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DRAFT STATUTORY INSTRUMENTS

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**1998 No.**

**The Fair Employment and Treatment  
(Northern Ireland) Order 1998**

**PART XII**

**SUPPLEMENTARY**

**Restrictions on contracting out**

**100.**—(1) Except as provided by paragraph (2), any provision in an agreement (whether a contract of employment or not) shall be void in so far as it purports—

- (a) to exclude or limit the operation of any provision of this Order; or
- (b) to preclude any person from presenting a complaint to the Tribunal under Article 38.

(2) Paragraph (1) does not apply—

- (a) to an agreement settling a complaint to which Article 38(1) applies where the Agency has taken action in accordance with Article 88(1) or (2); or
- (b) to an agreement settling a complaint to which Article 38(1) applies if the conditions regulating compromise agreements under this Order are satisfied in relation to the agreement; or
- (c) to an agreement settling a claim to which Article 40 applies.

(3) The conditions regulating compromise agreements under this Order are that—

- (a) the agreement must be in writing;
- (b) the agreement 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 agreement and in particular its effect on his ability to pursue his complaint before the 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 complainant 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 regulating compromise agreements under this Order are satisfied.

(4) A person is a relevant independent adviser for the purposes of paragraph (3)(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;

- (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; or
  - (d) if he is a person of a description specified in an order made by the Department.
- (5) But a person is not a relevant independent adviser for the purposes of paragraph (3)(c) in relation to the complainant—
- (a) if he is, is employed by or is acting in the matter for the other party or for a person who is connected with the other party;
  - (b) in the case of a person within paragraph (4)(b) or (c), if the trade union or advice centre is the other party or a person who is connected with the other party;
  - (c) in the case of a person within paragraph (4)(c), if the complainant makes a payment for the advice received from him; or
  - (d) in the case of a person of a description specified in an order under paragraph (4)(d), if any condition specified in the order in relation to the giving of advice by persons of that description is not satisfied.
- (6) In paragraph (4)(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.
- (7) In paragraph (4)(b) “independent trade union” has the same meaning as in the Industrial Relations (Northern Ireland) Order 1992.
- (8) For the purposes of paragraph (5) 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 paragraph (2)(a) and (b) as being an agreement settling a complaint if—
    - (i) the dispute is covered by a scheme having effect by virtue of an order under Article 89; and
    - (ii) the agreement is to submit it to arbitration in accordance with the scheme; but
  - (b) shall be regarded for those purposes as neither being nor including such an agreement in any other case.