

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.

[^{F1}(4) Sub-paragraphs (1), (2) and (3) shall apply whether the contract was entered into before or after the date on which any term of the contract became unlawful by virtue of these Regulations, but in the case of a contract made before the date on which a term became unlawful, those sub-paragraphs do not apply to that term in relation to any period before that date.]

Textual Amendments

F1 Sch. 5 para. 1(4) substituted (30.9.2006) by [The Employment Equality \(Age\) \(Amendment\) Regulations 2006 \(S.I. 2006/2408\)](#), regs. 1, 2(6)(a)

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 ^{M1};
- (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;

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- (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.
- (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, [^{F2}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)]; 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 [^{F3}practising in a solicitor’s practice (including a body recognised under section 9 of the Administration of Justice Act 1985)].
- (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.

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Textual Amendments

- F2** Words in Sch. 5 para. 2(5)(a) substituted (1.1.2010) by [The Legal Services Act 2007 \(Consequential Amendments\) Order 2009 \(S.I. 2009/3348\)](#), arts. 2(1), 23, **Sch. 2**
- F3** Words in Sch. 5 para. 2(6) substituted (16.12.2009) by [The Legal Services Act 2007 \(Consequential Amendments\) Order 2009 \(S.I. 2009/3348\)](#), arts. 2(2), 22, **Sch. 1**
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Marginal Citations

- M1** 1992 c. 52.

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);

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 [^{F4}the date on which the inclusion of any term which is the subject of the order becomes unlawful by virtue of these Regulations]).

Textual Amendments

- F4** Words in Sch. 5 para. 3(2) substituted (30.9.2006) by [The Employment Equality \(Age\) \(Amendment\) Regulations 2006 \(S.I. 2006/2408\)](#), regs. 1, 2(6)(b)

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Changes and effects yet to be applied to :

- Regulations revoked (except Schs. 6, 8) by [2010 c. 15 Sch. 27 Pt. 2](#) (Regulations revoked except Schs. 6, 8)

Commencement Orders yet to be applied to the The Employment Equality (Age) Regulations 2006

Commencement Orders bringing legislation that affects this Instrument into force:

- [S.I. 2010/2317 art. 2\(15\)\(f\)](#) commences ([2010 c. 15](#))
- [S.I. 2011/1066 art. 2\(h\)](#) commences ([2010 c. 15](#))