



# Trade Union and Labour Relations (Consolidation) Act 1992

## 1992 CHAPTER 52

### PART VII

#### MISCELLANEOUS AND GENERAL

##### *Contracting out, &c.*

#### **288 Restriction on contracting out.**

- (1) Any provision in an agreement (whether a contract of employment or not) is void in so far as it purports—
- (a) to exclude or limit the operation of any provision of this Act, or
  - (b) to preclude a person from bringing—
    - (i) proceedings before an [<sup>F1</sup>employment tribunal] or the Central Arbitration Committee under any provision of this Act, <sup>F2</sup> . . .
    - (ii) <sup>F2</sup> . . . . .
- (2) Subsection (1) does not apply to an agreement to refrain from instituting or continuing proceedings where a conciliation officer has taken action under— [<sup>F3</sup>section 18 of the [<sup>F1</sup>Employment Tribunals Act 1996] (conciliation)]
- [<sup>F4</sup>(2A) Subsection (1) does not apply to an agreement to refrain from instituting or continuing any proceedings, other than excepted proceedings, specified in [<sup>F5</sup>subsection (1) (b) of that section]] before an [<sup>F1</sup>employment tribunal] if the conditions regulating compromise agreements under this Act are satisfied in relation to the agreement.
- (2B) The conditions regulating compromise agreements under this Act are that—
- (a) the agreement must be in writing;
  - (b) the agreement must relate to the particular [<sup>F6</sup>proceedings];

*Status: Point in time view as at 06/04/2005.*

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- (c) the complainant must have received [<sup>F7</sup>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 [<sup>F1</sup>employment tribunal];
  - (d) there must be in force, when the adviser gives the advice, a [<sup>F8</sup>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 Act are satisfied.
- (2C) The proceedings excepted from subsection (2A) are proceedings on a complaint of non-compliance with section 188.
- (3) Subsection (1) does not apply—
- (a) to such an agreement as is referred to in section 185(5)(b) or (c) to the extent that it varies or supersedes an award under that section;
  - (b) to any provision in a collective agreement excluding rights under Chapter II of Part IV (procedure for handling redundancies), if an order under section 198 is in force in respect of it.
- [<sup>F9</sup>(4) A person is a relevant independent adviser for the purposes of subsection (2B)(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 Secretary of State.
- (4A) But a person is not a relevant independent adviser for the purposes of subsection (2B)(c) in relation to the complainant—
- (a) if he is, is employed by or is acting in the matter for the other party or a person who is connected with the other party,
  - (b) in the case of a person within subsection (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 subsection (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 subsection (4)(d), if any condition specified in the order in relation to the giving of advice by persons of that description is not satisfied.
- (4B) In subsection (4)(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 practising certificate, or a person other than a barrister or solicitor who is an authorised advocate or authorised litigator (within the meaning of the <sup>M1</sup>Courts and Legal Services Act 1990), and

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- (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.
- (4C) An order under subsection (4)(d) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (5) For the purposes of subsection (4A) 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.]
- [<sup>F10</sup>(6) An agreement under which the parties agree to submit a dispute to arbitration—
- (a) shall be regarded for the purposes of subsections (2) and (2A) as being an agreement to refrain from instituting or continuing proceedings if—
    - (i) the dispute is covered by a scheme having effect by virtue of an order under section 212A, 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.]

#### Textual Amendments

- F1** Words in s. 288 substituted (1.8.1998) by 1998 c. 8, s. 1(2)(a)(c) (with s. 16(2)); S.I. 1998/1658, art. 2(1), **Sch. 1**
- F2** S. 288(1)(b)(ii) and preceding word repealed (6.4.2005) by Employment Relations Act 2004 (c. 24), ss. 57(1)(2), 59(2)-(4), **Sch. 1 para. 19, Sch. 2**; S.I. 2005/872, **art. 4, Sch.** (with arts. 6-21)
- F3** Words in s. 288 substituted for paras. (a) and (b) (22.8.1996) by 1996 c. 17 ss. 43, 46, **Sch. 1 para. 8(a)** (with s. 38)
- F4** S. 288(2A)-(2C) inserted (30.8.1993) by 1993 c. 19, s. 39(2), **Sch. 6 para. 4(a)**; S.I. 1993/1908, art. 2(1), **Sch. 1**
- F5** Words in s. 288(2A) substituted (22.8.1996) by 1996 c. 18, ss. 43, 46, **Sch. 1 para. 8(b)** (with s. 38)
- F6** Word in s. 288(2B)(b) substituted (1.8.1998) by 1998 c. 8, s. 15, **Sch. 1 para. 9(2)**; S.I. 1998/1658, art. 2(1), **Sch. 1**
- F7** Words in s. 288(2B)(c) substituted (1.8.1998) by 1998 c. 8, s. 9(1)(2)(c); S.I. 1998/1658, art. 2(1), **Sch. 1**
- F8** Words in s. 288(2B)(d) substituted (1.8.1998) by 1998 c. 8, s. 10(1)(2)(c); S.I. 1998/1658, art. 2(1), **Sch. 1**
- F9** S. 288(4)(4A)(4B)(4C)(5) substituted for s. 288(4)(5) (1.8.1998) by 1998 c. 8, s. 15, **Sch. 1 para. 9(3)**; S.I. 1998/1658, art. 2(1), **Sch.**
- F10** S. 288(6) inserted (1.8.1998) by 1998 c. 8, s. 8(3); S.I. 1998/1658, art. 2(1), **Sch. 1** (with art. 3(4))

#### Marginal Citations

- M1** 1990 c. 41.

## 289 Employment governed by foreign law.

For the purposes of this Act it is immaterial whether the law which (apart from this Act) governs any person's employment is the law of the United Kingdom, or of a part of the United Kingdom, or not.

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