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STATUTORY INSTRUMENTS

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**2008 No. 1660**

**The Cross-border Railway Services  
(Working Time) Regulations 2008**

**Restrictions on contracting out**

**18.**—(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 [<sup>F1</sup>any of sections 18A to 18C] of the Employment Tribunals Act 1996 <sup>M1</sup> (conciliation); or
- (b) any agreement to refrain from instituting or continuing proceedings under regulation 17, if the conditions regulating [<sup>F2</sup>settlement] agreements under these Regulations are satisfied in relation to the agreement.

(3) For the purposes of paragraph (2)(b) the conditions regulating [<sup>F3</sup>settlement] agreements under these Regulations are that—

- (a) the agreement must be in writing,
- (b) the agreement must relate to the particular complaint,
- (c) the cross-border 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 the worker's ability to pursue the worker's 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 cross-border 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 [<sup>F3</sup>settlement] agreements under these Regulations are satisfied.

(4) A person is a relevant independent adviser for the purposes of paragraph (3)(c)—

- (a) if the person is a qualified lawyer,
- (b) if the person 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 the person 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 the person 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), if the trade union is the employer or an associated employer, or
  - (c) in the case of a person within paragraph (4)(c), if the cross-border worker makes a payment for the advice received from the adviser.
- (6) In paragraph (4)(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>M2</sup>; and
  - (b) as respects Scotland, an advocate (whether in practice as such or employed to give legal advice), or a solicitor who holds a practicing certificate.
- (7) A person is to be treated as being a qualified lawyer within paragraph (6)(a) if the person is a Fellow of the Institute of Legal Executives employed by a solicitors' practice.
- (8) For the purposes of paragraph (5) any two employers are to 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” is to be construed accordingly.

#### Textual Amendments

- F1** Words in [reg. 18\(2\)\(a\)](#) 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. 56**
- F2** Word in [reg. 18\(2\)](#) 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. 14**
- F3** Word in [reg. 18\(3\)](#) 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. 14**

#### 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 has been amended by the [Employment Act 2002 \(c.22\)](#), [section 24\(2\)](#) and Schedule 7, paragraph 23(2). Regulation 19 and paragraph (1) of Schedule 3 inserts paragraph (u) in section 18(1). There have been other amendments to section 18, but none is relevant to regulation 18.
- M2** [1990 c.41](#)

**Changes to legislation:**

There are currently no known outstanding effects for the The Cross-border Railway Services (Working Time) Regulations 2008, Section 18.