
DRAFT STATUTORY INSTRUMENTS

2010 No.

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

Unfair dismissal

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- 12.**—(1) Part 10 of the Employment Rights Act 1996(1) (unfair dismissal) is amended as follows.
(2) After section 104D insert—

“Blacklists

104E.—(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 2010 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.

(1) 1996 c. 18; section 95 was amended by section 57, paragraph 29 of Schedule 1, and Schedule 2 to the Employment Relations Act 2004 (c. 24), by regulation 11 and paragraph 3(1) and (7) of Schedule 2 to the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002, SI 2002/2034; section 97 was amended by regulation 11, and paragraph 3(1) and (8) of Schedule 2 to the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002, SI 2002/2034, by sections 9 and 44, and paragraphs 1, 5, and 14 of Part III Schedule 4, and Schedule 9(2) to the Employment Relations Act 1999 (c. 26); section 98 was amended by section 57(1) and paragraph 30 of Schedule 1 to the Employment Relations Act 2004 (c. 24) and other amendments not relevant to these Regulations; section 104E is inserted by regulation 12(1) and (2) of these Regulations; section 105 was amended by regulation 32(1)(a) of the European Cooperative Society (Involvement of Employees) Regulations SI 2006/2059, by regulation 48(1)(a) of the Companies (Cross-Border Mergers) Regulations 2007 SI 2007/2974, section 9 and Schedule 4 and 9(2) to the Employment Relations Act 1999 (c.26), by section 40(5) of the Employment Relations Act 2004 (c. 17), by section 16 and paragraph 5 of Schedule 5 to the Employment Relations Act 1999 (c. 26), by regulation 12(1) and (3) of these Regulations, and by other amendments not relevant to these Regulations; section 106 was amended by section 53 and paragraphs 24 and 35 of Schedule 7 to the Employment Act 2002 (c. 22), and by section 11(1) and paragraph 42 of Schedule 1 to the Work and Families Act 2006 (c. 18); section 108 was amended by articles 3 to 5 of the Unfair Dismissal and Statement of Reasons for Dismissal (Variation of Qualifying Period) Order 1999 SI 1999/1436, by regulation 12(1) and (4) of these Regulations, and by other amendments not relevant to these Regulations; section 111 was amended by section 1(2)(a) of the Employment Rights (Dispute Resolution) Act 1998 (c. 8) and by regulation 12(1) and (5) of these Regulations; section 120 was amended by sections 36(1)(a) and 44 and Schedule 9(10) to the Employment Relations Act 1999 (c. 26), by regulation 12(1) and (6) of the Schedule to these Regulations and by other amendments not relevant to these Regulations; section 122 was amended by section 15 and paragraph 22 of Schedule 1 to the Employment Rights (Dispute Resolution) Act 1998 (c. 8) and by other amendments not relevant to these Regulations; section 127C was inserted by regulation 12(1) and (7) of these Regulations; section 128 was amended by section 1(2)(a) of the Employment Rights (Dispute Resolution) Act 1998 (c. 8), by section 6 of the Employment Relations Act 1999 (c. 26), by regulation 12(1) and (8) of these Regulations and by other amendments not relevant to these Regulations; section 129 was amended by regulation 2(1) and 32(5) of the Working Time Regulations 1998 SI 1998/1833, by section 9 of the Public Interest Disclosure Act 1998 (c.23), by section 6 of the Employment Relations Act 1999 (c. 26) and by regulation 12(1) and (9) of these Regulations; there are other amendments not relevant to these Regulations.

- (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 2010 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 section—
- “the 2010 Regulations” means the Employment Relations Act 1999 (Blacklists) Regulations 2010, and
 - “prohibited list” has the meaning given in those Regulations (see regulation 3(2)).”
- (3) In section 105 (selection for redundancy)—
- (a) in subsection (1)(c) for “(7L)” substitute “(7M)”;
 - (b) after subsection (7L) insert—
 - “(7M) This subsection 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 section 104E(1), and
 - (b) the condition in paragraph (a) or (b) of that subsection was met.”
- (4) In section 108(3) (qualifying period of employment: cases where no qualifying period required), after paragraph (gj) (which is not yet in force) insert—
- “(gk) subsection (1) of section 104E (read with subsection (2) of that section) applies.”
- (5) In section 111 (complaint to employment tribunal)—
- (a) in subsection (2) (general requirement to present complaint within three months beginning with effective date of termination), for “Subject to subsection (3)” substitute “Subject to the following provisions of this section”; and
 - (b) after subsection (4) insert—
 - “(5) Where the dismissal is alleged to be unfair by virtue of section 104E (blacklists),
 - (a) subsection (2)(b) does not apply, and
 - (b) an employment 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 section 120 (minimum basic award in certain cases), after subsection (1B) insert—
- “(1C) Where an employee is regarded as unfairly dismissed by virtue of section 104E (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 section 122) shall not be less than £5,000.”
- (7) In section 122 (reduction of basic award), after subsection (4) insert—
- “(5) Where a dismissal is regarded as unfair by virtue of section 104E (blacklists), the amount of the basic award shall be reduced or further reduced by the amount of any basic award in respect of the same dismissal under section 156 of the Trade Union and Labour Relations (Consolidation) Act 1992 (minimum basic award in case of dismissal on grounds related to trade union membership or activities).”
- (8) In section 128 (interim relief pending determination of complaint), for subsection (1) substitute—

“(1) An employee who presents a complaint to an employment 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) section 100(1)(a) and (b), 101A(d), 102(1), 103 or 103A, or
 - (ii) paragraph 161(2) of Schedule A1 to the Trade Union and Labour Relations (Consolidation) Act 1992, 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 section 104E(1) and the condition in paragraph (a) or (b) of that subsection was met,

may apply to the tribunal for interim relief.”.

(9) In section 129 (procedure on hearing of application for interim relief), for subsection (1) substitute—

“(1) This section 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) section 100(1)(a) and (b), 101A(d), 102(1), 103 or 103A, or
 - (ii) paragraph 161(2) of Schedule A1 to the Trade Union and Labour Relations (Consolidation) Act 1992, 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 section 104E(1) and the condition in paragraph (a) or (b) of that subsection was met.”.