



# National Minimum Wage Act 1998

## 1998 CHAPTER 39

### *Miscellaneous*

#### **49 Restrictions on contracting out.**

- (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 Act; or
  - (b) to preclude a person from bringing proceedings under this Act before an employment tribunal.
- (2) Subsection (1) above does not apply to any agreement to refrain from instituting or continuing proceedings where a conciliation officer has taken action under—
  - (a) [<sup>F1</sup>any of sections 18A to 18C] of the <sup>M1</sup>Employment Tribunals Act 1996 (conciliation), or
  - (b) in relation to Northern Ireland, [<sup>F2</sup>any of Articles 20A to 20C] of the <sup>M2</sup>Industrial Tribunals (Northern Ireland) Order 1996.
- (3) Subsection (1) above does not apply to any agreement to refrain from instituting or continuing before an employment tribunal any proceedings within—
  - (a) [<sup>F3</sup>section 18(1)(c)] of the <sup>M3</sup>Employment Tribunals Act 1996 (proceedings under or by virtue of this Act where conciliation is available), or
  - (b) in relation to Northern Ireland, Article 20(1)(cc) of the <sup>M4</sup>Industrial Tribunals (Northern Ireland) Order 1996,if the conditions regulating [<sup>F4</sup>settlement] agreements under this Act are satisfied in relation to the agreement.
- (4) For the purposes of subsection (3) above the conditions regulating [<sup>F4</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 employee or worker must have received advice from a relevant independent adviser as to the terms and effect of the proposed agreement and,

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- 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 employee or 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>F4</sup>settlement] agreements under this Act are satisfied.
- (5) A person is a relevant independent adviser for the purposes of subsection (4)(c) above—
- (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,
  - (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, or
  - (d) if he is a person of a description specified in an order made by the Secretary of State.
- (6) But a person is not a relevant independent adviser for the purposes of subsection (4)(c) above in relation to the employee or worker—
- (a) if he 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 (5)(b) or (c) above, if the trade union or advice centre is the employer or an associated employer,
  - (c) in the case of a person within subsection (5)(c) above, if the employee or worker makes a payment for the advice received from him, or
  - (d) in the case of a person of a description specified in an order under subsection (5)(d) above, if any condition specified in the order in relation to the giving of advice by persons of that description is not satisfied.
- (7) In this section “qualified lawyer” means—
- [<sup>F5</sup>(a) as regards England and Wales, 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—
    - (i) an advocate (whether in practice as such or employed to give legal advice); or
    - (ii) a solicitor who holds a practising certificate; and
  - (c) as respects Northern Ireland—
    - (i) a barrister (whether in practice as such or employed to give legal advice); or
    - (ii) a solicitor who holds a practising certificate.
- (8) For the purposes of this section any two employers shall 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;

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and “associated employer” shall be construed accordingly.

[<sup>F6</sup>(8A) In the application of this section in relation to Northern Ireland, subsections (3) and (4) above shall have effect as if for “settlement agreements” (in each place) there were substituted “compromise agreements.”]

(9) In the application of this section in relation to Northern Ireland—

- (a) subsection (4)(c) above shall have effect as if for “advice from a relevant independent adviser” there were substituted “ independent legal advice from a qualified lawyer ”; and
- (b) subsection (4)(d) above shall have effect as if for “contract of insurance, or an indemnity provided for members of a profession or a professional body,” there were substituted “ policy of insurance ”.

(10) In subsection (4) above, as it has effect by virtue of subsection (9) above, “independent”, in relation to legal advice received by an employee or worker, means that the advice is given by a lawyer who is not acting in the matter for the employer or an associated employer.

(11) The Secretary of State may by order repeal subsections (9) and (10) above and this subsection.

#### Textual Amendments

- F1** Words in s. 49(2)(a) substituted (6.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 1 para. 11](#); S.I. 2014/253, art. 3(f) (with art. 5(1))
- F2** Words in s. 49(2)(b) substituted (27.1.2020) by [Employment Act \(Northern Ireland\) 2016 \(c. 15 \(N.I.\)\)](#), s. 29(2), [Sch. 1 para. 5](#); S.R. 2020/1, [art. 2\(m\)](#)
- F3** Words in s. 49(3)(a) substituted (6.4.2014) by [The Employment Tribunals Act 1996 \(Application of Conciliation Provisions\) Order 2014 \(S.I. 2014/431\)](#), art. 1, [Sch. para. 5](#)
- F4** Word in s. 49(3)(4) substituted (29.7.2013) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), [ss. 23\(3\)\(a\)](#), 103(3); S.I. 2013/1648, art. 2(c)
- F5** S. 49(7)(a) substituted (1.1.2010) by [Legal Services Act 2007 \(c. 29\)](#), s. 211(2), [Sch. 21 para. 126](#) (with [ss. 29](#), 192, 193); S.I. 2009/3250, art. 2(h)
- F6** S. 49(8A) inserted (29.7.2013) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), [ss. 23\(3\)\(b\)](#), 103(3); S.I. 2013/1648, art. 2(c)

#### Modifications etc. (not altering text)

- C1** S. 49 modified by [1948 c.47, s. 3A\(1\)-\(4\)](#) (as inserted (1.4.1999) by [1998 c. 39](#), [ss. 47\(1\)\(a\)](#), 56(2), [Sch. 2 Pt. I](#), para. 3 (with s. 36); S.I. 1999/685, art. 2, Sch.)  
S. 49 modified by [1949 c. 30, s. 3A\(1\)-\(3\)](#) (as inserted (1.4.1999) by [1998 c. 39](#), [ss. 47\(1\)\(b\)](#), 56(2), [Sch. 2 Pt. II](#), para. 13 (with s. 36); S.I. 1999/685, art. 2, Sch.)
- C2** S. 49 extended (with modifications) by [S.I. 1997/2151 \(N.I. 22\)](#), [art. 8A](#) (as inserted (1.4.1999) by [1998 c. 39](#), [ss. 47\(1\)\(c\)](#), 56(2), [Sch. 2 Pt. III](#), para. 26 (with s. 36); S.I. 1999/685, art. 2, Sch.)
- C3** S. 49 applied (with modifications) (E.W.) (30.7.2014) by [Agricultural Sector \(Wales\) Act 2014 \(anaw 6\)](#), [ss. 5\(1\)\(2\)\(n\)\(3\)-\(7\)](#), 19 (with s. 14(1))

#### Commencement Information

- I1** S. 49 partly in force; s. 49(11) in force at Royal Assent see s. 56(2); s. 49(1)-(8) in force at 1.11.1998 by [S.I. 1998/2574](#), [art. 2\(1\)](#), [Sch. 1](#)

#### Marginal Citations

- M1** [1996 c. 17](#).

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- M2** S.I. 1996/1921 (N.I.18).
- M3** 1996 c. 17.
- M4** S.I. 1996/1921 (N.I.18).

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