
DRAFT STATUTORY INSTRUMENTS

2010 No.

**The Employment Relations Act
1999 (Blacklists) Regulations 2010**

General prohibition

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- 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 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.