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DRAFT STATUTORY INSTRUMENTS

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**2003 No.**

**The Race Relations Act 1976 (Amendment) Regulations 2003**

**Collective agreements and rules of undertakings**

**49.** After section 72 of the 1976 Act insert—

**“Collective agreements and rules of undertakings**

**72A.**—(1) This section applies to—

- (a) any term of a collective agreement, including an agreement which was not intended, or is presumed not to have been intended, to be a legally enforceable contract;
- (b) any rule made by an employer for application to all or any of the persons who are employed by him or who apply to be, or are, considered by him for employment;
- (c) any rule made by an organisation to which section 11 (trade organisations) applies, or by a body to which section 12 (qualifying bodies) applies, for application to—
  - (i) all or any of its members or prospective members; or
  - (ii) all or any of the persons on whom it has conferred authorisations or qualifications or who are seeking the authorisations or qualifications which it has power to confer.

(2) Any term or rule to which this section applies is void where—

- (a) the making of the collective agreement is, by reason of the inclusion of the term, unlawful on grounds of race or ethnic or national origins, by virtue of a provision referred to in section 1(1B);
- (b) the term or rule is included or made in furtherance of an act which is unlawful on such grounds by virtue of such a provision; or
- (c) the term or rule provides for the doing of such an act.

(3) Subsection (2) applies whether the agreement was entered into, or the rule made, before, on or after 19th July 2003; but in the case of an agreement entered into, or a rule made, before that date, that subsection does not apply in relation to any period before that date.

(4) In this section, and in section 72B, “collective agreement” means any agreement relating to one or more of the matters mentioned in section 178(2) of the Trade Union and Labour Relations (Consolidation) Act 1992(1) (meaning of trade dispute), being an agreement made by or on behalf of one or more employers or one or more organisations of employers or associations of such organisations with one or more organisations of workers or associations of such organisations.

**72B.**—(1) A person to whom this subsection applies may present a complaint to an employment tribunal that a term or rule is void by virtue of section 72A if he has reason to believe—

- (a) that the term or rule may at some future time have effect in relation to him; and
- (b) where he alleges that it is void by virtue of section 72A(2)(c), that—
  - (i) an act for the doing of which it provides may at some such time be done in relation to him, and
  - (ii) the act would be rendered unlawful on grounds of race or ethnic or national origins by a provision referred to in section 1(1B) if done in relation to him in present circumstances.

(2) In the case of a complaint about—

- (a) a term of a collective agreement made by or on behalf of—
  - (i) an employer;
  - (ii) an organisation of employers of which an employer is a member; or
  - (iii) an association of such organisations of one of which an employer is a member; or
- (b) a rule made by an employer, within the meaning of section 72A(1)(b);

subsection (1) applies to any person who is, or is genuinely and actively seeking to become, one of his employees.

(3) In the case of a complaint about a rule made by an organisation or body to which section 72A(1)(c) applies, subsection (1) applies to any person—

- (a) who is, or is genuinely and actively seeking to become, a member of the organisation, or body;
- (b) on whom the organisation or body has conferred an authorisation or qualification; or
- (c) who is genuinely and actively seeking an authorisation or qualification which the organisation or body has power to confer.

(4) When an employment tribunal finds that a complaint presented to it under subsection (1) is well-founded the tribunal shall make an order declaring that the term or rule is void.

(5) An order under subsection (4) may include provision as respects any period before the making of the order (but after 19th July 2003).

(6) The avoidance by virtue of section 72 A(2) of any term or rule which provides for any person to be discriminated against shall be without prejudice to the following rights (except in so far as they enable any person to require another person to be treated less favourably than himself) namely—

- (a) such of the rights of the person to be discriminated against, and
- (b) such of the rights of any person who will be treated more favourably in direct or indirect consequence of the discrimination,

as are conferred by or in respect of a contract made or modified wholly or partly in pursuance of, or by reference to, that term or rule.”.