

## **EXPLANATORY MEMORANDUM TO**

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

**S.R. 2014 No. 88**

#### **1. Introduction**

- 1.1. This Explanatory Memorandum has been prepared by the Department for Employment and Learning to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.
- 1.2. The Statutory Rule is made under Article 5 of the Employment Relations (Northern Ireland) Order 1999 and is subject to the confirmatory resolution procedure.

#### **2. Purpose**

- 2.1. This Statutory Rule prohibits the compilation, distribution and use of lists (“Blacklists”) whose purpose is to facilitate discrimination against trade union members and activists by employers and employment agencies.
- 2.2. The main effects of the Statutory Rule are as follows:
  - to define a blacklist of trade unionists and to prohibit the compilation, the dissemination and the use of such blacklists;
  - to make it unlawful for an organisation to refuse employment, to dismiss an employee, or otherwise cause detriment to a worker for a reason related to a blacklist;
  - to make it unlawful for an employment agency to refuse a service to a worker for a reason related to a blacklist;
  - to provide for an industrial tribunal to hear complaints about alleged breaches and award remedies based on existing trade union law; and
  - as an alternative, to provide for the courts to hear complaints from any persons that they have suffered loss or potential loss because of a prohibited blacklisting activity.

#### **3. Background**

- 3.1. The Employment Rights (Northern Ireland) Order 1996 contains provisions (principally found in Articles 26, 27, 73 and 136) which protect individuals against discrimination on the grounds of their trade union membership and activities. It does not however provide protection against the blacklisting of trade unionists. In order to address this, Article 5 of the Employment Relations (Northern Ireland) Order 1999 provides a legislative power for the Department to introduce regulations to outlaw such blacklisting.

- 3.2. In 2009, an investigation by the Information Commissioner uncovered new evidence of the blacklisting of trade union members within the UK construction industry, including companies with a presence in NI. The Department for Business, Innovation and Skills (BIS) subsequently consulted upon and implemented Regulations (in March 2010) to prohibit the compilation, use, sale or supply of blacklists containing details of trade union members in GB.
- 3.3. As the evidence from the Information Commissioner also suggested that some firms involved with blacklisting had links with Northern Ireland, it was considered appropriate that consideration should be given to the need for similar Regulations to protect NI workers.

#### **4. Consultation**

- 4.1. There have been two public consultations on draft Blacklists Regulations. In 2003, the Department consulted on draft Regulations to prohibit the compilation, dissemination and use of trade union blacklists. There was no strong evidence at that time that blacklisting was occurring in Northern Ireland, so Regulations were not brought into operation.
- 4.2. In July 2010, the Northern Ireland Executive approved the issue of a public consultation to determine whether there was:
  - Evidence of blacklisting of trade union members occurring in Northern Ireland; and
  - A need for regulations to prohibit the blacklisting of trade union members.
- 4.3. The consultation took place from 28 July to 20 October 2010 and nine substantive responses were received. In order to further explore the need for the proposed Regulations, officials sought advice from DSO on whether existing legislation, namely the Fair Employment & Treatment (Northern Ireland) Order 1998 and Employment Rights (Northern Ireland) Order 1996 provides adequate protection in this area or whether the proposed Regulations would make a significant difference. Legal advice suggests that the proposed Regulations will make a significant difference.
- 4.4. Having considered the consultation responses, the Department made the decision to draft this Statutory Rule to prohibit Blacklists on the basis that:
  - companies that have operated in Northern Ireland have been named in the Information Commissioner's blacklisting investigation;
  - concrete evidence of blacklisting, by the very nature of the activity, can be very difficult to uncover, but there is a potential for blacklisting to occur;
  - the majority of respondents considered that Regulations are necessary and appropriate; and

- maintaining parity with GB legislation in this respect would ensure that workers in Northern Ireland have equal protections to workers elsewhere in the UK.

## **5. Equality Impact**

- 5.1. A Preliminary Equality Impact Assessment was carried out by the Department to assess whether this Statutory Rule is likely to impact on equality of opportunity or good relations, and seeking to identify which Section 75 groups, if any, would be adversely affected. As this Statutory Rule to prohibit blacklisting is intended to protect workers regardless of their religious belief, political opinion, racial group, age, marital status, sexual orientation; gender and whether they have dependants or a disability, the Department considers that that this Statutory Rule will not discriminate against any of the categories under Section 75 of the Northern Ireland Act 1998.
- 5.2. In addition, the Department considers that this Statutory Rule to prohibit blacklisting will provide additional protections to those already existing under the Fair Employment and Treatment Order 1998. The Department therefore considers that a full equality impact assessment is not required.

## **6. Regulatory Impact**

- 6.1. There is no robust data on the scale of blacklisting. However, it is anticipated that this is not a widespread practice and as such relatively few employees in Northern Ireland are currently affected. The Department believes that any blacklisting activity would be mostly concentrated in larger organisations within heavily unionised sectors of the economy.
- 6.2. An Impact Assessment was carried on a UK-wide basis by BIS in January 2010. It concluded that the Regulations should affect those parts of the economy where unionisation is more prevalent. Private services and small employers are therefore less affected. The Impact Assessment notes that compliance costs will be extremely low, not least because many of the behaviours outlawed by these Regulations are already unlawful in other pieces of legislation. Most costs concern the need for some employers to read the Regulations, or a summary of them, in order to become aware of their effects and their possible impact on workplace practices and record-keeping.
- 6.3. The Impact Assessment concluded that the proposed legislation would have a wholly positive effect in safeguarding sensitive personal information on trade unionists which will ensure that this information is not misused.

## **7. Financial Implications**

- 7.1. Compliance costs should be extremely low for the reasons outlined at 6.1.

## **8. Section 24 of the Northern Ireland Act 1998**

- 8.1. The Departmental Solicitor has confirmed that the provisions of this Statutory Rule are in full compliance with section 24 of the Northern Ireland Act 1998.

## **9. EU Implications**

9.1. Not applicable.

## **10. Parity or Replicatory Measure**

10.1. This Statutory Rule replicates the provisions of the Employment Relations Act 1999 (Blacklists) Regulations 2010 (S.I. 2010/493) which covers GB. The mechanism for dispute resolution in Northern Ireland differs from that in GB and this Statutory Rule has been drafted to account for these differences. It should be noted that this Statutory Rule sets a fixed upper limit for compensation at industrial tribunal in relation to unfair dismissal. This provision was erroneously omitted in the GB Regulations.

## **11. Additional Information**

Not applicable.