

---

STATUTORY INSTRUMENTS

---

**1999 No. 3323**

The Transnational Information and  
Consultation of Employees Regulations 1999

PART VIII

MISCELLANEOUS

*Restrictions on contracting out*

**Restrictions on contracting out: general**

**40.**—(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 these Regulations other than a provision of Part VII; or
- (b) to preclude a person from bringing any proceedings before the Appeal Tribunal or the CAC, or in Northern Ireland the Industrial Court, under any provision of these Regulations other than a provision of Part VII.

(2) Paragraph (1) does not apply to any agreement to refrain from continuing any proceedings referred to in sub-paragraph (b) of that paragraph made after the proceedings have been instituted.

**Restrictions on contracting out: Part VII**

**41.**—(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 Part VII of these Regulations; or
- (b) to preclude a person from bringing any proceedings before an employment tribunal, or in Northern Ireland an industrial tribunal, under that Part.

(2) Paragraph (1) does not apply to any agreement to refrain from instituting or continuing proceedings before an employment tribunal or, in Northern Ireland, an industrial tribunal where—

- (a) a conciliation officer has taken action under section 18 of the Employment Tribunals Act 1996 (conciliation); or
- (b) in relation to Northern Ireland, the Labour Relations Agency has taken action under Article 20 of the Industrial Tribunals (Northern Ireland) Order 1996 (conciliation).

(3) Paragraph (1) does not apply to any agreement to refrain from instituting or continuing before an employment tribunal, or in Northern Ireland an industrial tribunal, proceedings within—

- (a) section 18(1)(g) of the Employment Tribunals Act 1996 (proceedings under these Regulations where conciliation is available); or
- (b) in relation to Northern Ireland, Article 20(1)(g) of the Industrial Tribunals (Northern Ireland) Order 1996,

if the conditions regulating compromise agreements under these Regulations are satisfied in relation to the agreement.

- (4) For the purposes of paragraph (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 or, in Northern Ireland, 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 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 sub-paragraphs (a) to (e) are satisfied.
- (5) A person is a relevant independent adviser for the purposes of paragraph (4)(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.
- (6) But a person is not a relevant independent adviser for the purposes of paragraph (4)(c) in relation to the employee—
- (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 (5)(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 paragraph (5)(c), if the employee makes a payment for the advice received from him.
- (7) In paragraph (5)(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 Courts and Legal Services Act 1990)<sup>(1)</sup>;
  - (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; and
  - (c) as respects Northern Ireland, a barrister (whether in practice as such or employed to give legal advice) or a solicitor who holds a practising certificate.
- (8) For the purposes of paragraph (6) 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.

(1) 1990 c. 41.

