
STATUTORY INSTRUMENTS

2003 No. 3049

**The Merchant Shipping (Working Time:
Inland Waterways) Regulations 2003**

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Restriction on contracting out

19.—(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 these Regulations, save in so far as these Regulations provide for an agreement to have that effect, or
- (b) to preclude a person from bringing proceedings under these Regulations before an employment tribunal.

(2) Paragraph (1) does not apply to—

- (a) any agreement to refrain from instituting or continuing proceedings where a conciliation officer has taken action under [F1any of sections 18A to 18C] of the Employment Tribunals Act 1996 ^{M1} (conciliation); or
- (b) any agreement to refrain from instituting or continuing proceedings within [F2section 18(1) (p)] of the [F3Employment] Tribunals Act 1996 (proceedings under these Regulations where conciliation is available), if the conditions regulating [F4settlement] agreements under these Regulations are satisfied in relation to the agreement.

(3) For the purposes of paragraph (2)(b) the conditions regulating [F5settlement] agreements under these Regulations are that—

- (a) the agreement must be in writing,
- (b) the agreement must relate to the particular complaint,
- (c) the worker 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 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 [F5settlement] agreements under these Regulations are satisfied.

(4) A person is a relevant independent adviser for the purposes of paragraph (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, 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.
- (5) But a person is not a relevant independent adviser for the purposes of paragraph (3)(c)—
- (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 (4)(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 (4)(c), if the worker makes a payment for the advice received from him.
- (6) In paragraph (4)(a), “qualified lawyer” means—
- (a) as respects England and Wales, [F6 a person who, for the purposes of the Legal Services Act 2007), is an authorised person in relation to an activity which constitutes the exercise of a right of audience or the conduct of litigation (within the meaning of that Act)];
- (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.
- (7) For the purposes of paragraph (5) any two employers shall be treated as associated if—
- (a) one is a company of which the other (directly or indirectly) has control;
- (b) both are companies of which a third person (directly or indirectly) has control;
- and “associated employer” shall be construed accordingly.

Textual Amendments

- F1** Words in reg. 19(2)(a) substituted (6.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Consequential Amendments\) \(Employment\) Order 2014 \(S.I. 2014/386\)](#), art. 1, **Sch. para. 24**
- F2** Words in reg. 19(2)(b) substituted (E.W.S.) (6.4.2014) by [The Employment Tribunals Act 1996 \(Application of Conciliation Provisions\) Order 2014 \(S.I. 2014/431\)](#), art. 1, **Sch. para. 29(b)**
- F3** Word in reg. 19(2)(b) substituted (5.1.2018) by [The Merchant Shipping \(Working Time Inland Waterways\) \(Amendment\) Regulations 2017 \(S.I. 2017/1149\)](#), regs. 1(2), **22**
- F4** Word in reg. 19(2) substituted (30.8.2013) by [The Enterprise and Regulatory Reform Act 2013 \(Consequential Amendments\) \(Employment\) Order 2013 \(S.I. 2013/1956\)](#), art. 1, **Sch. para. 4**
- F5** Word in reg. 19(3) substituted (30.8.2013) by [The Enterprise and Regulatory Reform Act 2013 \(Consequential Amendments\) \(Employment\) Order 2013 \(S.I. 2013/1956\)](#), art. 1, **Sch. para. 4**
- F6** Words in reg. 19(6)(a) substituted (1.1.2010) by [The Legal Services Act 2007 \(Consequential Amendments\) Order 2009 \(S.I. 2009/3348\)](#), arts. 2(1), 23, **Sch. 2**

Marginal Citations

- M1** [1996 c. 17](#); section 1(2) of the [Employment Rights \(Dispute Resolution\) Act 1998 \(c. 8\)](#) provides for the Industrial Tribunals Act 1996 to be cited as the Employment Tribunals Act 1996. Section 18 was amended by the [National Minimum Wage Act 1998 \(c. 39\)](#), **section 30(1)**; the Working Time Regulations 1998, [S.I. 1998/1833](#), **regulation 33**; the Transnational Information and Consultation of Employees Regulations 1999, [S.I. 1999/3323](#), **regulation 33(1)**; the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000, [S.I. 2000/1551](#), **Schedule**, paragraph 1(a); the Part-time

Changes to legislation: *There are currently no known outstanding effects for the The Merchant Shipping (Working Time: Inland Waterways) Regulations 2003, Section 19. (See end of Document for details)*

Workers (Prevention of Less Favourable Treatment) Regulations 2001, [S.I. 2001/1107, regulation 2](#); the [Employment Act 2002 \(c. 22\), section 24\(2\)](#) and Schedule 7, paragraph 23(2); the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002, [S.I. 2002/2034, Schedule 2, paragraph 2, paragraph 2\(a\)](#) and paragraph 2(2) of Schedule 2 to these Regulations.

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