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**An Bille Caidrimh Thionscail (Dúliostaí), 2015**  
**Industrial Relations (Blacklists) Bill 2015**

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*Mar a tionscnaíodh*

*As initiated*

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ACTS REFERRED TO

Employment Agency Act 1971 (No. 27)

Industrial Relations (Amendment) Act 2015 (No. 27)

Industrial Relations Act 1946 (No. 26)

Industrial Relations Act 1990 (No. 19)

Protected Disclosures Act 2014 (No. 14)

Unfair Dismissals Acts 1977 to 2015

Workplace Relations Act 2015 (No. 16)



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**AN BILLE CAIDRIMH THIONSCAIL (DÚLIOSTAÍ), 2015**  
**INDUSTRIAL RELATIONS (BLACKLISTS) BILL 2015**

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# Bill

*entitled*

An Act to make it unlawful to compile, use, sell or supply blacklists containing details of people who are, or have been, trade union members or who are taking part, or have taken part, in trade union activities or an industrial action where such blacklists may be used by employers to discriminate in relation to recruitment or the treatment of existing workers and provide for sanctions where such unlawful actions as detailed occur. 5

**Be it enacted by the Oireachtas as follows:** 10

## **Interpretation**

**1.** In this Act—

“Act of 1977” means the Unfair Dismissals Acts 1977 to 2015;

“Act of 2015” means the Industrial Relations (Amendment) Act 2015;

“Commission” has the meaning assigned to it in section 10 of the Workplace Relations Act 2015; 15

“employment agency” has the same meaning assigned to it in section 1(2) of the Employment Agency Act 1971;

“industrial action” has the same meaning assigned to it in section 8 of the Industrial Relations Act 1990; 20

“Minister” means the Minister for Jobs, Enterprise and Innovation;

“office” means an office of a trade union;

“prohibited list” has the meaning assigned to it in *section 2(2)* of this Act;

“strike” has the same meaning assigned to it in section 8 of the Industrial Relations Act 1990; 25

“trade union” has the meaning assigned to it in section 3 of the Industrial Relations Act 1946;

“use”, in relation to a prohibited list, includes use of information contained in such a list;

“worker” has the same meaning assigned to it in section 8 of the Industrial Relations Act 1990. 30

## General ban

2. (1) Subject to *section 3* no person shall compile, use, sell or supply a prohibited list.
- (2) A “prohibited list” is a list which—
- (a) contains details of persons who are, or have been, members of trade unions or persons who are taking part, or have taken part, in the activities of trade unions, an industrial action or strike, and 5
  - (b) is compiled with a view to being used by employers or employment agencies for the purposes of discrimination in relation to recruitment or in relation to the treatment of workers.
- (3) “Discrimination” means treating a person less favourably than another on grounds of trade union membership, trade union activities or having engaged in an industrial action or strike. 10
- (4) References to membership of a trade union include references to—
- (a) membership of a particular branch or section of a trade union, or
  - (b) membership of one of a number of particular branches or sections of a trade union, 15
- and references to taking part in the activities of a trade union have a corresponding meaning.

## Exceptions to general ban

3. A person does not contravene *section 2* in the following cases: 20
- (a) where a person supplies a prohibited list, but—
    - (i) does not know they are supplying a prohibited list, and
    - (ii) could not reasonably be expected to know they are supplying a prohibited list;
  - (b) where a person compiles, uses or supplies a prohibited list, but— 25
    - (i) in doing so, that person’s sole or principal purpose is to make known a contravention of *section 2* or the possibility of such a contravention,
    - (ii) no information in relation to a person whose details are included in the prohibited list is published without the consent of that person, and
    - (iii) in all such circumstances compiling, using or supplying the prohibited list is justified in the public interest; 30
  - (c) where a person compiles, uses, sells or supplies a prohibited list, but in doing so that person’s sole or principal purpose is to apply a requirement either—
    - (i) that a person may not be considered for appointment to an office or for employment unless that person has experience or knowledge of trade union matters, and in all the circumstances it is reasonable to apply such a requirement, or 35
    - (ii) that a person may not be considered for appointment or election to an office

in a trade union unless she or he is a member of the union;

- (d) where a person compiles, uses, sells or supplies a prohibited list, but the compilation, use, sale or supply of the prohibited list is required or authorised—
  - (i) under a statutory provision,
  - (ii) by any rule of law, or 5
  - (iii) by an order of the court;
- (e) where a person uses or supplies a prohibited list—
  - (i) for the purpose of, or in connection with, legal proceedings (including prospective legal proceedings), or
  - (ii) for the purpose of giving or obtaining legal advice, where the use or supply is necessary in order to determine whether this section has been complied with. 10

#### **Refusal of employment**

4. (1) A person has a right of complaint to the Commission against another where employment is refused for a reason which relates to a prohibited list, and where the prospective employer either— 15
- (a) contravenes *section 2* in relation to that list, or
  - (b) (i) relies on information supplied by a person who contravenes that section in relation to that list, and
    - (ii) knows or ought reasonably to have known that the information relied on is supplied in contravention of that section. 20
- (2) The prospective employer shall be taken to refuse to employ a person if the person seeks employment of any description with the prospective employer who—
- (a) refuses or deliberately omits to entertain and process a person's application or enquiry,
  - (b) causes a person to withdraw or cease to pursue her or his application or enquiry, 25
  - (c) refuses or deliberately omits to offer a person employment of that description,
  - (d) makes a person an offer of such employment the terms of which are such as no reasonable employer who wished to fill the post would offer and which is not accepted, or
  - (e) makes a person an offer of such employment but withdraws it or causes her or him not to accept it. 30
- (3) If there are facts from which the Commission could conclude, in the absence of any other explanation, that the prospective employer contravened *section 2* or relied on information supplied in contravention of that section, the Commission must find that such a contravention or reliance on information occurred unless the prospective employer shows that it did not. 35

## Refusal of employment agency services

5. (1) A person shall have a right of complaint to the Commission against an employment agency which refuses her or him any of its services for a reason which relates to a prohibited list, and either—
- (a) an employment agency contravenes *section 2* in relation to that list, or 5
  - (b) a person—
    - (i) relies on information supplied by a person who contravenes that section in relation to that list, and
    - (ii) knows or ought reasonably to know that information relied on is supplied in contravention of that section. 10
- (2) An employment agency shall be taken to refuse a person a service if she or he seeks to make use of the service and the employment agency—
- (a) refuses or deliberately omits to make the service available to a person,
  - (b) causes a person not to make use of the service or to cease to make use of it, or
  - (c) does not provide a person with the same service, on the same terms, as is provided to others. 15
- (3) If there are facts from which the Commission could conclude, in the absence of any other explanation, that the employment agency contravened *section 2* or relied on information supplied in contravention of that section, the tribunal must find that such a contravention or reliance on information occurred unless the employment agency shows that it did not. 20

## Time limit for proceedings under *sections 4 and 5*

6. (1) Subject to *subsection (2)*, the Commission shall not consider a complaint under *sections 4 or 5* unless it is presented to the tribunal before the end of the period of six months beginning with the date of the conduct to which the complaint relates. 25
- (2) The Commission may consider a complaint under *sections 4 or 5* where such a complaint is not initiated within the time specified in *section 6(1)* if, in all the circumstances of the case, it considers that it is just and equitable to do so.
- (3) The date of the conduct to which a complaint under *section 4* relates shall be taken to be— 30
- (a) in the case of an actual refusal, the date of the refusal,
  - (b) in the case of a deliberate omission—
    - (i) to entertain and process a person's application or enquiry,
    - (ii) to offer employment, or
    - (iii) the end of the period within which it was reasonable to expect the employer to act, 35
  - (c) in the case of conduct causing a person to withdraw or cease to pursue her or his application or enquiry, the latest date of that conduct,



- (d) in a case where the prospective employer made but withdrew an offer, the date the offer was withdrawn,
  - (e) in any other case where the prospective employer made an offer which was not accepted, the date on which the offer was made.
- (4) The date of the conduct to which a complaint under *section 5* relates shall be taken to be— 5
- (a) in the case of an actual refusal, the date of the refusal,
  - (b) in the case of a deliberate omission to make a service available, the end of the period within which it was reasonable to expect the employment agency to act,
  - (c) in the case of conduct causing a person not to make use of a service, or to cease to make use of it, the latest date of that conduct, 10
  - (d) in the case of failure to provide the same service, on the same terms, as is provided to others, the date or last date on which the service in fact was provided.

**Amendment of Act of 1977**

7. The Act of 1977 is amended by— 15
- (a) the insertion of the following definition in section 1—
    - “ ‘prohibited list’ has the meaning assigned to it in *section 2(2)* of the *Industrial Relations (Blacklists) Act 2015*,”
    - and
  - (b) the insertion of the following new paragraphs to section 6(2)— 20
    - “(b) relates to a prohibited list, and either—
      - (i) the employer contravenes *section 2* of the *Industrial Relations (Blacklists) Act 2015* in relation to that prohibited list, or
      - (ii) the employer—
        - (I) relies on information supplied by a person who contravenes that section in relation to that list, and 25
        - (II) knows or ought reasonably to know that the information relied on is supplied in contravention of that section,
    - (c) if there are facts from which the Workplace Relations Commission could conclude, in the absence of any other explanation, that the employer— 30
      - (i) contravened *section 2* of the *Industrial Relations (Blacklists) Act 2015*, or
      - (ii) relied on information supplied in contravention of that section,
        - the Commission must find that such a contravention or reliance on information occurred, unless the employer shows that it did not.”. 35

## Amendment of Act of 2015

8. The Act of 2015 is amended by the insertion of the following new section—

### “Prohibition on penalisation of a person in relation to blacklisting

21. (1) An employer shall not penalise or threaten penalisation of a worker for—

- (a) making a complaint to the Workplace Relations Commission that a provision of the *Industrial Relations (Blacklists) Act 2015* has been contravened, or 5
- (b) giving notice of his or her intention make such a complaint referred to in paragraph (a). 10
- (2) If there are facts from which the Commission could conclude, in the absence of any other explanation, that the employer contravened *section 2* of the *Industrial Relations (Blacklists) Act 2015* or relied on information supplied in contravention of that section, the Commission must find that such a contravention or reliance on information occurred unless the employer can show that it did not. 15
- (3) Subsection (1) does not apply to the making of a complaint that is a protected disclosure within the meaning of the Protected Disclosures Act 2014. 20
- (4) In relation to a complaint that subsection (1) has been contravened, it shall be presumed, until the contrary is proved, that the worker concerned has acted reasonably and in good faith in forming the opinion and making the communication concerned. 25
- (5) Where the Commission finds that a complaint made by a person under *sections 4* and *5* of the *Industrial Relations (Blacklists) Act 2015* is well founded, it shall make a declaration to that effect and compensation may be awarded as if the person were a worker employed by the employer or persons against whom the declaration has been made. 30
- (6) If a penalisation of a worker, in contravention of subsection (1), constitutes a dismissal of the worker within the meaning of the *Industrial Relations (Blacklists) Act 2015*, relief may not be granted to the worker in respect of that penalisation both under *section 23* and under those Acts. 35
- (7) In this section ‘penalisation’ means any act or omission by an employer or a person acting on behalf of an employer that affects a worker to his or her detriment with respect to any term or condition of his or her employment, and, without prejudice to the generality of the foregoing, includes—
  - (a) suspension, lay-off or dismissal (including a dismissal within the meaning of the Unfair Dismissals Acts 1977 to 2015), or the threat of suspension, lay-off or dismissal, 40
  - (b) demotion or loss of opportunity for promotion,
  - (c) transfer of duties, change of location of place of work, reduction in

- wages or change in working hours,
- (d) imposition or the administering of any discipline, reprimand or other penalty (including a financial penalty), and
- (e) coercion or intimidation.”.

**Complaint against an employer and employment agency** 5

9. (1) Where a person has a right of complaint under *section 4* or *5* against an employer or an employment agency arising out of the same facts, he or she may present a complaint against either the employer or employment agency or against the employer and employment agency jointly.
- (2) If a person presents a complaint against only one party, that party or the person may request the Commission to join the other as a party to the proceedings. 10
- (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 Commission has made its decision as to whether the complaint is well-founded.
- (4) Where a person brings a complaint against the employer and employment agency jointly, or where he or she brings a complaint against one of them and the other is joined as a party to the proceedings, and the Commission— 15
- (a) finds that the complaint is well-founded as against the employer and the employment agency, and
  - (b) awards compensation, 20
- the Commission may order that the compensation shall be paid by the employer, by the employment agency, or partly by the employer and partly by the employment agency, as the Commission may consider just and equitable in all the circumstances.

**Compensation**

10. Where the Commission finds that a complaint under this Act is well-founded it shall do one or more of the following, namely— 25
- (a) declare that the complaint was or, as the case may be, was not well founded,
  - (b) require the employer or the employment agency, or both, to pay to the worker compensation of such amount (if any) as the Commission considers just and equitable having regard to all of the circumstances, but not exceeding 2 years’ remuneration, or reasonably expected remuneration. 30

**Offences**

11. (1) A person guilty of an offence under this Act shall be liable—
- (a) on summary conviction, to a class A fine or imprisonment for a term not exceeding 6 months or both, or 35
  - (b) on conviction on indictment, to a fine not exceeding €50,000 or imprisonment for a term not exceeding 3 years or both.

- (2) Where an offence under this Act is committed by a body corporate and is proved to have been so committed with the consent or connivance of any person, being a director, manager, secretary or other officer of the body corporate, or a person who was purporting to act in any such capacity, that person shall, as well as the body corporate, be guilty of an offence and shall be liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence. 5
- (3) Summary proceedings for an offence under this Act may be brought and prosecuted by the Commission.
- (4) Where a person is convicted of an offence under this Act, the court shall order the person to pay to the Commission the costs and expenses, measured by the court, incurred by the Commission in relation to the investigation, detection and prosecution of the offence unless the court is satisfied that there are special and substantial reasons for not so doing. 10

#### **Prosecution of summary offences by the Commission**

12. Summary proceedings for an offence under this Act may be brought and prosecuted by the Commission. 15

#### **Failure to comply with *section 10***

13. A person shall be guilty of an offence where he or she fails or refuses to comply with *section 10*.

#### **Short title and commencement**

14. (1) This Act may be cited as the Industrial Relations (Blacklists) Act 2015. 20
- (2) This Act shall come into operation immediately.



An Bille Caidrimh Thionscail (Dúliostaí),  
2015

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# BILLE

*(mar a tionscnaíodh)*

*dá ngairtear*

Acht chun tiomsú, úsáid, díol nó soláthar dúliostaí a dhéanamh neamhdhleathach, is dúliostaí ina bhfuil mionsonraí daoine atá, nó a bhí, ina gcomhaltaí ceardchumainn nó a bhfuil páirt á glacadh acu, nó a ghlac páirt, i ngníomhaíochtaí ceardchumainn nó i ngníomh tionscail i gcás go bhféadfadh fostóirí dúliostaí den sórt sin a úsáid chun idirdhealú a dhéanamh i ndáil le hearcaíocht nó i ndáil le déileáil le hoibrithe láithreacha agus do dhéanamh socrú maidir le smachtbhannaí i gcás go dtarlaíonn gníomhartha neamhdhleathacha den sórt sin arna mionsonrú.

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*An Teachta Peadar Tóibín a thug isteach,*

16 Nollaig, 2015

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Industrial Relations (Blacklists) Bill 2015

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# BILL

*(as initiated)*

*entitled*

An Act to make it unlawful to compile, use, sell or supply blacklists containing details of people who are, or have been, trade union members or who are taking part, or have taken part, in trade union activities or an industrial action where such blacklists may be used by employers to discriminate in relation to recruitment or the treatment of existing workers and provide for sanctions where such unlawful actions as detailed occur.

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*Introduced by Deputy Peadar Tóibín,*

16th December, 2015

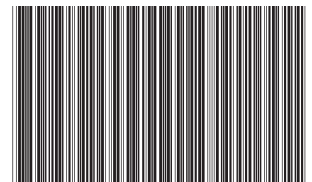
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