



# Employment Rights Act 1996

## 1996 CHAPTER 18

### PART XIII

#### MISCELLANEOUS

#### CHAPTER II

##### OTHER MISCELLANEOUS MATTERS

##### *Contracting out etc. and remedies*

#### **203 Restrictions on contracting out.**

- (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 Act, or
  - (b) to preclude a person from bringing any proceedings under this Act before an [F1employment tribunal].
- (2) Subsection (1)—
  - (a) does not apply to any provision in a collective agreement excluding rights under section 28 if an order under section 35 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 section 94 if that provision is not to have effect unless an order under section 110 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 section 157 is for the time being in force in respect of it,
  - (d) F2 .....
  - (e) does not apply to any agreement to refrain from instituting or continuing proceedings where a conciliation officer has taken action under section 18 of [F1the M1Employment Tribunals Act 1996], and

*Status: Point in time view as at 16/08/2004.*

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- (f) does not apply to any agreement to refrain from instituting or continuing<sup>F3</sup> . . . any proceedings within

[<sup>F4</sup>the following provisions of section 18(1) of the Employment Tribunals Act 1996 (cases where conciliation available)—

- (i) paragraph (d) (proceedings under this Act),
- (ii) paragraph (h) (proceedings arising out of the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000),] if the conditions regulating compromise agreements under this Act are satisfied in relation to the agreement
- (iii) [<sup>F5</sup>paragraph (i)(proceedings arising out of the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002),
- (iv) paragraph (j)(proceedings under those Regulations),]

(3) For the purposes of subsection (2)(f) the conditions regulating compromise agreements under this Act are that—

- (a) the agreement must be in writing,
- (b) the agreement must relate to the particular [<sup>F6</sup>proceedings],
- (c) the employee or worker must have received [<sup>F7</sup>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 [<sup>F1</sup>employment tribunal],
- (d) there must be in force, when the adviser gives the advice, a [<sup>F8</sup>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 Act are satisfied.

[<sup>F9</sup>(3A) A person is a relevant independent adviser for the purposes of subsection (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 Secretary of State.

(3B) But a person is not a relevant independent adviser for the purposes of subsection (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 subsection (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 subsection (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 subsection (3A)(d), if any condition specified in the order in relation to the giving of advice by persons of that description is not satisfied.

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- (4) In subsection (3A)(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 solicitor who is an authorised advocate or authorised litigator (within the meaning of the <sup>M2</sup>Courts and Legal Services Act 1990), and
  - (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.]
- [<sup>F10</sup>(5) An agreement under which the parties agree to submit a dispute to arbitration—
- (a) shall be regarded for the purposes of subsection (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 section 212A of the Trade Union and Labour Relations (Consolidation) Act 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.]

#### Textual Amendments

- F1** Words in s. 203(1)(b)(2)(e)(f)(3)(c) substituted (1.8.1998) by 1998 c. 8, s. 1(2)(a)(c) (with s. 16(2)); S.I. 1998/1658, art. 2(1), **Sch. 1**
- F2** S. 203(2)(d) omitted (1.10.2002) by virtue of The Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 (S.I. 2002/2034), reg. 11, **Sch. 2 Pt. 1 para. 3(17)(a)** (with regs. 13-20 and subject to transitional provisions in Sch. 2 Pt. 2)
- F3** Words in s. 203(2)(f) repealed (1.8.1998) by 1998 c. 8, s. 15, **Sch. 2**; S.I. 1998/1658, art. 2(1), **Sch. 1**
- F4** Words in s. 203(2)(f) and s. 203(2)(f)(i)(ii) substituted for words in s. 203(2)(f) (1.5.2001) by S.I. 2001/1107, **reg. 3**
- F5** S. 203(2)(f)(iii)(iv) inserted (1.10.2002) by The Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 (S.I. 2002/2034), reg. 11, **Sch. 2 Pt. 1 para. 3(17)(b)** (with regs. 13-20 and subject to transitional provisions in Sch. 2 Pt. 2)
- F6** Word in s. 203(3)(b) substituted (1.8.1998) by 1998 c. 8, s. 15, **Sch. 1 para. 24(2)**; S.I. 1998/1658, art. 2(1), **Sch. 1**
- F7** Words in s. 203(3)(c) substituted (1.8.1998) by 1998 c. 8, s. 9(1)(2)(e); S.I. 1998/1658, art. 2(1), **Sch. 1**
- F8** Words in s. 203(3)(d) substituted (1.8.1998) by 1998 c. 8, s. 10(1)(2)(e); S.I. 1998/1658, art. 2(1), **Sch. 1**
- F9** S. 203(3A)(3B)(4) substituted for s. 203(4) (1.8.1998) by 1998 c. 8, s. 15, **Sch. 1 para. 24(3)**; S.I. 1998/1658, art. 2(1), **Sch. 1**
- F10** S. 203(5) inserted (1.8.1998) by 1998 c. 8, s. 8(5); S.I. 1998/1658, art. 2(2), **Sch. 1**

#### Modifications etc. (not altering text)

- C1** S. 203 applied (1.7.2000) by S.I. 2000/1551, **reg. 9**
- C2** S. 203 applied (with modifications) (1.10.2002) by The fixed-Term Employees (Prevention of Less Favourable Treatment) Regulations 2002 (S.I. 2002/2034), **reg. 10** (with regs. 13-20)
- C3** S. 203 applied (with modifications) (6.4.2006 with application in accordance with reg. 21(1) of the amending S.I.) by The Transfer of Undertakings (Protection of Employment) Regulations 2006 (S.I. 2006/246), regs. 1(2), **18**
- C4** S. 203(1)(2)(e)(f)(3)(4) amended (4.9.2000) by 1999 c. 26, s. 14(a); S.I. 2000/2242, **art. 2**

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#### **Marginal Citations**

- M1** 1996 c. 17.  
**M2** 1990 c. 41.

### **204 Law governing employment.**

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

<sup>F11</sup>(2) .....

#### **Textual Amendments**

- F11** S. 204(2) repealed (25.10.1999) by 1999 c. 26, s. 44, **Sch. 9(9)**; S.I. 1999/2830, art. 2(3), **Sch. 2 Pt. I** (with transitional provisions in **Sch. 3 para. 7(2)**)

### **205 Remedy for infringement of certain rights.**

- (1) The remedy of an employee for infringement of any of the rights conferred by section 8, Part III, Parts V to VIII, section 92, Part X and Part XII is, where provision is made for a complaint or the reference of a question to an [<sup>F12</sup>employment tribunal], by way of such a complaint or reference and not otherwise.

[<sup>F13</sup>(1A) In relation to the right conferred by section 47B, the reference in subsection (1) to an employee has effect as a reference to a worker.]

[<sup>F14</sup>(1ZA) In relation to the right conferred by section 45A, the reference in subsection (1) to an employee has effect as a reference to a worker.]

- (2) The remedy of a worker in respect of any contravention of section 13, 15, 18(1) or 21(1) is by way of a complaint under section 23 and not otherwise.

#### **Textual Amendments**

- F12** Words in s. 205(1) substituted (1.8.1998) by 1998 c. 8, s. 1(2)(a) (with s. 16(2)); S.I. 1998/1658, art. 2(1), **Sch. 1**  
**F13** S. 205(1A) inserted (2.7.1999) by 1998 c. 23, s. 14; S.I. 1999/1547, art. 2  
**F14** S. 205(1ZA) inserted (1.10.1998) by S.I. 1998/1833, **reg. 31(7)**

#### **Modifications etc. (not altering text)**

- C5** S. 205(1) applied (6.4.2006 with application in accordance with reg. 21(1) of the amending S.I.) by **The Transfer of Undertakings (Protection of Employment) Regulations 2006 (S.I. 2006/246), regs. 1(2), 16(1)**

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