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STATUTORY RULES OF NORTHERN IRELAND

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**2014 No. 88**

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

*Unfair dismissal*

**Unfair dismissal**

**12.**—(1) Part 11 of the Employment Rights (Northern Ireland) Order 1996 (unfair dismissal) is amended as follows.

(2) After Article 135E(1) insert—

**“Blacklists**

**135F.**—(1) An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal relates to a prohibited list, and either—

- (a) the employer contravenes regulation 3 of the 2014 Regulations in relation to that prohibited list, or
- (b) the employer—
  - (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) If there are facts from which the tribunal could conclude, in the absence of any other explanation, that the employer—

- (a) contravened regulation 3 of the 2014 Regulations, or
- (b) relied on information supplied in contravention of that regulation,

the tribunal must find that such a contravention or reliance on information occurred, unless the employer shows that it did not.

(3) In this Article—

“the 2014 Regulations” means the Employment Relations (Northern Ireland) Order 1999 (Blacklists) Regulations (Northern Ireland) 2014; and

“prohibited list” has the meaning given in those Regulations (see regulation 3(2)).”

(3) In Article 137(2) (selection for redundancy)—

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- (1) [S.I. 1996/1919 \(N.I. 16\)](#); Article 135E inserted by section 15 and paragraph 6 of Part 2 of Schedule 3 to the Employment Act (Northern Ireland) 2011 ([c. 13 \(N.I.\)](#))
- (2) [S.I. 1996/1919 \(N.I. 16\)](#); Article 137 amended by regulation 32(1) and paragraph 11 of Schedule 3 to the European Cooperative Society (Involvement of Employees) Regulations 2006 ([S.I. 2006/2059](#)), by paragraph 6 of the Schedule to the Occupational and Personal Pension Schemes (Consultation by Employers) Regulations (Northern Ireland) 2006 ([S.R. 2006 No. 48](#)), by regulation 48(1) and paragraph 8 of Schedule 2 to the Companies (Cross-Border Mergers) Regulations 2007 ([S.I. 2007/2974](#)),

- (a) in paragraph (1)(c) for “(7L)” substitute “(7M)”;
- (b) after paragraph (7L) insert—
  - “(7M) This paragraph applies if—
    - (a) the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was the one specified in the opening words of Article 135F(1), and
    - (b) the condition in sub-paragraph (a) or (b) of that paragraph was met.”.
- (4) In Article 140(3)(3) (qualifying period of employment: cases where no qualifying period required), after sub-paragraph (fj) insert—
  - “(fk) paragraph (1) of Article 135F (read with paragraph (2) of that Article) applies.”.
- (5) In Article 145 (complaint to industrial tribunal)—
  - (a) in paragraph (2) (general requirement to present complaint within three months beginning with effective date of termination), for “Subject to paragraph (3)” substitute “Subject to the following provisions of this Article”; and
  - (b) after paragraph (4) add—
    - “(5) Where the dismissal is alleged to be unfair by virtue of Article 135F (blacklists)—
      - (a) paragraph (2)(b) does not apply, and
      - (b) an industrial tribunal may consider a complaint 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.”.
- (6) In Article 154(4) (minimum basic award in certain cases), after paragraph (1B) insert—
  - “(1C) Where an employee is regarded as unfairly dismissed by virtue of Article 135F (blacklists) (whether or not the dismissal is unfair or regarded as unfair for any other reason), the amount of the basic award of compensation (before any reduction is made under Article 156) shall not be less than £5,700.”.
- (7) In Article 156(5) (reduction of basic award), after paragraph (4) add—
  - “(5) Where a dismissal is regarded as unfair by virtue of Article 135F (blacklists), the amount of the basic award shall be reduced or further reduced by the amount of any basic award under Article 154(1) in respect of the same dismissal under Article 136(1) (dismissal on grounds related to trade union membership or activities) or Article 137(1) and (7) (selection for redundancy on grounds related to trade union membership or activities).”.
- (8) In Article 158(6) (limit of compensatory award etc.)—

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by regulation 3(2) of the Employment Equality (Age) (Consequential Amendments) Regulations (Northern Ireland) 2007 (S.R. 2007 No. 225), by section 57 of the Pensions (No. 2) Act (Northern Ireland) 2008 (c. 13), by regulation 30 of the European Public Limited-Liability Company (Employee Involvement) (Northern Ireland) Regulations 2009 (S.I. 2009/2402), by regulation 3(4) of the Employment Equality (Repeal of Retirement Age Provisions) Regulations (Northern Ireland) 2011 (S.R. 2011 No. 168), by paragraph 14 of Schedule 2 to the Agency Workers Regulations (Northern Ireland) 2011 (S.R. 2011 No. 350) and by other amendments not relevant to these Regulations

- (3) S.I. 1996/1919 (N.I. 16); Article 140 amended by articles 4 and 5 of the Unfair Dismissal and Statement of Reasons for Dismissal (Variation of Qualifying Period) Order (Northern Ireland) 1999 (S.R. 1999 No. 277), by section 26 of the National Minimum Wage Act 1998 (c. 39), by section 27 and paragraph 4 of Schedule 1 to the Tax Credits Act 2002 (c. 21), by Article 35 and paragraph 2 of Schedule 5 to the Employment (Northern Ireland) Order 2003 (S.I. 2003/2902 (N.I. 15)), by section 57(5) of the Pensions (No. 2) Act (Northern Ireland) 2008 (c. 13 (N.I.)), by section 15 and paragraph 8 of Part 2 of Schedule 3 to the Employment Act (Northern Ireland) 2011 (c. 13 (N.I.)) and by other amendments not relevant to these Regulations
- (4) S.I. 1996/1919 (N.I. 16); Article 154 amended by Article 23(5) of the Employment (Northern Ireland) Order 2003 (S.I. 2003/2902 (N.I. 15)) and by other amendments not relevant to these Regulations
- (5) S.I. 1996/1919 (N.I. 16); Article 156 amended by Article 16 and paragraph 13 of Schedule 1 to the Employment Rights (Dispute Resolution) (Northern Ireland) Order 1998 (S.I. 1998/1265 (N.I. 8)) and by other amendments not relevant to these Regulations
- (6) S.I. 1996/1919 (N.I. 16); Article 158 amended by Article 36(1) of, and paragraph 10 of Schedule 9 to, the Employment Relations (Northern Ireland) Order 1999 (S.I. 1999/2790 (N.I. 9)) and by other amendments not relevant to these Regulations

- (a) in paragraph (1A) after “134A,” insert “135F,”; and
- (b) after paragraph (1A) insert—
  - “(1B) Where an employee is regarded as unfairly dismissed by virtue of Article 135F (blacklists) (whether or not the dismissal is unfair or regarded as unfair for any other reason), the amount of award of compensation shall not exceed £76,600.”.
- (9) In Article 163(7) (interim relief pending determination of complaint), for paragraph (1) substitute—
  - “(1) An employee who presents a complaint to an industrial tribunal that he has been unfairly dismissed and—
    - (a) that the reason (or, if more than one, the principal reason) for the dismissal is one of those specified in—
      - (i) Article 132(1)(a) and (b), 132A(1)(d), 133(1), 134, 134A or 136(1), or
      - (ii) paragraph 161(2) of Schedule 1A to the Trade Union and Labour Relations Order, or
    - (b) that the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was the one specified in the opening words of Article 135F(1) and the condition in sub-paragraph (a) or (b) of that paragraph was met, may apply to the tribunal for interim relief.”.
- (10) In Article 164(8) (procedure on hearing of application for interim relief), for paragraph (1) substitute—
  - “(1) This Article applies where, on hearing an employee’s application for interim relief, it appears to the tribunal that it is likely that on determining the complaint to which the application relates the tribunal will find—
    - (a) that the reason (or, if more than one, the principal reason) for the dismissal is one of those specified in—
      - (i) Article 132(1)(a) and (b), 132A(1)(d), 133(1), 134, 134A or 136(1), or
      - (ii) paragraph 161(2) of Schedule 1A to the Trade Union and Labour Relations Order, or
    - (b) that the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was the one specified in the opening words of Article 135F(1) and the condition in sub-paragraph (a) or (b) of that paragraph was met.”.

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(7) [S.I. 1996/1919 \(N.I. 16\)](#); Article 163 amended by regulation 2(2) and 32(6) of the Working Time Regulations (Northern Ireland) 1998 ([S.R. 1998 No. 386](#)), by Article 13 of the Public Interest Disclosure (Northern Ireland) Order 1998 ([S.I. 1998/1763 \(N.I. 17\)](#)), by Article 8 of the Employment Relations (Northern Ireland) Order 1999 ([S.I. 1999/2790 \(N.I. 9\)](#)), and by other amendments not relevant to these Regulations

(8) [S.I. 1996/1919 \(N.I. 16\)](#); Article 164 amended by regulation 2(2) and 32(6) of the Working Time Regulations (Northern Ireland) 1998 ([S.R. 1998 No. 386](#)), by Article 13 of the Public Interest Disclosure (Northern Ireland) Order 1998 ([S.I. 1998/1763 \(N.I. 17\)](#)), by Article 8 of the Employment Relations (Northern Ireland) Order 1999 ([S.I. 1999/2790 \(N.I. 9\)](#)), and by other amendments not relevant to these Regulations