schedule 1 of the Employment Tribunals Act 1996 (c. 17), by section 39(2) and paragraph 4(a) and (b) of Schedule 6 of the Trade Union Reform and Employment Rights Act 1993 (c.19), and by section 208(1) and Schedule 21 of the Legal Services Act 2007 (c. 29); Schedule A2 was inserted by section 3(1) and (3) of the Employment Act 2008 (c. 24) and is amended by paragraph 3 of the Schedule to these Regulations; there are other amendments not relevant to these Regulations.

(3) The second case is where a person compiles, uses or supplies a prohibited list, but—

(a) in doing so, that person's sole or principal purpose is to make known a contravention of regulation 3 or the possibility of such a contravention,

(b) no information in relation to a person whose details are included in the prohibited list is published without the consent of that person, and

(c) in all the circumstances compiling, using or supplying the prohibited list is justified in the public interest.

(4) The third case is where a person compiles, uses, sells or supplies a prohibited list, but in doing so that person's sole or principal purpose is to apply a requirement either—

(a) that a person may not be considered for appointment to an office or for employment unless that person has experience or knowledge of trade union matters, and in all the circumstances it is reasonable to apply such a requirement, or

(b) that a person may not be considered for appointment or election to an office in a trade union unless he is a member of the union.

(5) The fourth case is where a person compiles, uses, sells or supplies a prohibited list, but the compilation, use, sale or supply of the prohibited list is required or authorised—

(a) under an enactment,

(b) by any rule of law, or

(c) by an order of the court.

(6) The fifth case is where a person uses or supplies a prohibited list—

(a) for the purpose of, or in connection with, legal proceedings (including prospective legal proceedings), or

(b) for the purpose of giving or obtaining legal advice,

where the use or supply is necessary in order to determine whether these regulations have been, are being or will be complied with.

Refusal of employment or employment agency services

Refusal of employment

5.—(1) A person (P) has a right of complaint to an employment tribunal against another (R) if R refuses to employ P for a reason which relates to a prohibited list, and either—

(a) R contravenes regulation 3 in relation to that list, or

(b) R—

(i) relies on information supplied by a person who contravenes that regulation in relation to that list, and

(ii) knows or ought reasonably to know that the information relied on is supplied in contravention of that regulation.

(2) R shall be taken to refuse to employ P if P seeks employment of any description with R and R—

(a) refuses or deliberately omits to entertain and process P's application or enquiry;

(b) causes P to withdraw or cease to pursue P's application or enquiry;

(c) refuses or deliberately omits to offer P employment of that description;

(d) makes P an offer of such employment the terms of which are such as no reasonable employer who wished to fill the post would offer and which is not accepted; or

(e) makes P an offer of such employment but withdraws it or causes P not to accept it.

(3) If there are facts from which the tribunal could conclude, in the absence of any other explanation, that R contravened regulation 3 or relied on information supplied in contravention of that regulation, the tribunal must find that such a contravention or reliance on information occurred unless R shows that it did not.

Refusal of employment agency services

6.—(1) A person (P) has a right of complaint to an employment tribunal against an employment agency (E) if E refuses P any of its services for a reason which relates to a prohibited list, and either—

(a) E contravenes regulation 3 in relation to that list, or

(b) E—

(i) relies on information supplied by a person who contravenes that regulation in relation to that list, and

(ii) knows or ought reasonably to know that information relied on is supplied in contravention of that regulation.

(2) E shall be taken to refuse P a service if P seeks to make use of the service and E—

(a) refuses or deliberately omits to make the service available to P;

(b) causes P not to make use of the service or to cease to make use of it; or

(c) does not provide P the same service, on the same terms, as is provided to others.

(3) If there are facts from which the tribunal could conclude, in the absence of any other explanation, that E contravened regulation 3 or relied on information supplied in contravention of that regulation, the tribunal must find that such a contravention or reliance on information occurred unless E shows that it did not.

Time limit for proceedings under regulation 5 or 6

7.—(1) Subject to paragraph (2), an employment tribunal shall not consider a complaint under regulation 5 or 6 unless it is presented to the tribunal before the end of the period of three months beginning with the date of the conduct to which the complaint relates.

(2) An employment tribunal may consider a complaint under regulation 5 or 6 that is otherwise out of time if, in all the circumstances of the case, it considers that it is just and equitable to do so.

(3) The date of the conduct to which a complaint under regulation 5 relates shall be taken to be—

(a) in the case of an actual refusal, the date of the refusal;

(b) in the case of a deliberate omission—

(i) to entertain and process P's application or enquiry, or

(ii) to offer employment,

the end of the period within which it was reasonable to expect R to act;

(c) in the case of conduct causing P to withdraw or cease to pursue P's application or enquiry, the date of that conduct;

(d) in a case where R made but withdrew an offer, the date R withdrew the offer;

(e) in any other case where R made an offer which was not accepted, the date on which R made the offer.

(4) The date of the conduct to which a complaint under regulation 6 relates shall be taken to be—

(a) in the case of an actual refusal, the date of the refusal;

(b) in the case of a deliberate omission to make a service available, the end of the period within which it was reasonable to expect E to act;

(c) in the case of conduct causing P not make use of a service or to cease to make use of it, the date of that conduct;

(d) in the case of failure to provide the same service, on the same terms, as is provided to others, the date or last date on which the service in fact was provided.

Remedies in proceedings under regulation 5 or 6

8.—(1) Where an employment tribunal finds that a complaint under regulation 5 or 6 is well-founded, it shall make a declaration to that effect and may make such of the following as it considers just and equitable—

(a) an order requiring the respondent to pay compensation;

(b) a recommendation that the respondent take within a specified period action appearing to the tribunal to be practicable for the purpose of obviating or reducing the adverse effect on the complainant of any conduct to which the complaint relates.

(2) Compensation shall be assessed on the same basis as damages for breach of statutory duty and may include compensation for injury to feelings.

(3) Where an award of compensation is made, the amount of compensation before any increase or reduction is made under paragraph (4), (5) or (6) shall not be less than £5,000.

(4) If the respondent fails without reasonable justification to comply with a recommendation under paragraph (1)(b), the tribunal may increase its award of compensation or, if it has not made such an award, make one.

(5) Where the tribunal considers that any conduct of the complainant before the refusal to which the complaint under regulation 5 or 6 relates was such that it would be just and equitable to reduce the award of compensation, the tribunal shall reduce that amount accordingly.

(6) The amount of compensation shall be reduced or further reduced by the amount of any compensation awarded by the tribunal under section 140 of the Trade Union and Labour Relations (Consolidation) Act 1992 in respect of the same refusal.

(7) The total amount of compensation shall not exceed £65,300.

Detriment

Detriment

9.—(1) A person (P) has a right of complaint to an employment tribunal against P's employer (D) if D, by any act or any deliberate failure to act, subjects P to a detriment for a reason which relates to a prohibited list, and either—

(a) D contravenes regulation 3 in relation to that list, or

(b) D—

(i) relies on information supplied by a person who contravenes that regulation in relation to that list, and

(ii) knows or ought reasonably to know that information relied on is supplied in contravention of that regulation.

(2) If there are facts from which the tribunal could conclude, in the absence of any other explanation, that D contravened regulation 3 or relied on information supplied in contravention of that regulation, the tribunal must find that such a contravention or reliance on information occurred unless D shows that it did not.