
STATUTORY RULES OF NORTHERN IRELAND

2004 No. 417

**The European Public Limited-Liability
Company Regulations (Northern Ireland) 2004**

PART III

EMPLOYEE INVOLVEMENT

CHAPTER 9

miscellaneous

Industrial Court proceedings

47.—(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 Industrial Court may require.

(2) In its consideration of a complaint or application 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 complaint or application an opportunity to be heard.

(3) Where the participating company, concerned subsidiary or establishment or the SE has its registered office in Northern Ireland –

- (a) a declaration made by the Industrial Court under these Regulations may be relied on as if it were a declaration or order made by the High Court; and
- (b) an order made by the Industrial Court under these Regulations may be enforced in the same way as an order of the High Court.

(4) A declaration or order made by the Industrial Court under these Regulations must be in writing and state the reasons for the Industrial Court's findings.

(5) An appeal lies to the High Court on any question of law arising from any declaration or order of, or arising in any proceedings before, the Industrial Court under these Regulations.

Labour Relations Agency

48.—(1) If on receipt of an application or complaint under these Regulations 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 the 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 the Agency shall seek to promote a settlement of the matter.

(2) If an application or complaint so referred is not settled or withdrawn and the Agency is of the opinion that further attempts at conciliation are unlikely to result in a settlement, it shall inform the Industrial Court of its opinion.

(3) If the application or complaint is not referred to the Agency or, if it is so referred, on the Agency informing the Industrial Court of its opinion that further attempts at conciliation are unlikely

to result in a settlement, the Industrial Court shall proceed to hear and determine the application or complaint.

Restrictions on contracting out: general

49.—(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 this Part other than a provision of Chapter 8; or
- (b) to preclude a person from bringing any proceedings before the Industrial Court, under any provision of this Part other than a provision of that Chapter.

(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: Chapter 8

50.—(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; or
- (b) to preclude a person from bringing any proceedings before an industrial tribunal under that Chapter.

(2) Paragraph (1) does not apply to any agreement to refrain from instituting or continuing proceedings before an industrial tribunal where the 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 industrial tribunal proceedings within Article 20(1)(m) of the Industrial Tribunals (Northern Ireland) Order 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 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 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 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.

Amendment of the Transnational Information and Consultation of Employees Regulations 1999

51. In the Transnational Information and Consultation of Employees Regulations 1999(1), after regulation 46 insert –

“**46A.**—(1) These regulations do not apply to an SE that is –

- (a) a Community-scale undertaking, or
- (b) a controlling undertaking of a Community-scale group of undertakings,

except where the special negotiating body has taken the decision referred to in regulation 30 of the European Public Limited-Liability Company Regulations (Northern Ireland) 2004 (decision not to open, or to terminate, negotiations) or, as the case may be, in regulation 30 of the European Public Limited-Liability Company Regulations 2004.

(2) In this regulation an “SE” means a company established in accordance with the European Public Limited-Liability Company Regulations (Northern Ireland) 2004 or the European Public-Limited Liability Company Regulations 2004.”.

Existing employee involvement rights

52.—(1) Subject to paragraph (2), nothing in these Regulations shall affect involvement rights of employees of an SE, its subsidiaries or establishments provided for by law or practice in the EEA state in which they were employed immediately prior to the registration of the SE.

(2) Paragraph (1) does not apply to rights to participation.