

## SCHEDULE 5

### Validity of contracts, collective agreements and rules of undertakings

#### Part 1

##### Validity and revision of contracts

1.—(1) A term of a contract is void where—

- (a) the making of the contract is, by reason of the inclusion of the term, unlawful by virtue of these Regulations;
- (b) it is included in furtherance of an act which is unlawful by virtue of these Regulations; or
- (c) it provides for the doing of an act which is unlawful by virtue of these Regulations.

(2) Sub-paragraph (1) does not apply to a term the inclusion of which constitutes, or is in furtherance of, or provides for, unlawful discrimination against, or harassment of, a party to the contract, but the term shall be unenforceable against that party.

(3) A term in a contract which purports to exclude or limit any provision of these Regulations is unenforceable by any person in whose favour the term would operate apart from this paragraph.

(4) Sub-paragraphs (1), (2) and (3) shall apply whether the contract was entered into before or after the date on which these Regulations come into force, but in the case of a contract made before that date, those sub-paragraphs do not apply in relation to any period before that date.

2.—(1) Paragraph 1(3) does not apply—

- (a) to a contract settling a complaint to which regulation 36(1) (jurisdiction of employment tribunals) applies where the contract is made with the assistance of a conciliation officer within the meaning of section 211 of the Trade Union and Labour Relations (Consolidation) Act 1992<sup>(1)</sup>;
- (b) to a contract settling a complaint to which regulation 36(1) applies if the conditions regulating compromise contracts under this Schedule are satisfied in relation to the contract; or
- (c) to a contract settling a claim to which regulation 39 (jurisdiction of county or sheriff courts) applies.

(2) The conditions regulating compromise contracts under this Schedule are that—

- (a) the contract must be in writing;
- (b) the contract must relate to the particular complaint;
- (c) the complainant must have received advice from a relevant independent adviser as to the terms and effect of the proposed contract and in particular its effect on his ability to pursue a complaint 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 professional body, covering the risk of a claim by the complainant in respect of loss arising in consequence of the advice;
- (e) the contract must identify the adviser; and
- (f) the contract must state that the conditions regulating compromise contracts under this Schedule are satisfied.

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(1) 1992 c. 52.

*Status: This is the original version (as it was originally made).*

- (3) A person is a relevant independent adviser for the purposes of sub-paragraph (2)(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 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.
- (4) But a person is not a relevant independent adviser for the purposes of sub-paragraph (2)(c) in relation to the complainant—
- (a) if he is employed by, or is acting in the matter for the other party, or is a person who is connected with the other party;
  - (b) in the case of a person within sub-paragraph (3)(b) or (c), if the trade union or advice centre is the other party or a person who is connected with the other party; or
  - (c) in the case of a person within sub-paragraph (3)(c), if the complainant makes a payment for the advice received from him.
- (5) In sub-paragraph (3)(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>(2)</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 practising certificate.
- (6) A person shall be treated as being a qualified lawyer within sub-paragraph (5)(a) if he is a Fellow of the Institute of Legal Executives employed by a solicitors' practice.
- (7) In sub-paragraph (3)(b) “independent trade union” has the same meaning as in the Trade Union and Labour Relations (Consolidation) Act 1992.
- (8) For the purposes of sub-paragraph (4)(a) any two persons are to be treated as connected—
- (a) if one is a company of which the other (directly or indirectly) has control; or
  - (b) if both are companies of which a third person (directly or indirectly) has control.
- (9) An agreement under which the parties agree to submit a dispute to arbitration—
- (a) shall be regarded for the purposes of sub-paragraphs (1)(a) and (b) as being a contract settling a complaint if—
    - (i) the dispute is covered by a scheme having effect by virtue of an order under section 212A of the Trade Union and Labour Relations (Consolidation) Act 1992, and
    - (ii) the agreement is to submit it to arbitration in accordance with the scheme, but
  - (b) shall be regarded as neither being nor including such a contract in any other case.
- 3.—(1) On the application of a person interested in a contract to which paragraph 1(1) or (2) applies, a county court or a sheriff court may make such order as it thinks fit for—
- (a) removing or modifying any term rendered void by paragraph 1(1), or
  - (b) removing or modifying any term made unenforceable by paragraph 1(2);

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(2) 1990 c. 41.

but such an order shall not be made unless all persons affected have been given notice in writing of the application (except where under rules of court notice may be dispensed with) and have been afforded an opportunity to make representations to the court.

(2) An order under sub-paragraph (1) may include provision as respects any period before the making of the order (but after the coming into force of these Regulations).