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STATUTORY RULES OF NORTHERN IRELAND

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**2008 No. 315**

**The Cross-border Railway Services (Working Time) Regulations (Northern Ireland) 2008**

**Restrictions on contracting out**

**18.**—(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 these Regulations, save in so far as these Regulations provide for an agreement to have that effect, or
- (b) to preclude a person from bringing proceedings under these Regulations before an industrial tribunal.

(2) Paragraph (1) does not apply to—

- (a) any agreement to refrain from instituting or continuing proceedings where a conciliation officer has taken action under [F1any of Articles 20A to 20C] of the Industrial Tribunals (Northern Ireland) Order 1996(1) (conciliation); or
- (b) any agreement to refrain from instituting or continuing proceedings within Article 20 (1) (q) of the Industrial Tribunals (Northern Ireland) Order 1996 (proceedings under this Order where conciliation is available), if the conditions regulating compromise agreements under these Regulations are satisfied in relation to the agreement.

(3) For the purposes of paragraph (2)(b) the conditions regulating compromise agreements under these Regulations are that—

- (a) the agreement must be in writing,
- (b) the agreement must relate to the particular complaint,
- (c) the cross-border worker must have received advice from a relevant independent adviser as to the terms and effect of the proposed agreement and, in particular, its effect on the worker's ability to pursue the worker's rights before an industrial tribunal,
- (d) there must be in force, when the adviser gives the advice, a contract of insurance, or an indemnity provided for members of a profession or a professional body, covering the risk of a claim by the cross-border 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 these Regulations are satisfied.

(4) A person is a relevant independent adviser for the purposes of paragraph (3)(c)—

- (a) if the person is a qualified lawyer,

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(1) S.I.1996/1921 (N.I. 18); article 20(1) has been amended on a number of occasions to specify additional proceedings and claims to which the article applies

- (b) if the person 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, or
  - (c) if the person works at an advice centre (whether as an employee or as 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.
- (5) But a person is not a relevant independent adviser for the purposes of paragraph (3)(c)—
- (a) if the person 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 (4)(b), if the trade union is the employer or an associated employer, or
  - (c) in the case of a person within paragraph (4)(c), if the cross-border worker makes a payment for the advice received from the adviser.
- (6) In paragraph (4)(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;
- (7) For the purposes of paragraph (5) any two employers shall be treated as associated if—
- (a) one is a company of which the other (directly or indirectly) has control; or
  - (b) both are companies of which a third person (directly or indirectly) has control;
- and “associated employer” shall be construed accordingly.

**F1** Words in [reg. 18\(2\)\(a\)](#) substituted (27.1.2020) by [The Industrial Tribunals \(1996 Order\) \(Application of Conciliation Provisions\) Order \(Northern Ireland\) 2020 \(S.R. 2020/4\)](#), art. 1, [Sch. para. 45](#)

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**Commencement Information**

**I1** [Reg. 18](#) in operation at 1.10.2008, see [reg. 1\(1\)](#)

**Changes to legislation:**

There are currently no known outstanding effects for the The Cross-border Railway Services (Working Time) Regulations (Northern Ireland) 2008, Section 18.