

SCHEDULE

Employment rights and protections in connection with consultation

Miscellaneous

11. Any provision in any agreement (whether an employee's contract or not) is void in so far as it purports to exclude or limit the operation of any provision of regulations 6 to 16.

12.—(1) Any provision in any agreement (whether an employee's contract or not) is void in so far as it purports—

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

(2) Sub-paragraph (1) does not apply to any agreement to refrain from instituting or continuing proceedings before an employment tribunal where a conciliation officer has taken action under section 18 of the Employment Tribunals Act 1996 (conciliation).

(3) Sub-paragraph (1) does not apply to any agreement to refrain from instituting or continuing before an employment tribunal proceedings within section 18(1) of the Employment Tribunals Act 1996 (which specifies proceedings under these Regulations as being proceedings where conciliation is available⁽¹⁾) if the conditions specified in paragraph 13 regulating compromise agreements are satisfied in relation to the agreement.

13.—(1) For the purposes of paragraph 12(3) the conditions regulating compromise agreements are that—

- (a) the agreement must be in writing,
 - (b) the agreement must relate to the particular proceedings,
 - (c) the employee 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 his ability to pursue his rights before an employment 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 employee 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 in paragraphs (a) to (e) are satisfied.
- (2) A person is a relevant independent adviser for the purposes of sub-paragraph (1)(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, or
 - (c) if he 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.
- (3) But a person is not a relevant independent adviser for the purposes of sub-paragraph (1)(c)—
- (a) if he is, is employed by or is acting in the matter for the employer or an associated employer,

(1) See amendment of section 18(1) in paragraph 9 of the Schedule to these Regulations.

Draft Legislation: This is a draft item of legislation. This draft has since been made as a UK Statutory Instrument:
The Occupational and Personal Pension Schemes (Miscellaneous Amendments) Regulations 2006 No. 778

- (b) in the case of a person within sub-paragraph (2)(b) or (c), if the trade union or advice centre is the employer or an associated employer, or
 - (c) in the case of a person within sub-paragraph (2)(c), if the employee makes a payment for the advice received from him.
- (4) In sub-paragraph (2)(a) “qualified lawyer” means—
- (a) as respects England and Wales, a barrister (whether in practice as such or employed to give legal advice), a solicitor who holds a practising certificate, or a person other than a barrister or a solicitor who is an authorised advocate or authorised litigator (within the meaning of the Courts and Legal Services Act 1990⁽²⁾);
 - (b) as respects Scotland, an advocate (whether in practice as such or employed to give legal advice) or a solicitor who holds a practising certificate.
- (5) A person shall be treated as being a qualified lawyer within the meaning of sub-paragraph (4) (a) if he is a Fellow of the Institute of Legal Executives⁽³⁾ employed by a solicitors’ practice.
- (6) In this paragraph—
- (a) “independent trade union” has the same meaning as in the Trade Union and Labour Relations (Consolidation) Act 1992⁽⁴⁾; and
 - (b) for the purposes of sub-paragraph (3) any two employers shall be treated as associated if—
 - (i) one is a company of which the other (directly or indirectly) has control, or
 - (ii) both are companies of which a third person (directly or indirectly) has control,and “associated employer” shall be construed accordingly.

⁽²⁾ 1990 c.41.

⁽³⁾ The Institute of Legal Executives is located at Kempston Manor, Kempston, Bedfordshire, MK42 7AB.

⁽⁴⁾ 1992 c.52.