

SCHEDULES

SCHEDULE 4

Article 16(4).

COMPROMISE CONTRACTS

The Sex Discrimination (Northern Ireland) Order 1976 (NI 15)

1. In Article 77—

(a) in paragraph (4), after sub-paragraph (a), there shall be inserted—

“(aa) to a contract settling a complaint to which Article 63(1) of this Order or section 2 of the Equal Pay Act applies if the conditions regulating compromise contracts under this Order are satisfied in relation to the contract;” and

(b) after paragraph (4) there shall be inserted—

“(4A) The conditions regulating compromise contracts under this Order are that—

- (a) the contract must be in writing;
- (b) the contract must relate to the particular complaint;
- (c) the complainant must have received independent legal advice from a qualified lawyer as to the terms and effect of the proposed contract and in particular its effect on his ability to pursue his complaint before an industrial tribunal;
- (d) there must be in force, when the adviser gives the advice, a policy of insurance 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 Order are satisfied.

(4B) In paragraph (4A)—

“independent”, in relation to legal advice to the complainant, means that it is given by a lawyer who is not acting for the other party or for a person who is connected with that other party; and

“qualified lawyer” means—

- (a) a barrister, whether in practice as such or employed to give legal advice; or
- (b) a solicitor of the Supreme Court who holds a practising certificate.

(4C) For the purposes of paragraph (4B) any two persons are to be treated as “connected” if one is a company of which the other (directly or indirectly) has control, or if both are companies of which a third person (directly or indirectly) has control.”.

The Industrial Relations (No. 2) (Northern Ireland) Order 1976 (NI 28)

2. In Article 59—

(a) in paragraph (2) at the end there shall be added—

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- (e) to any agreement to refrain from instituting or continuing any proceedings specified in Article 56(2)(a) or (b) before an industrial tribunal if the conditions regulating compromise agreements under this Order are satisfied in relation to the agreement.”; and
- (b) after paragraph (2) there shall be added—
 - “(3) The conditions regulating compromise agreements under this Order are that—
 - (a) the agreement must be in writing;
 - (b) the agreement must relate to the particular complaint;
 - (c) the complainant must have received independent legal advice from a qualified lawyer as to the terms and effect of the proposed agreement and in particular its effect on his ability to pursue his rights before an industrial tribunal;
 - (d) there must be in force, when the adviser gives the advice, a policy of insurance covering the risk of a claim by the complainant 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 compromise agreements under this Order are satisfied.
 - (4) In paragraph (3)—
 - “independent”, in relation to legal advice to the complainant, means that it is given by a lawyer who is not acting for the other party or for a person who is connected with that other party; and
 - “qualified lawyer” means—
 - (a) a barrister, whether in practice as such or employed to give legal advice; or
 - (b) a solicitor of the Supreme Court who holds a practising certificate.
 - (5) For the purposes of paragraph (4) any two persons are to be treated as “connected” if one is a company of which the other (directly or indirectly) has control, or if both are companies of which a third person (directly or indirectly) has control.”.

The Wages (Northern Ireland) Order 1988 (NI 7)

3. In Article 8—
- (a) in paragraph (3) after the words “apply to” there shall be inserted “(a)” and at the end of the words so constituted sub-paragraph (a) there shall be inserted the words
“; or
 - (b) an agreement to refrain from presenting or continuing with a complaint if the conditions regulating compromise agreements under this Part are satisfied in relation to the agreement”; and
- (b) after paragraph (3) there shall be added—
- “(4) The conditions regulating compromise agreements under this Part are that—
 - (a) the agreement must be in writing;
 - (b) the agreement must relate to the particular complaint;
 - (c) the worker must have received independent legal advice from a qualified lawyer as to the terms and effect of the proposed agreement and in particular its effect on his ability to pursue his complaint before an industrial tribunal;

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- (d) there must be in force, when the adviser gives the advice, a policy of insurance 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 compromise agreements under this Part are satisfied.
- (5) In paragraph (4)—
- “independent”, in relation to legal advice to the worker, means that it is given by a lawyer who is not acting in the matter for the employer or for a person who is connected with the employer; and
- “qualified lawyer” means—
- (a) a barrister, whether in practice as such or employed to give legal advice; or
 - (b) a solicitor of the Supreme Court who holds a practising certificate.
- (6) For the purposes of paragraph (5) any two persons are to be treated as “connected” if one is a company of which the other (directly or indirectly) has control, or if both are companies of which a third person (directly or indirectly) has control.”.

The Industrial Relations (Northern Ireland) Order 1992 (NI 5)

4. After Article 105 insert—

“Restrictions on contracting out

Restrictions on contracting out

- 105A.**—(1) Except as provided by paragraph (2), any provision in an agreement (whether a contract of employment or not) shall be void in so far as it purports—
- (a) to exclude or limit the operation of any provision of this Order;
 - (b) to preclude any person from presenting a complaint to, or bringing any proceedings under this Order before, an industrial tribunal; or
 - (c) to preclude any person from making any reference, claim or complaint under Part V.
- (2) Paragraph (1) does not apply—
- (a) to any agreement to refrain from instituting or continuing any proceedings where the Agency has taken action in accordance with Article 62(2) or (5) of the No. 1 Order;
 - (b) to any agreement such as is referred to in Article 43(6)(b) or (c) to the extent that it varies or supersedes an award under that Article; or
 - (c) to any agreement to refrain from instituting or continuing any proceedings arising out of a contravention or alleged contravention of Article 29 or 34 before an industrial tribunal if the conditions regulating compromise agreements under this Order are satisfied in relation to the agreement.
- (3) The conditions regulating compromise agreements under this Order are that—
- (a) the agreement must be in writing;
 - (b) the agreement must relate to the particular complaint;

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- (c) the complainant must have received independent legal advice from a qualified lawyer as to the terms and effect of the proposed agreement and in particular its effect on his ability to pursue his rights before an industrial tribunal;
 - (d) there must be in force, when the adviser gives the advice, a policy of insurance covering the risk of a claim by the complainant 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 compromise agreements under this Order are satisfied.
- (4) In paragraph (3)—
- “independent”, in relation to legal advice to the complainant, means that it is given by a lawyer who is not acting for the other party or for a person who is connected with that other party; and
- “qualified lawyer” means—
- (a) a barrister, whether in practice as such or employed to give legal advice; or
 - (b) a solicitor of the Supreme Court who holds a practising certificate.
- (5) For the purposes of paragraph (4) any two persons are to be treated as “connected” if one is a company of which the other (directly or indirectly) has control, or if both are companies of which a third person (directly or indirectly) has control.”.