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STATUTORY INSTRUMENTS

1996 No. 1919

The Employment Rights (Northern Ireland) Order 1996

PART XV

MISCELLANEOUS

CHAPTER II

OTHER MISCELLANEOUS MATTERS

Contracting out etc. and remedies

Restrictions on contracting out

245.—(1) Any provision in an agreement (whether a contract of employment or not) is void in so far as it purports—

- (a) to exclude or limit the operation of any provision of this Order, or
- (b) to preclude a person from bringing any proceedings under this Order before an industrial tribunal.

(2) Paragraph (1)—

- (a) does not apply to any provision in a collective agreement excluding rights under Article 60 if an order under Article 67 is for the time being in force in respect of it,
- (b) does not apply to any provision in a dismissal procedures agreement excluding the right under Article 126 if that provision is not to have effect unless an order under Article 142 is for the time being in force in respect of it,
- (c) does not apply to any provision in an agreement if an order under Article 192 is for the time being in force in respect of it,

Sub#para. (d) rep. by SR 2002/298

- (e) does not apply to any agreement to refrain from instituting or continuing proceedings where the Agency has taken action under [^{F1}any of Articles 20A to 20C] of the Industrial Tribunals (Northern Ireland) Order 1996, and
- (f) does not apply to any agreement to refrain from instituting or continuing^{F2}. . . any proceedings within^{F3} the following provisions of Article 20(1) of the Industrial Tribunals (Northern Ireland) Order 1996 (cases where conciliation available)—
 - (i) sub-paragraph (c) (proceedings under this Order);
 - (ii) sub-paragraph (i) (proceedings arising out of the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations (Northern Ireland) 2002;
 - (iii) sub-paragraph (j) (proceedings under those Regulations);]

if the conditions regulating compromise agreements under this Order are satisfied in relation to the agreement, and

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- (g) does not apply to any provision of a collective agreement excluding rights under Part XIII if an order under Article 226 is in force in respect of it.
- (3) For the purposes of paragraph (2)(f) the conditions regulating compromise agreements under this Order are that—
- (a) the agreement must be in writing,
 - (b) the agreement must relate to the particular^[F2] proceedings],
 - (c) the employee or worker must have received^[F2] advice from a relevant independent advisor] as to the terms and effect of the proposed agreement and, in particular, its effect on his ability to pursue his rights before an industrial tribunal.
 - (d) there must be in force, when the adviser gives the advice, a^[F2] contract of insurance, or an indemnity provided for members of a profession or professional body,] covering the risk of a claim by the employee or worker in respect of loss arising in consequence of the advice,
 - (e) the agreement must identify the adviser, and
 - (f) the agreement must state that the conditions regulating compromise agreements under this Order are satisfied.
- ^[F2](3A) A person is a relevant independent adviser for the purposes of paragraph (3)(c)—
- (a) if he is a qualified lawyer;
 - (b) if he is an officer, official, employee or member of an independent trade union who has been certified in writing by the trade union as competent to give advice and as authorised to do so on behalf of the trade union,
 - (c) if he works at an advice centre (whether as an employee or a volunteer) and has been certified in writing by the centre as competent to give advice and as authorised to do so on behalf of the centre, or
 - (d) if he is a person of a description specified in an order made by the Department.
- (3B) But a person is not a relevant independent adviser for the purposes of paragraph (3)(c) in relation to the employee or worker—
- (a) if he is, is employed by or is acting in the matter for the employer or an associated employer,
 - (b) in the case of a person within paragraph (3A)(b) or (c), if the trade union or advice centre is the employer or an associated employer,
 - (c) in the case of a person within paragraph (3A)(c), if the employee or worker makes a payment for the advice received from him, or
 - (d) in the case of a person of a description specified in an order under paragraph (3A)(d), if any condition specified in the order in relation to the giving of advice by persons of that description is not satisfied.
- (4) In paragraph (3A)(a) “qualified lawyer” means a barrister (whether in practice as such or employed to give legal advice), or a solicitor who holds a practising certificate.]
- ^[F2](5) An agreement under which the parties agree to submit a dispute to arbitration—
- (a) shall be regarded for the purposes of paragraph (2)(e) and (f) as being an agreement to refrain from instituting or continuing proceedings if—
 - (i) the dispute is covered by a scheme having effect by virtue of an order under Article 84A of the Industrial Relations (Northern Ireland) Order 1992, and
 - (ii) the agreement is to submit it to arbitration in accordance with the scheme, but
 - (b) shall be regarded as neither being nor including such an agreement in any other case.]

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- F1** Words in [art. 245\(2\)\(e\)](#) substituted (27.1.2020) by [Employment Act \(Northern Ireland\) 2016 \(c. 15\)](#), s. 29(2), [Sch. 1 para. 1](#); S.R. 2020/1, art. 2(m)
- F2** 1998 NI 8
- F3** SR 2002/298

Modifications etc. (not altering text)

- C1** Art. 245 applied (with modifications) (6.4.2006) by [Transfer of Undertakings \(Protection of Employment\) Regulations 2006 \(S.I. 2006/246\)](#), regs. 2(3), 18, [Sch. 1 para. 11](#) (with [reg. 21\(1\)](#), [Sch. 1 para. 3](#))
- C2** Art. 245 applied (6.4.2006) by [Service Provision Change \(Protection of Employment\) Regulations \(Northern Ireland\) 2006 \(S.R. 2006/177\)](#), [reg. 18](#)
- C3** Art. 245 applied (5.12.2011) by [Agency Workers Regulations \(Northern Ireland\) 2011 \(S.R. 2011/350\)](#), [reg. 15](#)
- C4** Art. 245 applied (6.4.2014) by [The Employment Relations \(Northern Ireland\) Order 1999 \(Blacklists\) Regulations \(Northern Ireland\) 2014 \(S.R. 2014/88\)](#), regs. 1, [16](#)

Law governing employment

246.—(1) For the purposes of this Order it is immaterial whether the law which (apart from this Order) governs any person's employment is the law of the United Kingdom, or of a part of the United Kingdom, or not.

Para. (2) rep. by 1999 NI 9

Remedy for infringement of certain rights

247.—(1) The remedy of an employee for infringement of any of the rights conferred by Article 40, Parts V to IX, Article 124, Part XI, Part XIII and Part XIV is, where provision is made for a complaint or the reference of a question to an industrial tribunal, by way of such a complaint or reference and not otherwise.

[^{F4}(1YA) In relation to the right conferred by Article 68(1A), the reference in paragraph (1) to an employee has effect as a reference to a worker.]

[^{F5}(1ZA) In relation to the right conferred by Article 68A, the reference in paragraph (1) to an employee has effect as a reference to a worker.]

[^{F6}(1A) In relation to the right conferred by Article 70B, the reference in paragraph (1) to an employee has effect as a reference to a worker.]

(2) The remedy of a worker in respect of any contravention of Article 45, 47, 50(1) or 53(1) is by way of a complaint under Article 55 and not otherwise.

[^{F7}(2A) The remedy of a person for infringement of the right conferred on him by Article 73 is by way of a complaint under Article 74 and not otherwise.]

[^{F7}(2B) The remedy of a person for infringement of the right conferred on him by Article 77A or Article 77B is by way of a complaint under that Article and not otherwise.]

(3) The remedy of a person for conduct which is unlawful by virtue of Part II is by way of a complaint to an industrial tribunal in accordance with that Part, and not otherwise.

No other legal liability arises by reason that conduct is unlawful by virtue of that Part.

- F4** [Art. 247\(1YA\)](#) inserted (31.5.2021) by [The Employment Rights \(Northern Ireland\) Order 1996 \(Protection from Detriment in Health and Safety Cases\) \(Amendment\) Order \(Northern Ireland\) 2021 \(S.R. 2021/103\)](#), arts. 1, [6](#)
- F5** SR 1998/386

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F6 1998 NI 17

F7 2004 NI 19

Modifications etc. (not altering text)

- C5** Art. 247(1) applied (6.4.2006) by virtue of [Transfer of Undertakings \(Protection of Employment\) Regulations 2006 \(S.I. 2006/246\)](#), regs. 2(3), 16(1), **Sch. 1 para. 11** (with reg. 21(1)(5), Sch. 1 para. 3)
- C6** Art. 247(1) applied (6.4.2006) by [Service Provision Change \(Protection of Employment\) Regulations \(Northern Ireland\) 2006 \(S.R. 2006/177\)](#), **reg. 16(1)**

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