

Status: This version of this provision is prospective.

Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Transnational Information and Consultation of Employees Regulations 1999. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

STATUTORY INSTRUMENTS

1999 No. 3323

The Transnational Information and Consultation of Employees Regulations 1999

PROSPECTIVE

PART VIII

MISCELLANEOUS

Restrictions on contracting out

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

Status: This version of this provision is prospective.

Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Transnational Information and Consultation of Employees Regulations 1999. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

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)(1);
 - (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.

Commencement Information

II Reg. 41 in force at 15.1.2000, see [reg. 1\(1\)](#)

(1) 1990 c. 41.

Status:

This version of this provision is prospective.

Changes to legislation:

There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Transnational Information and Consultation of Employees Regulations 1999. Any changes that have already been made by the team appear in the content and are referenced with annotations.

[View outstanding changes](#)

Changes and effects yet to be applied to :

- Regulations modified by [S.R. 2011/350 art. 23\(1\)Sch. 1 para. 1\(a\)](#)
- Regulations words substituted by [S.I. 2019/535 Sch. 2 para. 2\(a\)](#)
- Regulations words substituted by [S.I. 2019/535 Sch. 2 para. 2\(b\)](#)
- reg. 41 coming into force by [S.I. 1999/3323 reg. 1\(1\)](#)
- reg. 41(2)(a) words substituted by [S.I. 2014/386 Sch. para. 9](#)
- reg. 41(2)(b) words substituted by [S.R. 2020/4 Sch. para. 14](#)
- reg. 41(3) word substituted by [S.I. 2013/1956 Sch. para. 3\(a\)](#)
- reg. 41(3)(a) words substituted by [S.I. 2014/431 Sch. para. 20](#)
- reg. 41(4) word substituted by [S.I. 2013/1956 Sch. para. 3\(a\)](#)
- reg. 41(7)(a) words substituted by [S.I. 2009/3348 art. 23Sch. 2](#)

Changes and effects yet to be applied to the whole Instrument associated Parts and Chapters:

- Blanket amendment words substituted by [S.I. 2011/1043 art. 3-68-10](#)

Whole provisions yet to be inserted into this Instrument (including any effects on those provisions):

- Sch. para. 6(3) inserted by [S.I. 2010/1088 reg. 25](#)
- Sch. para. 8A inserted by [S.I. 2010/1088 reg. 28](#)
- Sch. para. 9(7)(8) inserted by [S.I. 2010/1088 reg. 29\(b\)](#)
- Sch. para. 7(3)(4) substituted for Sch, para. 7(3) by [S.I. 2010/1088 reg. 26](#)
- reg. 2(4B)(a) omitted by [S.I. 2019/535 Sch. 2 para. 3\(d\)\(i\)](#)
- reg. 2(4B)(b) word substituted by [S.I. 2019/535 Sch. 2 para. 3\(d\)\(ii\)](#)
- reg. 2(4B)(c) word substituted by [S.I. 2019/535 Sch. 2 para. 3\(d\)\(ii\)](#)
- reg. 16(1A) inserted by [S.I. 2010/1088 reg. 8\(a\)](#)
- reg. 17(4)(dd) inserted by [S.I. 2010/1088 reg. 9\(b\)](#)
- reg. 17(4A) inserted by [S.I. 2010/1088 reg. 9\(d\)](#)
- reg. 17(9) inserted by [S.I. 2010/1088 reg. 9\(f\)](#)
- reg. 18A inserted by [S.I. 2010/1088 reg. 10](#)
- reg. 18A(1)(a) words inserted by [S.I. 2019/535 Sch. 2 para. 14](#)
- reg. 18A(1)(b) words inserted by [S.I. 2019/535 Sch. 2 para. 14](#)
- reg. 19A-19F inserted by [S.I. 2010/1088 reg. 11](#)
- reg. 19B(1)(a) and word omitted by [S.I. 2019/535 Sch. 2 para. 15](#)
- reg. 19E(1)(a) words substituted by [S.I. 2019/535 Sch. 2 para. 16](#)
- reg. 19F omitted by [S.I. 2019/535 Sch. 2 para. 17](#)
- reg. 20(A1) inserted by [S.I. 2019/535 Sch. 2 para. 18\(a\)](#)
- reg. 20(7A) inserted by [S.I. 2010/1088 reg. 12\(c\)](#)
- reg. 21(1A) inserted by [S.I. 2010/1088 reg. 13\(b\)](#)
- reg. 21(1A)(a) words inserted by [S.I. 2019/535 Sch. 2 para. 19\(b\)](#)
- reg. 21(6A) inserted by [S.I. 2010/1088 reg. 13\(e\)](#)
- reg. 21A inserted by [S.I. 2010/1088 reg. 14](#)
- reg. 21A(1)(a) omitted by [S.I. 2019/535 Sch. 2 para. 20\(a\)\(i\)](#)
- reg. 21A(1)(c) words omitted by [S.I. 2019/535 Sch. 2 para. 20\(a\)\(ii\)](#)
- reg. 21A(3) word omitted by [S.I. 2019/535 Sch. 2 para. 20\(b\)](#)

- reg. 21A(10)(c)(i) omitted by S.I. 2019/535 Sch. 2 para. 20(c)(i)
- reg. 21A(10)(c)(iii) words omitted by S.I. 2019/535 Sch. 2 para. 20(c)(ii)
- reg. 25(1A) inserted by S.I. 2010/1088 reg. 16
- reg. 25(1A)(a) omitted by S.I. 2019/535 Sch. 2 para. 21(b)
- reg. 27(2A) inserted by S.I. 2014/386 Sch. para. 7
- reg. 27(2B) inserted by S.R. 2020/4 Sch. para. 12
- reg. 27A inserted by S.I. 2014/386 Sch. para. 8
- reg. 27B inserted by S.R. 2020/4 Sch. para. 13
- reg. 41(7A) inserted by S.I. 2004/2518 reg. 2
- reg. 41(7A) words substituted by S.I. 2009/3348 art. 22Sch. 1
- reg. 41(9) inserted by S.I. 2013/1956 Sch. para. 3(b)
- reg. 44-45A substituted for reg. 44 by S.I. 2010/1088 reg. 23
- reg. 44(4)-(7) omitted by S.I. 2019/535 Sch. 2 para. 27(b)
- reg. 45(4)-(7) omitted by S.I. 2019/535 Sch. 2 para. 28(b)
- reg. 45A(1) substituted by S.I. 2019/535 Sch. 2 para. 29(a)
- reg. 45A(2)(a) words inserted by S.I. 2019/535 Sch. 2 para. 29(b)
- reg. 45A(3) word substituted by S.I. 2019/535 Sch. 2 para. 29(c)
- reg. 45A(3A) inserted by S.I. 2019/535 Sch. 2 para. 29(d)
- reg. 45A(4) omitted by S.I. 2019/535 Sch. 2 para. 29(e)
- reg. 45A(5) substituted by S.I. 2019/535 Sch. 2 para. 29(f)
- reg. 46A inserted by S.I. 2004/2326 reg. 53
- reg. 46A substituted by S.I. 2009/2401 reg. 40
- reg. 46A(1) words substituted by S.I. 2019/685 Sch. 3 para. 19(a)
- reg. 46A(2) substituted by S.I. 2019/685 Sch. 3 para. 19(b)
- reg. 46B inserted by S.I. 2006/2059 reg. 42