
STATUTORY INSTRUMENTS

2010 No. 493

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

Supplementary provisions

Complaint against employer and employment agency

14.—(1) Where P has a right of complaint under regulation 5 or 6 against R and E arising out of the same facts, P may present a complaint against either R or E or against R and E jointly.

(2) If P presents a complaint against only one party, that party or P may request the tribunal to join or sist the other as a party to the proceedings.

(3) The request shall be granted if it is made before the hearing of the complaint begins, but may be refused if it is made after that time; and no such request may be made after the tribunal has made its decision as to whether the complaint is well-founded.

(4) Where P brings a complaint against R and E jointly, or where P brings a complaint against one of them and the other is joined or sisted as a party to the proceedings, and the tribunal—

- (a) finds that the complaint is well-founded as against R and E, and
- (b) awards compensation,

the tribunal may order that the compensation shall be paid by R, by E, or partly by R and partly by E, as the tribunal may consider just and equitable in all the circumstances.

Awards against third parties in tribunal proceedings

15.—(1) If in proceedings on a complaint under regulation 5, 6 or 9, or under Part 10 of the Employment Rights Act 1996 as it applies by virtue of these regulations, either the respondent or complainant claims that another person contravened regulation 3 in respect of the prohibited list to which the complaint relates, the complainant or respondent may request the tribunal to direct that other person be joined or sisted as a party to the proceedings.

(2) The request shall be granted if it is made before the hearing of the complaint begins, but may be refused if it is made after that time; and no such request may be made if it is made after the tribunal has made a decision as to whether the complaint is well-founded.

(3) Where a person has been so joined or sisted as a party to the proceedings and the tribunal—

- (a) finds that the complaint is well-founded,
- (b) awards compensation, and
- (c) finds the claim in paragraph (1) is well-founded,

the tribunal shall make a declaration to that effect and may award such of the remedies mentioned in paragraph (4) as it considers just and equitable.

(4) The remedies the tribunal may award are—

- (a) an order that compensation shall be paid by the person joined (or sisted) instead of by the respondent, or partly by that person and partly by the respondent;

(b) a recommendation that within a specified period the person joined (or sisted) takes 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.

(5) If the person joined (or sisted) fails without reasonable justification to comply with a recommendation to take action, the tribunal may increase its award of compensation or, if it has not made such an award, make one.

(6) Where by virtue of regulation 14 (complaint against employer and employment agency) there is more than one respondent, the above provisions apply to either or both of them.

Restrictions on contracting out

16. Section 288 of the Trade Union and Labour Relations (Consolidation) Act 1992 (restrictions on contracting out) applies in relation to regulations 5, 6 and 9 as if they were contained in that Act.

Consequential amendments

17.—(1) The Employment Tribunals Act 1996(1) is amended as follows.

(2) In section 10(1) (dismissal of complaint where action taken for purpose of safeguarding national security)—

(a) omit the word “or” at the end of paragraph (a); and

(b) after paragraph (b) insert—

“, or

(c) regulation 9 of the Employment Relations Act 1999 (Blacklists) Regulations 2010 (detriment connected with prohibited list).”

(3) In section 16(1) (recoupment of benefits: payments in relation to which power exercisable)—

(a) omit the word “or” at the end of paragraph (c); and

(b) after paragraph (d) insert—

“or

(e) payments by employers to employees under regulation 5, 6 or 9 of the Employment Relations Act 1999 (Blacklists) Regulations 2010.”

(4) In section 18(1) (conciliation: proceedings and claims to which section applies)—

(a) omit the word “or” at the end of paragraph (u);

(b) after the paragraph inserted by regulation 33 of the European Public Limited-Liability Company (Employee Involvement) (Great Britain) Regulations 2009 insert—

“, or

(w) under regulation 5, 6 or 9 of the Employment Relations Act 1999 (Blacklists) Regulations 2010.”

(5) In section 21(1) (jurisdiction of Appeal Tribunal)—

(1) 1996 c. 17; section 10 was amended by section 41 and paragraph 3 of Schedule 8 to the Employment Relations Act 1999 (c. 26), by sections 36 and 57(1) and paragraph 24 of Schedule 1 to the Employment Relations Act 2004 (c. 17) and by regulation 17(1) and (2) of these Regulations; section 16 was amended by section 1(2)(a) and (b) of the Employment Rights (Dispute Resolution) Act 1998 (c. 8), by section 28 and Schedule 3 to the Welfare Reform Act 2007 (c. 5), by section 86 and Schedule 7 to the Social Security Act 1998 (c. 14), and regulation 17(1) and (3) of these Regulations; section 18 was amended by section 1(2)(a) and (b) of the Employment Rights (Dispute Resolution) Act 1998 (c. 8), by section 5(1), (2) and (3) of the Employment Act 2008 (c. 24), by regulation 17(1) and (4) of these Regulations, and by other amendments not relevant to these Regulations; section 21 was amended by section 1(2)(a), section 15 and paragraph 17(1) and (3) of Schedule 1 to the Employment Rights (Dispute Resolution) Act 1998 (c. 8), by regulation 34(b) of the Working Time Regulations 1998 SI 1998/1833, by regulation 17(1) and (5) of these Regulations, and by other amendments not relevant to these Regulations; there are other amendments not relevant to these Regulations.

(a) omit the word “or” at the end of paragraph (v); and

(b) after paragraph (w), insert-

“, or

(x) the Employment Relations Act 1999 (Blacklists) Regulations 2010.”.

(6) In the list in Schedule A2 to the Trade Union and Labour Relations (Consolidation) Act 1992 (tribunal jurisdictions to which provisions apply requiring adjustment of award in case of failure to comply with code of practice), after the entry relating to regulation 17 of the Cross-Border Railway Services (Working Time) Regulations 2008 insert—

“Regulation 9 of the Employment Relations Act 1999 (Blacklists) Regulations 2010 ([SI 2010/493](#)) (detriment connected with prohibited list).”.