



# Discrimination and union membership: Consultation on revised draft regulations

To: All Chief Executives, Main Contacts and Email Contacts

## Key issues

BIS has issued revised draft regulations in response to recent blacklisting activities

### 1. Introduction

This Executive Summary outlines the Government's approach to trade unions noting that "those who belong to them and participate in their activities, play a legitimate role in any democratic society". It goes on to state that "It believes that the blacklisting of trade unionists should have no place in the conduct of employment relations in this country".

An electronic version of the consultation document can be found at [www.berr.gov.uk/files/file51729.pdf](http://www.berr.gov.uk/files/file51729.pdf)

The main effects of the draft regulations are as follows:-

- To define a blacklist of trade unionists and to prohibit the compilation, dissemination and use of such blacklists;

- To make it unlawful for organisations 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 the employment 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 have suffered loss or potential loss because of a prohibited blacklisting activity.

The regulations will apply to Great Britain.

An electronic version of the consultation document can be found at [www.berr.gov.uk/files/file51729.pdf](http://www.berr.gov.uk/files/file51729.pdf)

## **2. Background**

The paper refers to the relevant sections of the Employment Relations Act 1999 noting that it provides powers for the Secretary of State to outlaw the compilation, dissemination and use of trade union blacklists.

There was a further round of consultation in 2003, at the end of which the Government re-affirmed its view that it would not seek to implement regulations until evidence was available that a problem existed and it repeated its commitment if such an eventually arose.

Further relevant legislation, the Trade Union and Labour Relations (Consolidation) Act 1992 and The Data Protection Act 1998 are also detailed.

## **3. Evidence of recent blacklisting activity**

The investigation by the Information Commissioner (IC) into the activities of The Consulting Association (TCA) have been ongoing since June 2008. The initial findings, announced in March 2009, showed that TCA had provided a service for many years to around 40 construction companies many of whom are major players in the sector appraising the suitability for employment of individuals.

TCA held records on about 3,300 people and more detailed records on 1,600 people and the IC concluded that this vetting service, which had operated on covert lines, seriously breached aspects of the Data

Protection Act 1998. As a result, Mr Ian Kerr who ran the TCA has been prosecuted and he has ceased trading. About 75% of the 1,600 records kept concern trade unionists and activities associated with trade unions.

The paper goes on to describe the method of vetting used by TCA, membership of the organisation and fees. The paper states that “It appears that the overall purpose of the records held by the TCA was to assist members in identifying people who from their viewpoint might be classified as troublemakers and who might therefore affect the delivery of construction work on time”.

The IC is providing a facility for construction workers or others to check whether they were listed by TCA and if so access their records. This will be available until 31 March 2010 via a helpline on 08450 306060.

#### **4. The Government View**

The paper makes the Government’s view clear reiterating that there is no place for blacklisting activities. It refers to similar activities in the 1980s and 1990s by the Economic League and notes that there remains some demand for the kind of services supplied by TCA.

The government takes the view that recent events justify the introduction of regulations under Section 3 of the 1999 Act to outlaw the compilation, dissemination and use of trade union blacklists.

The Government notes that good employers should use testimonials and other systems which lawfully and fairly check the records of job applicants and so have nothing to fear from the draft regulations.

#### **5. APSE Comment**

APSE welcomes the comments of the Minister in the foreword to this document and agrees with the spirit of the comments – that blacklisting of trade unionists is unacceptable behaviour and could undermine the work of one of our most effective and influential voluntary groups. APSE would encourage councils to do all they can to ensure this activity does not is wiped out. There have been allegations made against a number of large and small companies many of whom have contracts or partnership arrangements with councils. Councils should remain aware of developments with this issue and be prepared to address the issue with their contractors and partners to satisfy themselves that they are not involved in blacklisting in any way.

APSE will be sending a joint response to this consultation document on behalf of its members and all comments should be sent by 11 August 2009 by e-mail to [pbrennan@apse.org.uk](mailto:pbrennan@apse.org.uk)

The consultation period will run from 7 July to 18 August, 2009.

Responses to the Department can be submitted to

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Employment Relations Directorate  
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Or emailed to [blacklisting.response@bis.gsi.gov.uk](mailto:blacklisting.response@bis.gsi.gov.uk)

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