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STATUTORY INSTRUMENTS

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**2004 No. 2326**

The European Public Limited-  
Liability Company Regulations 2004

PART 3

EMPLOYEE INVOLVEMENT

*CHAPTER 9*

*MISCELLANEOUS*

**Restrictions on contracting out: Chapter 8 of this Part**

**52.**—(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 Chapter 8 of this Part of these Regulations; or
- (b) to preclude a person from bringing any proceedings before an employment tribunal under that Chapter.

(2) Paragraph (1) does not apply to any agreement to refrain from instituting or continuing proceedings before an employment tribunal where a conciliation officer has taken action under section 18 of the Employment Tribunals Act 1996 (conciliation).

(3) Paragraph (1) does not apply to any agreement to refrain from instituting or continuing before an employment tribunal proceedings within section 18(1)(k) of the Employment Tribunals Act 1996 (proceedings under these Regulations where conciliation is available) 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;
- (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 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 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 by him.
- (7) In paragraph (5)(a), 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 practicing 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>(1)</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.
- (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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<sup>(1)</sup> 1990 c. 41.