

SCHEDULE 4

VALIDITY OF CONTRACTS, COLLECTIVE AGREEMENTS AND RULES OF UNDERTAKINGS

PART II

COLLECTIVE AGREEMENTS AND RULES OF UNDERTAKINGS

- 4.—(1) This Part of this Schedule applies to –
- (a) any term of a collective agreement, including an agreement which was not intended, or is presumed not to have been intended, to be a legally enforceable contract;
 - (b) any rule made by an employer for application to all or any of the persons who are employed by him or who apply to be, or are, considered by him for employment;
 - (c) any rule made by a trade organisation (within the meaning of regulation 17) or a qualifications body (within the meaning of regulation 18) for application to –
 - (i) all or any of its members or prospective members; or
 - (ii) all or any of the persons on whom it has conferred professional or trade qualifications (within the meaning of regulation 18) or who are seeking the professional or trade qualifications which it has power to confer.
- (2) Any term or rule to which this Part of this Schedule applies is void where –
- (a) the making of the collective agreement is, by reason of the inclusion of the term, unlawful by virtue of these Regulations;
 - (b) the term or rule is included or made in furtherance of an act which is unlawful by virtue of these Regulations; or
 - (c) the term or rule provides for the doing of an act which is unlawful by virtue of these Regulations.
- (3) Sub-paragraph (2) shall apply whether the agreement was entered into, or the rule made, before or after 2nd December 2003; but in the case of an agreement entered into, or a rule made, before 2nd December 2003, that sub-paragraph does not apply in relation to any period before that date.
5. A person to whom this paragraph applies may present a complaint to an industrial tribunal that a term or rule is void by virtue of paragraph 4 if he has reason to believe –
- (a) that the term or rule may at some future time have effect in relation to him; and
 - (b) where he alleges that it is void by virtue of paragraph 4(2)(c), that –
 - (i) an act for the doing of which it provides, may at some such time be done in relation to him, and
 - (ii) the act would be unlawful by virtue of these Regulations if done in relation to him in present circumstances.
6. In the case of a complaint about –
- (a) a term of a collective agreement made by or on behalf of –
 - (i) an employer,
 - (ii) an organisation of employers of which an employer is a member, or
 - (iii) an association of such organisations of one of which an employer is a member, or

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(b) a rule made by an employer within the meaning of paragraph 4(1)(b), paragraph 5 applies to any person who is, or is genuinely and actively seeking to become, one of his employees.

7. In the case of a complaint about a rule made by an organisation or body to which paragraph 4(1)(c) applies, paragraph 5 applies to any person –

- (a) who is, or is genuinely and actively seeking to become, a member of the organisation or body;
- (b) on whom the organisation or body has conferred a professional or trade qualification (within the meaning of regulation 18); or
- (c) who is genuinely and actively seeking such a professional or trade qualification which the organisation or body has power to confer.

8.—(1) When an industrial tribunal finds that a complaint presented to it under paragraph 5 is well-founded the tribunal shall make an order declaring that the term or rule is void.

(2) An order under sub-paragraph (1) may include provision as respects any period before the making of the order (but after 2nd December 2003).

9. The avoidance by virtue of paragraph 4(2) of any term or rule which provides for any person to be discriminated against shall be without prejudice to the following rights (except in so far as they enable any person to require another person to be treated less favourably than himself), namely –

- (a) such of the rights of the person to be discriminated against; and
- (b) such of the rights of any person who will be treated more favourably in direct or indirect consequence of the discrimination,

as are conferred by or in respect of a contract made or modified wholly or partly in pursuance of, or by reference to, that term or rule.

10. In this Schedule “collective agreement” means any agreement relating to one or more of the matters mentioned in Article 96(1) of the Industrial Relations (Northern Ireland) Order 1992 (meaning of trade dispute), being an agreement made by or on behalf of one or more employers or one or more organisations of employers or associations of such organisations with one or more organisations of workers or associations of such organisations.