



# Pensions Act 2008

## 2008 CHAPTER 30

### PART 1

#### PENSION SCHEME MEMBERSHIP FOR JOBHOLDERS

### CHAPTER 3

#### SAFEGUARDS: EMPLOYMENT AND PRE-EMPLOYMENT

##### *Protection of employment rights*

#### **58 Restrictions on agreements to limit operation of this Part**

- (1) Any provision in any agreement (whether a worker's contract or not) is void in so far as it purports—
  - (a) to exclude or limit the operation of any provision of this Part, or
  - (b) to preclude a person from bringing proceedings under section 56 before an employment tribunal.
- (2) The fact that an agreement is to any extent void under subsection (1) does not entitle the employer to recover any property transferred, or the value of any benefit conferred, as an inducement to enter into, or otherwise in connection with, the agreement.
- (3) Subsection (1) does not apply to any agreement to refrain from instituting or continuing proceedings where a conciliation officer has taken action under [F1 any of sections 18A to 18C] of the Employment Tribunals Act 1996 (c. 17) (conciliation).
- (4) Subsection (1) does not apply to any agreement to refrain from instituting or continuing before an employment tribunal any proceedings within section 18(1)(v) of the Employment Tribunals Act 1996 (proceedings under this Act where conciliation is available) if the conditions regulating [F2 settlement] agreements under this Act are satisfied in relation to the agreement.

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**Changes to legislation:** *Pensions Act 2008, Section 58 is up to date with all changes known to be in force on or before 09 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

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- (5) For the purposes of subsection (4) the conditions regulating [F<sup>2</sup>settlement] agreements under this Act are that—
- (a) the agreement must be in writing,
  - (b) the agreement must relate to the particular proceedings,
  - (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 [F<sup>2</sup>settlement] agreements under this Act are satisfied.
- (6) A person is a relevant independent adviser for the purposes of subsection (5)(c) if that person—
- (a) is a qualified lawyer,
  - (b) 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) 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) is a person of a description specified in an order made by the Secretary of State.
- (7) But a person is not a relevant independent adviser for the purposes of subsection (5)(c) in relation to the worker—
- (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 subsection (6)(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 (6)(c), if the worker makes a payment for the advice received from the person, or
  - (d) in the case of a person of a description specified in an order under subsection (6)(d), if any condition specified in the order in relation to the giving of advice by persons of that description is not satisfied.
- (8) In this section “qualified lawyer” means—
- (a) as respects England and Wales—
    - (i) a barrister (whether in practice as such or employed to give legal advice),
    - (ii) a solicitor who holds a practising certificate, or
    - (iii) 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);
  - (b) as respects Scotland—
    - (i) an advocate (whether in practice as such or employed to give legal advice), or

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(ii) a solicitor who holds a practising certificate.

(9) For the purposes of this section any two employers are 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 read accordingly.

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#### Textual Amendments

- F1** Words in s. 58(3) substituted (6.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 1 para. 13](#); S.I. 2014/253, art. 3(f) (with art. 5(1))
  - F2** Word in s. 58(4)(5) substituted (29.7.2013) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), [ss. 23\(1\)\(c\)](#), 103(3); S.I. 2013/1648, art. 2(c)
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#### Commencement Information

- I1** S. 58 wholly in force at 30.6.2012; s. 58 in force for certain purposes at Royal Assent see s. 149(2)(k); s. 58 in force so far as not already in force at 30.6.2012 by [S.I. 2012/1682](#), [art. 2\(1\)\(2\)\(a\)](#), [Sch. 1](#)

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

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

- s. 3(1A) inserted by [2023 c. 44 s. 1\(2\)](#)
- s. 5(1C) inserted by [2023 c. 44 s. 1\(3\)](#)
- s. 13(3)(ec) inserted by [2023 c. 20 Sch. para. 56](#)
- s. 13A inserted by [2023 c. 44 s. 1\(4\)](#)
- s. 24(1)(c) inserted by [2015 c. 8 Sch. 2 para. 43\(2\)\(d\)](#)
- s. 143(6)(7) inserted by [2023 c. 44 s. 1\(5\)\(b\)](#)