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SCHEDULES

SCHEDULE 6

Section 39(2).

COMPROMISE CONTRACTS

Sex Discrimination Act 1975 (c.65)

1 In section 77 of the Sex Discrimination Act 1975 (validity, etc. of contracts)—

(a) in subsection (4), after paragraph (a), there shall be inserted—

"(aa) to a contract settling a complaint to which section 63(1) of this Act or section 2 of the [M1]Equal Pay Act 1970 applies if the conditions regulating compromise contracts under this Act are satisfied in relation to the contract;"; and

(b) after subsection (4) there shall be inserted—

"(4A) The conditions regulating compromise contracts under this Act are that—

(a) the contract must be in writing;

(b) the contract must relate to the particular complaint;

(c) the complainant must have received independent legal advice from a qualified lawyer as to the terms and effect of the proposed contract and in particular its effect on his ability to pursue his complaint before an industrial tribunal;

(d) there must be in force, when the adviser gives the advice, a policy of insurance 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 Act are satisfied.

(4B) In subsection (4A)—

independent, in relation to legal advice to the complainant, means that it is given by a lawyer who is not acting for the other party or for a person who is connected with that other party; and

qualified lawyer means—

(a) as respects proceedings in England and Wales—

(i) a barrister, whether in practice as such or employed to give legal advice, or

(ii) a solicitor of the Supreme Court who holds a practising certificate;

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(b) as respects proceedings in Scotland—

(i) an advocate, whether in practice as such or employed to give legal advice, or

(ii) a solicitor who holds a practising certificate.

(4C) For the purposes of subsection (4B) any two persons are to be treated as connected if one is a company of which the other (directly or indirectly) has control, or if both are companies of which a third person (directly or indirectly) has control.”.

Marginal Citations

M1 1970 c. 41.

Race Relations Act 1976 (c. 74)

2 In section 72 of the Race Relations Act 1976 (validity, etc. of contracts)—

(a) in subsection (4), after paragraph (a) there shall be inserted—

“(aa) to a contract settling a complaint to which section 54(1) applies if the conditions regulating compromise contracts under this Act are satisfied in relation to the contract;”; and

(b) after subsection (4) there shall be inserted—

“(4A) The conditions regulating compromise contracts under this Act are that—

(a) the contract must be in writing;

(b) the contract must relate to the particular complaint;

(c) the complainant must have received independent legal advice from a qualified lawyer as to the terms and effect of the proposed contract and in particular its effect on his ability to pursue his complaint before an industrial tribunal;

(d) there must be in force, when the adviser gives the advice, a policy of insurance 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 Act are satisfied.

(4B) In subsection (4A)—

independent, in relation to legal advice to the complainant, means that it is given by a lawyer who is not acting for the other party or for a person who is connected with that other party; and

qualified lawyer means—

(a) as respects proceedings in England and Wales—

(i) a barrister, whether in practice as such or employed to give legal advice, or

(ii) a solicitor of the Supreme Court who holds a practising certificate.

(b) as respects proceedings in Scotland—

(i) an advocate, whether in practice as such or employed to give legal advice, or

(ii) a solicitor who holds a practising certificate.

(4C) For the purposes of subsection (4B) any two persons are to be treated as connected if one is a company of which the other (directly or indirectly) has control, or if both are companies of which a third person (directly or indirectly) has control.".

Wages Act 1986 (c.48)

3 In section 6 of the Wages Act 1986 (remedies for Part I contraventions and restriction on contracting out)—

(a) in subsection (3) after the words apply to there shall be inserted " (a) " and at the end of the words so constituted paragraph (a) there shall be inserted the words "; or

(b) an agreement to refrain from presenting or continuing with a complaint if the conditions regulating compromise agreements under this Part of this Act are satisfied in relation to the agreement"; and

(b) after subsection (3) there shall be inserted—

"(4) The conditions regulating compromise agreements under this Part of this Act are that—

(a) the agreement must be in writing;

(b) the agreement must relate to the particular complaint;

(c) the worker must have received independent legal advice from a qualified lawyer as to the terms and effect of the proposed agreement and in particular its effect on his ability to pursue his complaint before an industrial tribunal;

(d) there must be in force, when the adviser gives the advice, a policy of insurance covering the risk of a claim by the worker 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 Part of this Act are satisfied.

(5) In subsection (4)—

independent, in relation to legal advice to the worker, means that it is given by a lawyer who is not acting in the matter for the employer or for a person who is connected with the employer; and

qualified lawyer means—

(a) as respects proceedings in England and Wales—

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(i) a barrister, whether in practice as such or employed to give legal advice, or

(ii) a solicitor of the Supreme Court who holds a practising certificate;

(b) as respects proceedings in Scotland—

(i) an advocate, whether in practice as such or employed to give legal advice, or

(ii) a solicitor who holds a practising certificate.

(6) For the purposes of subsection (5) any two persons are to be treated as connected if one is a company of which the other (directly or indirectly) has control, or if both are companies of which a third person (directly or indirectly) has control.”.

Trade Union and Labour Relations (Consolidation) Act 1992 (c. 52)

4 In section 288 of the 1992 Act (restrictions on contracting out)—

(a) after subsection (2) there shall be inserted—

“(2A) Subsection (1) does not apply to an agreement to refrain from instituting or continuing any proceedings, other than excepted proceedings, specified in section 290 before an industrial 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 complaint;

(c) the complainant must have received independent legal advice from a qualified lawyer 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 policy of insurance 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.”; and

(b) after subsection (3) there shall be inserted—

“(4) In subsection (2B)—

independent, in relation to legal advice to the complainant means that it is given by a lawyer who is not acting for the other party or for a person who is connected with that other party; and

qualified lawyer means—

(a) as respects proceedings in England and Wales—

(i) a barrister, whether in practice as such or employed to give legal advice, or

(ii) a solicitor of the Supreme Court who holds a practising certificate;

(b) as respects proceedings in Scotland—

(i) an advocate, whether in practice as such or employed to give legal advice, or

(ii) a solicitor who holds a practising certificate.

(5) For the purposes of subsection (4) any two persons are to be treated as connected if one is a company of which the other (directly or indirectly) has control, or if both are companies of which a third person (directly or indirectly) has control.”.

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