STATUTORY RULES OF NORTHERN IRELAND

2014 No. 88

EMPLOYMENT

The Employment Relations (Northern Ireland) Order 1999 (Blacklists) Regulations (Northern Ireland) 2014

Made - - - -	*19th March 2014*
Coming into operation	*6th April 2014*

The Department for Employment and Learning [F1], in exercise of the powers conferred by Article 5 of the Employment Relations (Northern Ireland) Order 1999 [F2], and now vested in it [F3], makes the following Regulations:

F1 Formerly the Department of Higher and Further Education, Training and Employment; *see*2001 c. 15 (N.I.)
F2 S.I. 1999/2790 (N.I. 9)
F3 *See* S.R. 1999 No. 481

Introductory provisions

Citation and commencement

1. These Regulations may be cited as the Employment Relations (Northern Ireland) Order 1999 (Blacklists) Regulations (Northern Ireland) 2014 and shall come into operation on 6th April 2014.

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—

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

(b) to which Part 3 of the Trade Union and Labour Relations (Northern Ireland) Order 1995 [F4] (duty to hold elections) applies,

and "official" has the meaning given by Article 2(2) of that Order;

"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 Northern Ireland.

F4 S.I. 1995/1980 (N.I. 12); Article 12 amended by Articles 26, 30(2) and Schedule 3 of the Employment Relations (Northern Ireland) Order 2004 (S.I. 2004/3078 (N.I. 19)); Article 2(2) to which there are amendments not relevant to these Regulations

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.

(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 a statutory provision,

(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 industrial 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 industrial 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 industrial 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.

[[F5](1A) Regulation 18 (extension of time limit to facilitate conciliation before institution of proceedings) applies for the purposes of paragraph (1).**]**

(2) An industrial 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 to 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.

F5 Reg. 7(1A) inserted (27.1.2020) by The Industrial Tribunals (1996 Order) (Application of Conciliation Provisions) Order (Northern Ireland) 2020 (S.R. 2020/4), art. 1, **Sch. para. 54**

Remedies in proceedings under regulation 5 or 6

8.—(1) Where an industrial 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 £5,700.

(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 Article 29 of the Employment Rights (Northern Ireland) Order 1996 [F6] in respect of the same refusal.

(7) The total amount of compensation shall not exceed £76,600.

F6 S.I. 1996/1919 (N.I. 16)

Detriment

Detriment

9.—(1) A person (P) has a right of complaint to an industrial 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.