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STATUTORY INSTRUMENTS

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**1999 No. 3323**

**The Transnational Information and  
Consultation of Employees Regulations 1999**

**PART VIII**

**MISCELLANEOUS**

*The Appeal Tribunal, Industrial Court, CAC, ACAS and the Labour Relations Agency*

**Appeal Tribunal: jurisdiction**

**34.**—(1) Any proceedings before the Appeal Tribunal arising under these Regulations, other than proceedings before the Appeal Tribunal under paragraph (i) of section 21(1) of the Employment Tribunals Act 1996(1), shall—

- (a) where the central management is situated in England and Wales, be in England and Wales;
- (b) where the central management is situated in Scotland, be in Scotland.

(2) Paragraph (1) shall apply to proceedings before the Appeal Tribunal arising under regulation 8 as if for the words “central management” there were substituted the words “recipient (within the meaning given to that term by regulation 7)”.

(3) Paragraph (1) shall apply to proceedings before the Appeal Tribunal arising under regulation 13 or 15 or paragraph 4 of the Schedule as if for the words “central management” there were substituted the words “UK management”.

**Appeal Tribunal: proceedings**

**35.**—(1) The Employment Tribunals Act 1996 shall be amended as follows.

(2) At the end of section 20 (the Appeal Tribunal), insert—

“(4) Subsection (2) is subject to regulation 34 of the Transnational Information and Consultation of Employees Regulations 1999.”.

(3) In section 21 (jurisdiction of the Appeal Tribunal), in subsection (1) (which specifies the proceedings and claims to which the section applies)—

- (a) at the end of paragraph (ff), the word “or” shall be omitted; and
- (b) in paragraph (g), for “or under the Working Time Regulations 1998” there shall be substituted—

“,

(h) the Working Time Regulations 1998, or

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(1) Section 21(1) has been amended on a number of occasions to specify additional proceedings and claims to which the section applies. Paragraph (i) is inserted by regulation 35(3) of these Regulations from the date they come into force.

(i) the Transnational Information and Consultation of Employees Regulations 1999.”.

(4) In section 30 (Appeal Tribunal procedure rules), in paragraph (b) of subsection (2)(2), after “any application” insert “or complaint”.

### **Industrial Court: jurisdiction**

**36.**—(1) Where the central management is situated in Northern Ireland, any complaint under regulation 20 or 21 shall be presented to the Industrial Court instead of to the Appeal Tribunal and references in those regulations and in regulation 22 to the Appeal Tribunal shall be read as references to the Industrial Court.

(2) Where the central management is situated in Northern Ireland, any application under regulation 10, 23 or 24 shall be made to the Industrial Court instead of to the CAC, and references in those regulations to the CAC shall be read as references to the Industrial Court.

(3) Where the recipient (within the meaning given to that term by regulation 7) is situated in Northern Ireland, any complaint under regulation 8 shall be presented to the Industrial Court instead of to the CAC, and references in regulation 8 to the CAC shall be read as references to the Industrial Court.

(4) Where the UK management is situated in Northern Ireland, any complaint under regulation 13 or 15 or paragraph 4 of the Schedule shall be presented to the Industrial Court instead of to the CAC, and references in those regulations or that paragraph to the CAC shall be read as references to the Industrial Court.

### **Industrial Court: proceedings**

**37.**—(1) Where under these Regulations a person presents a complaint or makes an application to the Industrial Court, the complaint or application must be in writing and in such form as the Court may require.

(2) In its consideration of an application or complaint under these Regulations, the Industrial Court shall make such enquiries as it sees fit and give any person whom it considers has a proper interest in the application or complaint an opportunity to be heard.

(3) A decision, declaration or order made by the Industrial Court under these Regulations—

(a) must be in writing and state the reasons for the Court’s findings; and

(b) may be relied on and enforced as if it were a decision, declaration or order made by the High Court in Northern Ireland.

(4) An appeal lies to the Court of Appeal in Northern Ireland on any question of law arising from a decision, declaration or order of, or arising in any proceedings before, the Industrial Court under these Regulations.

### **CAC: proceedings**

**38.**—(1) Where under these Regulations a person presents a complaint or makes an application to the CAC the complaint or application must be in writing and in such form as the CAC may require.

(2) In its consideration of an application or complaint under these Regulations, the CAC shall make such enquiries as it sees fit and give any person whom it considers has a proper interest in the application or complaint an opportunity to be heard.

(3) Where the central management is situated in England and Wales—

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(2) Section 30(2) was amended by the Employment Rights (Dispute Resolution) Act 1998 (c. 8), section 1(2)(a).

- (a) a declaration or order made by the CAC under these Regulations may be relied on as if it were a declaration or order made by the High Court in England and Wales; and
  - (b) an order made by the CAC under these Regulations may be enforced in the same way as an order of the High Court in England and Wales.
- (4) Where the central management is situated in Scotland—
- (a) a declaration or order made by the CAC under these Regulations may be relied on as if it were a declaration or order made by the Court of Session; and
  - (b) an order made by the CAC under these Regulations may be enforced in the same way as an order of the Court of Session.
- (5) Paragraphs (3) and (4) shall apply to an order made under regulation 8 as if for the words “central management” there were substituted the words “recipient”.
- (6) Paragraphs (3) and (4) shall apply, as appropriate, to a declaration or order made under regulation 13 or 15 or paragraph 4 of the Schedule as if for the words “central management” there were substituted the words “UK management”.
- (7) A declaration or order made by the CAC under these Regulations must be in writing and state the reasons for the CAC’s findings.
- (8) An appeal lies to the Appeal Tribunal on any question of law arising from any declaration or order of, or arising in any proceedings before, the CAC under these Regulations.

#### **ACAS and the Labour Relations Agency**

**39.**—(1) If on receipt of an application or complaint under these Regulations the CAC, the Appeal Tribunal, or as the case may be the Industrial Court, is of the opinion that it is reasonably likely to be settled by conciliation, it shall refer the application or complaint to ACAS or to the Labour Relations Agency and shall notify the applicant or complainant and any persons whom it considers have a proper interest in the application or complaint accordingly, whereupon ACAS, or as the case may be the Labour Relations Agency, shall seek to promote a settlement of the matter.

(2) If an application or complaint so referred is not settled or withdrawn and ACAS, or as the case may be the Labour Relations Agency, is of the opinion that further attempts at conciliation are unlikely to result in a settlement, it shall inform the CAC, the Appeal Tribunal, or as the case may be the Industrial Court, of its opinion.

(3) If the application or complaint is not referred to ACAS or to the Labour Relations Agency, or if it is so referred, on ACAS, or as the case may be the Labour Relations Agency, informing the CAC, the Appeal Tribunal, or as the case may be the Industrial Court, of its opinion that further attempts at conciliation are unlikely to result in a settlement, the CAC, the Appeal Tribunal, or as the case may be the Industrial Court, shall proceed to hear and determine the application or complaint.

#### ***Restrictions on contracting out***

##### **Restrictions on contracting out: general**

**40.**—(1) Any provision in any agreement (whether an employee’s contract or not) is void in so far as it purports—

- (a) to exclude or limit the operation of any provision of these Regulations other than a provision of Part VII; or
- (b) to preclude a person from bringing any proceedings before the Appeal Tribunal or the CAC, or in Northern Ireland the Industrial Court, under any provision of these Regulations other than a provision of Part VII.

(2) Paragraph (1) does not apply to any agreement to refrain from continuing any proceedings referred to in sub-paragraph (b) of that paragraph made after the proceedings have been instituted.

### **Restrictions on contracting out: Part VII**

**41.—**(1) Any provision in any agreement (whether an employee's contract or not) is void in so far as it purports—

- (a) to exclude or limit the operation of any provision of Part VII of these Regulations; or
- (b) to preclude a person from bringing any proceedings before an employment tribunal, or in Northern Ireland an industrial tribunal, under that Part.

(2) Paragraph (1) does not apply to any agreement to refrain from instituting or continuing proceedings before an employment tribunal or, in Northern Ireland, an industrial tribunal where—

- (a) a conciliation officer has taken action under section 18 of the Employment Tribunals Act 1996 (conciliation); or
- (b) in relation to Northern Ireland, the Labour Relations Agency has taken action under Article 20 of the Industrial Tribunals (Northern Ireland) Order 1996 (conciliation).

(3) Paragraph (1) does not apply to any agreement to refrain from instituting or continuing before an employment tribunal, or in Northern Ireland an industrial tribunal, proceedings within—

- (a) section 18(1)(g) of the Employment Tribunals Act 1996 (proceedings under these Regulations where conciliation is available); or
- (b) in relation to Northern Ireland, Article 20(1)(g) of the Industrial Tribunals (Northern Ireland) Order 1996,

if the conditions regulating compromise agreements under these Regulations are satisfied in relation to the agreement.

(4) For the purposes of paragraph (3) the conditions regulating compromise agreements are that—

- (a) the agreement must be in writing;
- (b) the agreement must relate to the particular proceedings;
- (c) the employee 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 or, in Northern Ireland, an industrial 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 employee 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 in sub-paragraphs (a) to (e) are satisfied.

(5) A person is a relevant independent adviser for the purposes of paragraph (4)(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 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.

(6) But a person is not a relevant independent adviser for the purposes of paragraph (4)(c) in relation to the employee—

- (a) if he is, 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 (5)(b) or (c), if the trade union or advice centre is the employer or an associated employer; or
  - (c) in the case of a person within paragraph (5)(c), if the employee makes a payment for the advice received from him.
- (7) In paragraph (5)(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)(3);
  - (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; and
  - (c) as respects Northern Ireland, a barrister (whether in practice as such or employed to give legal advice) or a solicitor who holds a practising certificate.
- (8) For the purposes of paragraph (6) 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;
- and “associated employer” shall be construed accordingly.

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(3) 1990 c. 41.