

## SCHEDULE

Article 4

### The Labour Relations Agency Arbitration Scheme

## PART I

### Introduction

1. The Labour Relations Agency Arbitration Scheme (“the Scheme”) is implemented pursuant to Article 84A of the Industrial Relations (Northern Ireland) Order 1992(1) (“the 1992 Order”) and Article 89 of the Fair Employment and Treatment (Northern Ireland) Order 1998(2) (“the 1998 Order”).

2. The Scheme provides a voluntary alternative, in the form of arbitration, to—

(a) an industrial tribunal for the resolution of—

(i) unfair dismissal disputes;

(ii) disputes arising out of an employee’s application for a change in his or her terms and conditions of employment made under Article 112F of the Employment Rights (Northern Ireland) Order 1996(3) (“the 1996 Order”);

(iii) disputes arising out of the alleged contravention of any of the statutory provisions listed in the Schedule to the Labour Relations Agency Arbitration Scheme (Jurisdiction) Order (Northern Ireland) 2012(4);

(b) the Fair Employment Tribunal for the resolution of disputes involving proceedings under Article 38 of the 1998 Order, or claims which could be the subject of such proceedings, before that Tribunal.

3. Resolution of disputes under the Scheme is intended to be confidential, informal, relatively fast and cost efficient. Procedures under the Scheme are non-legalistic, and more flexible than an industrial tribunal, the Fair Employment Tribunal or the courts. For example (as explained in more detail below), the Scheme avoids the use of formal pleadings, formal witness and documentary procedures. Strict rules of evidence do not apply and general principles of fairness and good conduct are taken into account including, for example, principles referred to in any relevant Code of Practice. Arbitral decisions, including “awards”, are final. There are specified opportunities to appeal or otherwise challenge the result.

4. The Scheme also caters for requirements imposed as a matter of law (e.g. the Human Rights Act 1998, existing domestic law in the field of arbitration and European Community (hereafter referred to as EC) law).

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(1) [S.I. 1992/807 \(N.I. 5\)](#); Article 84A was inserted by Article 8 of the Employment Rights (Dispute Resolution) (Northern Ireland) Order 1998 ([S.I. 1998/1265 \(N.I. 8\)](#)) and amended by paragraph 3 of Schedule 2 to the Employment (Northern Ireland) Order 2002 ([S.I. 2002/2836 \(N.I. 2\)](#))

(2) [S.I. 1998/3162 \(N.I. 21\)](#)

(3) [S.I. 1996/1919 \(N.I. 16\)](#); Article 112F was inserted by Article 15 of the Employment (Northern Ireland) Order 2002 ([S.I. 2002/2836 \(N.I. 2\)](#)) and amended by provisions of the Work and Families (Northern Ireland) Order 2006 ([S.I. 2006/1947 \(N.I. 16\)](#))

(4) [S.R. 2012 No. 302](#)

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## PART II

### The role of the LRA

5. As more fully explained below, cases enter the Scheme by reference to the Labour Relations Agency (hereafter referred to as “the LRA”), which appoints an arbitrator from a panel (see paragraphs 32 to 34) to determine the dispute. The LRA provides administrative assistance during the proceedings. The LRA may scrutinise awards and refer any clerical or other similar errors back to the arbitrator. Disputes are determined, however, by arbitrators and not by the LRA.

### Routing of communications

6. All communications between either party and the arbitrator other than in the course of the hearing shall be sent through the LRA.

7. Paragraph 120 sets out the manner in which any document, notice or communication must be served on, or transmitted to, the LRA.

## PART III

### Terms and abbreviations

8. In the Scheme –

“claimant” means any person entitled to pursue a qualifying claim;

“EC law” means:

- (a) any provision in the domestic legislation of Northern Ireland giving effect to rights, powers, liabilities, obligations and restrictions from time to time created or arising by or under the European Community Treaties; and
- (b) any such rights, powers, liabilities, obligations and restrictions which are not given effect by any such provision;

“qualifying claim” means a claim by the claimant arising out of a contravention, or alleged contravention, of—

- (c) Part XI of the Employment Rights (Northern Ireland) Order 1996 (an unfair dismissal);
- (d) Article 112G(1) or 112H(1)(b) of that Order (flexible working)<sup>(5)</sup>;
- (e) any of the statutory provisions listed in the Schedule to the Labour Relations Agency Arbitration Scheme (Jurisdiction) Order (Northern Ireland) 2012; or
- (f) Article 38 of the Fair Employment and Treatment (Northern Ireland) Order 1998.

“respondent” means any person against whom a qualifying claim is pursued.

9. With the exception of paragraph 18(a) (“Requirements for entry into the Scheme”) references to anything being written or in writing include its being recorded by any means so as to be usable for subsequent reference.

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(5) Articles 112G and 112H were inserted by Article 15 of S.I. 2002/2836 (N.I. 2)

## PART IV

### Arbitrator's Terms of Reference

10. Every agreement to refer a dispute to arbitration under this Scheme shall be taken to be an agreement that the arbitrator decide the dispute according to the following Terms of Reference:

- (1) In deciding whether to uphold a qualifying claim, the arbitrator –
  - (a) shall have regard to general principles of fairness and good conduct in employment relations (including, for example, principles referred to in any relevant codes of practice);
  - (b) shall deal with matters expeditiously;
  - (c) shall have regard to relevant LRA guidance;
  - (d) may make recommendations, as appropriate, within the objective of promoting the improvement of employment relations.

(2) Where a qualifying claim falls within section 2(1) of the Equal Pay Act (Northern Ireland) 1970, section 2A of that Act<sup>(6)</sup> (reproduced at Appendix C) shall apply to the arbitrator as it applies to an industrial tribunal.

(3) At any time during proceedings, where the arbitrator considers it appropriate, he or she may adjourn the case or aspects of it, on terms agreed with the parties, to enable them to resolve the dispute otherwise than by arbitration under the Scheme.

(4) The arbitrator shall not decide the case by substituting what he or she would have done for the actions taken by the respondent.

(5) If the arbitrator upholds a claim, he or she shall determine the appropriate remedy under the terms of this Scheme.

## PART V

### Scope of the Scheme

#### **Cases that are covered by the Scheme**

11. This Scheme only applies to disputes involving, or which could be the subject of, proceedings arising from a qualifying claim.

12. The Scheme does not extend to other kinds of claim which are related to, or raised at the same time as, a qualifying claim.

13. Any claim other than a qualifying claim that forms part of the same dispute must be settled separately, or referred, as appropriate, to an industrial tribunal or the Fair Employment Tribunal, or withdrawn. In the event that different aspects of the same dispute are being heard in an industrial tribunal or the Fair Employment Tribunal as well as under the Scheme, the arbitrator may decide, if appropriate or convenient, to postpone the arbitral proceedings pending a determination by an industrial tribunal or the Fair Employment Tribunal.

#### **Waiver of jurisdictional issues**

14. Arbitration under the Scheme shall not deal with jurisdictional issues, for example:
- (a) whether or not the claimant was employed by the respondent;

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(6) 1970 c. 32 (N.I.)

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- (b) whether or not the claimant had the necessary period of continuous service to bring the claim;
- (c) whether or not the claimant has a disability within the meaning of section 1 of the Disability Discrimination Act 1995(7);
- (d) whether or not time limits have expired or should be extended.

15. Accordingly, when agreeing to refer a dispute to arbitration under the Scheme, both parties will be taken to have accepted as a condition of the Scheme that no jurisdictional issue is in dispute between them. The arbitrator will not therefore deal with such issues during the arbitration process, even if they are raised by the parties, and the parties will be taken to have waived any rights in that regard.

16. In agreeing to arbitration under the Scheme, the parties to a qualifying claim in respect of unfair dismissal as described in paragraph 8 will be treated as having agreed that a dismissal has taken place.

## PART VI

### Access to the Scheme

17. The Scheme is an entirely voluntary system of dispute resolution, it will apply only if both parties have so agreed.

#### Requirements for entry into the Scheme

18. Any agreement to submit a dispute to arbitration under the Scheme (“an Arbitration Agreement”):

- (a) must be in writing;
- (b) must concern an existing dispute;
- (c) must not seek to alter or vary any provision of the Scheme;
- (d) must have been reached either:
  - (i) where the LRA has taken action under Article 20 of the Industrial Tribunals (Northern Ireland) Order 1996(8) or Article 88 of the Fair Employment and Treatment (Northern Ireland) Order 1998(9) (a “Conciliated Settlement”); or
  - (ii) through a compromise agreement, where the conditions regulating such agreements under the Employment Rights (Northern Ireland) Order 1996 are satisfied (a “Compromise Agreement”); and
- (e) must include a waiver of rights to bring the dispute before an industrial tribunal or the Fair Employment Tribunal as specified at Appendix A;
- (f) must be completed by or on behalf of each party;
- (g) must include all other information specified at Appendix A.

19. Where an agreement fails to satisfy any one of these requirements, no valid reference to the Scheme will have been made.

20. Where:

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(7) 1995 c. 50  
(8) S.I. 1996/1921 (N.I. 18)  
(9) S.I. 1998/3162 (N.I. 21)

- (a) a dispute concerning a qualifying claim as well as other claims has been referred to an industrial tribunal or the Fair Employment Tribunal; and
- (b) the parties have agreed to settle the other claims and refer the qualifying claim to arbitration under the Scheme,

a separate settlement which satisfies all the requirements mentioned in paragraph 18 must be reached referring the qualifying claim to arbitration (although it may form part of one overall settlement document).

### **Notification to the LRA of an Arbitration Agreement**

21. All Arbitration Agreements must be notified and sent to the LRA within six weeks of their conclusion, by either of the parties or their representatives or an LRA conciliator. When the reference to arbitration under the Scheme has been accepted by the LRA, it must inform the Office of Industrial Tribunals and the Fair Employment Tribunal of that fact and send a copy of the ET1 (NI) and ET3 (NI) (industrial tribunal or Fair Employment Tribunal claim and response), if these have been completed, to that Office.

22. For the purposes of paragraph 21, an Arbitration Agreement is treated as “concluded” on the date it is signed, or if signed by different people at different times, on the date of the last signature.

23. Where an Arbitration Agreement is not notified to the LRA in accordance with paragraph 21, the LRA will not arrange for the appointment of an arbitrator under the Scheme, unless notification within the six week period specified in that paragraph was not reasonably practicable. Any party seeking to notify the LRA of an Arbitration Agreement outside this period must explain in writing to the LRA the reason for the delay. The LRA shall appoint an arbitrator, in accordance with paragraphs 32 to 34, to consider the explanation, and that arbitrator may seek the views of the other party, and may call both parties to a hearing to establish the reasons for the delay. The arbitrator shall then rule in an award on whether or not the agreement can be accepted for hearing under the Scheme.

24. Any such hearing and award will be governed by the provisions of this Scheme.

### **Consolidation of proceedings**

25. Where all parties so agree in writing, the LRA may consolidate, as appropriate, arbitral proceedings under the Scheme.

## **PART VII**

### **Settlement and withdrawal from the Scheme**

#### **Withdrawal by the claimant**

26. At any stage of the arbitration process, once an Arbitration Agreement has been concluded and the reference has been accepted by the LRA, the claimant may withdraw the claim or any part of it from the Scheme, provided that any such withdrawal is in writing. Such a withdrawal shall constitute a dismissal of the claim or that part of it as the case may be.

#### **Withdrawal by the respondent**

27. Once an Arbitration Agreement has been concluded and the reference has been accepted by the LRA, the respondent cannot unilaterally withdraw from the Scheme.

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## **Settlement**

28. Parties are free to reach an agreement settling the dispute or any part of it at any stage.
29. If such an agreement is reached:
- (a) upon the joint written request of the parties to the LRA, the arbitrator (if appointed) or the LRA (if no arbitrator has been appointed) shall terminate the arbitral proceedings or the relevant part of the proceedings;
  - (b) if so requested by the parties, and where an arbitrator has been appointed, the arbitrator may record the settlement in the form of an agreed award. The LRA, on the request of the parties, will appoint an arbitrator to record the settlement in the form of an agreed award.
30. An agreed award shall state that it is an award of the arbitrator by consent and shall have the same status and effect as any other award (see Part XX).
31. In making an award by consent under paragraph 30, the arbitrator:
- (a) may only record the parties' agreed wording;
  - (b) may not approve, vary, transcribe or interpret a settlement in any way;
  - (c) may not record any settlement beyond the scope of the Scheme, the Arbitration Agreement or the reference to the Scheme as initially accepted by the LRA.

## **PART VIII**

### **Appointment of arbitrators**

#### **The LRA Arbitration Panel**

32. Arbitrators are selected to serve on the LRA Arbitration Panel from amongst persons appearing to the LRA to have appropriate knowledge and experience of employment issues and good employment relations practice.

#### **Appointment to a case**

33. Arbitral appointments are made exclusively by the LRA from the LRA Arbitration Panel. Parties will have no choice of arbitrator.

34. Once the LRA has been notified of a valid Arbitration Agreement, it will select and appoint an arbitrator, and notify all parties of the name of the arbitrator so appointed.

#### **Arbitrators' duty of disclosure**

35. Arbitrators have a continuing duty to disclose to the LRA any matter relating to the appropriateness, propriety, impartiality or conflict of interest concerning their appointment to hear a case. In support of this arbitrators will be required to disclose their interests to the LRA. The LRA will hold a register of arbitrators' interests.

36. Once appointed, and until the arbitration is concluded, every arbitrator shall be under a continuing duty forthwith to disclose to the LRA any such interests which may have arisen since appointment.

#### **Removal of an arbitrator**

37. Arbitrators may be removed by the LRA or the court only under the provisions in paragraphs 38 to 40.

38. Applications under the Scheme to remove an arbitrator on any of the grounds set out in section 24(1)(a) and (c) of the Arbitration Act 1996(10) shall be made in the first instance to the LRA.

39. If the LRA refuses such an application, a party may thereafter apply to the High Court or the county court.

40.—(1) Section 24(1)(a) and (c), (2), (3), (5) and (6) of the Arbitration Act 1996 shall apply to arbitrations conducted in accordance with the Scheme, modified as shown in sub-paragraphs (2) to (6).

(2) A party to arbitral proceedings may (upon notice to the other party, to the arbitrator concerned and to the LRA) apply to the High Court or the county court to remove an arbitrator on any of the following grounds—

- (a) that circumstances exist that give rise to justifiable doubts as to his or her impartiality;
- (b) that he or she is physically or mentally incapable of conducting the proceedings or there are justifiable doubts as to his or her capacity to do so.

(3) The court shall not exercise its power of removal unless satisfied that the applicant has first exhausted any available recourse to the LRA.

(4) The arbitral tribunal may continue the arbitral proceedings and make an award while an application to the court under this section is pending.

(5) The arbitrator concerned is entitled to appear and be heard by the court before it makes any order under this section.

(6) The leave of the court is required for any appeal from a decision of the court under this section.

41. The arbitrator may continue the proceedings and make an award while an application to the LRA (as well as the court) to remove him or her is pending.

#### **Death of an arbitrator**

42. The authority of an arbitrator is personal and ceases on his or her death.

#### **Replacement of an arbitrator**

43. Where an arbitrator ceases to hold an appointment for any reason, he or she shall be replaced by an arbitrator appointed by the LRA under paragraphs 32 to 34.

44. Once appointed, the replacement arbitrator shall determine whether and, if so, to what extent the previous proceedings should stand.

## **PART IX**

### **General duty of the arbitrator**

45. The arbitrator shall:

- (a) act fairly and impartially as between the parties, giving each party a reasonable opportunity of putting his or her case and dealing with issues raised by the other party; and
- (b) adopt procedures suitable to the circumstances of the particular case, avoiding unnecessary delay or expense, so as to provide a fair means for the resolution of the matters to be determined.

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46. The arbitrator shall comply with the general duty (see paragraph 45) in conducting the arbitral proceedings, in his or her decisions on matters of procedure and evidence and in the exercise of all other powers conferred on him or her.

## PART X

### General duty of the parties

47. The parties shall do all things necessary for the proper and expeditious conduct of the arbitral proceedings. This includes (without limitation) complying without delay with any determination of the arbitrator as to procedural or evidential matters, or with any order or directions of the arbitrator, and co-operating in the arrangement of any hearing.

## PART XI

### Confidentiality and privacy

48. Arbitrations, and all associated procedures under the Scheme, are strictly private and confidential.

49. The arbitrator, the parties and an officer of the LRA will attend the hearings. In addition only the representatives of the parties, any interpreters, witnesses and a legal adviser, if appointed under paragraph 85 may attend hearings. If the parties so agree, an arbitrator in training or an LRA officer in training may also attend.

## PART XII

### Arrangements for the hearing

#### **Initial arrangements**

50. A hearing must be held in every case, notwithstanding any agreement between the parties to the contrary.

51. Once an arbitrator has been appointed a hearing shall be arranged by the LRA as soon as reasonably practicable.

52. The LRA, in conjunction with the arbitrator, shall decide the date and venue for the hearing.

53. The LRA shall contact all parties with details of the date and venue for the hearing.

#### **Expedited hearings**

54. The arbitrator may expedite the hearing on the application of any party if, in the arbitrator's opinion, relevant circumstances exist.

#### **Venue**

55. Hearings will be held in the LRA Head or Regional Office. In exceptional circumstances alternative venues may be considered. Any formal application for a venue other than the LRA offices must be made, in writing, with reasons, to the LRA within 14 days beginning with the date of the letter notifying of the hearing arrangements. Such applications will be determined by the LRA after



all parties have received a copy of the formal application and been given a reasonable opportunity to respond.

### **Assistance**

56. Where a party needs the services of an interpreter, signer or communicator at the hearing, the LRA should be so informed well in advance of the hearing. Where such assistance is required, the LRA shall meet the reasonable costs of providing this.

### **Travelling expenses or loss of earnings**

57. Subject to paragraph 58, every party shall meet its own travelling expenses and those of its representatives and witnesses.

58. No loss of earnings is payable by the LRA to anyone involved in the arbitration. However, where an arbitrator upholds a claim, he or she may include in the calculation of any compensation a sum to cover reasonable travelling expenses and loss of earnings incurred by the claimant personally in attending the hearing.

### **Applications for postponements of initial hearings**

59. Any application for a postponement of an initial hearing must be made in writing, with reasons, to the LRA within 14 days beginning with the date of the letter notifying the hearing arrangements or, where this is not practicable, as soon as is reasonably practicable. Such applications will be determined by the arbitrator without an oral hearing after all parties have received a copy of the application and been given a reasonable opportunity to respond.

60. If the application is rejected, the initial hearing will be held on the original date.

61. This provision does not affect the arbitrator's general discretion with respect to postponements after an initial hearing has been fixed, or with respect to other aspects of the procedure. In particular, procedural applications may be made to the arbitrator at the hearing itself.

## **PART XIII**

### **Non-compliance with procedure**

62. If a party fails to comply with any aspect of the procedure set out in this Scheme, or any order or direction by the arbitrator, or fails to comply with the general duty in Part X, the arbitrator may (in addition to any other power set out in this Scheme)—

- (a) adjourn any hearing, where it would be unfair on any party to proceed;
- (b) draw such inferences from the act of non-compliance as the circumstances justify.

## **PART XIV**

### **Outline of procedure before the hearing**

63. Once a hearing has been fixed, the following procedure shall apply, subject to any direction by the arbitrator.

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## Written materials

64.—(1) At least 14 days before the date of the hearing, each party shall send to the LRA (for forwarding to the arbitrator and the other party, and for retention by the LRA Arbitration Section) three copies of a written statement of that party's case, together with three copies of—

- (a) any supporting documentation or other material to be relied upon at the hearing; and
- (b) in respect of any person who will accompany each party to the hearing or be called as a witness, that person's name and the purpose of their attendance.

(2) Written statements under sub-paragraph (1) should briefly set out the main particulars of each party's case, which can then be expanded upon if necessary at the hearing itself. The statement should include an explanation of the events which led to the claim being brought, including an account of the sequence and outcome of any relevant meetings, interviews or discussions.

(3) If the arbitral proceedings include a claim of unfair dismissal (see paragraph 8), the parties should come to the hearing prepared to address the practicability of any remedy the claimant is seeking.

65. Supporting documentation or other material may include (where applicable and without limitation) copies of—

- (a) contracts of employment;
- (b) documentation concerning recruitment;
- (c) letters of appointment;
- (d) written statement of particulars of employment;
- (e) employers' handbooks, rules and procedures;
- (f) time sheets and attendance records;
- (g) performance appraisal reports;
- (h) warning and dismissal letters;
- (i) written reasons given to the claimant by the respondent explaining the respondent's actions;
- (j) notes of meetings held between claimant and respondent in relation to the dispute;
- (k) any other written information which may assist the arbitrator in deciding on the claim or the relevant part of it;
- (l) any information which will help the arbitrator to assess compensation, including (without limitation)—
  - (i) pay slips, P60s or wage records;
  - (ii) details of benefits paid to the claimant such as travelling expenses and free or subsidised accommodation;
  - (iii) guidance about, and (if available) actuarial assessments of, pension entitlements;
  - (iv) details of any welfare benefits received;
  - (v) evidence of attempts to find other work, or otherwise mitigate loss;
- (m) signed statements of any witnesses or outlines of evidence to be given by witnesses at the hearing.

66. The parties must also supply details of any relevant awards of compensation that may have been made by any other tribunal or court in connection with the subject matter of the claim.

67. Legible copies of documents must be supplied to the LRA even if they have already been supplied to an LRA conciliator before the Arbitration Agreement was concluded.

68. No information on the conciliation process, if any, in respect of the case to be heard by the arbitrator shall be disclosed by the LRA to the arbitrator.

#### **Submissions, evidence and witnesses not previously notified**

69. Any document which has not been provided to the LRA prior to the hearing in accordance with paragraph 64 may be relied upon at the hearing only with the arbitrator's permission.

70. All representatives and witnesses who have been listed as accompanying a party at the hearing should be present at the start of the hearing. Witnesses who have not been included in a list submitted to the LRA prior to the hearing may be called only with the arbitrator's permission.

#### **Requests for documents**

71. Any party may request the other party to include in their submission, or submit through the LRA or the arbitrator (as appropriate), copies of relevant documents that are not in the requesting party's possession, custody or control. Although the LRA and the arbitrator have no power to compel a party to comply, the arbitrator may draw an inference from a party's failure to comply with a reasonable request.

#### **Requests for attendance of witnesses**

72. Although the arbitrator has no power to compel the attendance of any person at the hearing, the arbitrator may draw an inference if an employer who is a party to the arbitration fails or refuses to allow any person who is a party or a witness time off from work to attend the hearing, should such an employer be so requested.

#### **Preliminary hearings and directions**

73. Where the arbitrator believes that there may be considerable differences between the parties over any issue, including the availability or exchange of documents, or the availability of witnesses, the arbitrator may call, through the LRA, the parties to a preliminary hearing to address such issues, or he or she may give procedural directions.

74. In the course of a preliminary hearing or through the LRA, the arbitrator may express views on the desirability of information or evidence being available at the hearing.

## **PART XV**

### **Outline of procedure at the hearing**

#### **Arbitrator's overall discretion**

75. Subject to the arbitrator's general duty (Part IX), and subject to the provisions of this Part, the conduct of the hearing and all procedural and evidential matters (including applications for adjournments) shall be for the arbitrator to decide.

#### **Administration**

76. The LRA shall provide administrative services to the arbitrator during the course of the hearing. However, no formal recording of the proceedings will take place.

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### **Witnesses**

77. No party or witness shall be cross-examined by a party or representative, or give evidence on oath or affirmation.

### **Examination by the arbitrator**

78. The arbitrator shall have the right to address questions directly to either party or to any other person attending the hearing, and to take the initiative in ascertaining the facts.

### **Representatives**

79. The parties may be accompanied by any person chosen by them to help them to present their case at the hearing. Each party is liable for any fees or expenses incurred by any such person.

### **Strict rules of evidence**

80. The arbitrator will not apply strict rules of evidence as to the admissibility, relevance or weight of any material sought to be tendered on any matters of fact or opinion.

### **Interim relief**

81. The arbitrator shall have no power to order provisional or interim relief.

### **Non-attendance at the hearing**

82. If, without showing sufficient cause, a party fails to attend or be represented at a hearing, the arbitrator may:

- (a) continue the hearing in that party's absence or in the absence of that party's representative, and in such a case shall take into account any written submissions and documents that have already been submitted by that party; or
- (b) adjourn the hearing.

83. In the case of the non-attendance of the claimant, if the arbitrator decides to adjourn the hearing, he or she may request, in writing, through the LRA that the claimant provides an explanation for the non-attendance. If the arbitrator decides that the claimant has not demonstrated sufficient cause for the non-attendance, he or she may rule in an award that the claim or claims be treated as dismissed.

### **Post-hearing written materials**

84. No further submissions or evidence will be accepted after the end of the substantive hearing except with the arbitrator's permission, which will be granted only where the arbitrator is satisfied that new evidence has become available, the existence of which could not have been reasonably known of or foreseen. Where permission is granted, any material is to be sent to the LRA, to be forwarded to the arbitrator and all other parties.

## PART XVI

### Questions of EC Law and the Human Rights Act 1998

#### **Appointment of legal adviser**

85. The arbitrator shall have the power, on the application of any party or of his or her own volition, to require the appointment of a legal adviser to assist with respect to any issue of EC law or the Human Rights Act 1998 that, in the arbitrator's view and subject to paragraph 10 (Arbitrator's Terms of Reference), might be involved and be relevant to the resolution of the dispute.

86. The legal adviser will be appointed by the LRA, to report to the arbitrator and the parties, and shall be subject to the duty of disclosure set out in paragraphs 35 and 36.

87. The arbitrator shall allow the legal adviser to attend the proceedings, and may order an adjournment to facilitate this.

88. The parties shall be given a reasonable opportunity to comment to the arbitrator on any information, opinion or advice offered by the legal adviser, following which the arbitrator shall take such information, opinion or advice into account in determining the dispute.

#### **Court determination of preliminary points**

89.—(1) Section 45 of the Arbitration Act 1996<sup>(11)</sup> shall apply to arbitrations conducted in accordance with the Scheme, modified as shown in sub-paragraphs (2) to (7).

(2) The High Court or the county court may on the application of a party to arbitral proceedings (upon notice to the other parties) determine any question—

- (a) of EC law; or
- (b) concerning the application of the Human Rights Act 1998; and

arising in the course of the proceedings which the court is satisfied substantially affects the rights of one or more of the parties.

(3) An application under this section shall not be considered unless—

- (a) it is made with the agreement of all the other parties to the proceedings, or
- (b) it is made with the permission of the tribunal and the court is satisfied that the application was made without delay.

(4) The application shall identify the question of law to be determined and, unless made with the agreement of all the other parties to the proceedings, shall state the grounds on which it is said that the question should be decided by the court.

(5) Unless the court gives leave, no appeal lies from a decision of the court whether the conditions specified in subsection (2) are met.

(6) The decision of the court on the question of law shall be treated as a judgment of the court for the purposes of an appeal.

But no appeal lies without the leave of the court which shall not be given unless the court considers that the question is one of general importance, or is one which for some other special reason should be considered by the Court of Appeal.

(7) In this section, "EC law" means—

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(11) 1996 c. 23

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- (a) any provision in the domestic legislation of Northern Ireland giving effect to rights, powers, liabilities, obligations and restrictions from time to time created or arising by or under the European Community Treaties, and
- (b) any such rights, powers, liabilities, obligations and restrictions which are not given effect by any such provision.

## PART XVII

### Awards

#### Form of the award

90. The award shall be in writing, signed by the arbitrator.
91. The award (unless it is an award by consent under paragraph 30) shall—
- (a) contain the main considerations which were taken into account in reaching the decision;
  - (b) state the decision;
  - (c) state the remedy awarded, together with an explanation or calculation;
  - (d) state the date when it was made.

#### Awards on different issues

92. The arbitrator may make more than one award at different times on different aspects of the matters to be determined.
93. The arbitrator may, in particular, make an award relating:
- (a) to an issue affecting the whole claim; or
  - (b) to a part only of the claim submitted to him or her for a decision.
94. If the arbitrator does so, he or she shall specify in his or her award the issue, or the claim or part of a claim, which is the subject matter of the award.

#### Remedies

95. The arbitrator shall apply the remedies (including the making of any awards of compensation) that he or she considers appropriate.
- 96.—(1) The remedies available to the arbitrator shall be those that, but for the arbitral proceedings, could have been granted by an industrial tribunal or the Fair Employment Tribunal in determining the same matters.
- (2) When deciding upon the availability or extent of such remedies the arbitrator shall have regard to the same factors in the same manner as would an industrial tribunal or the Fair Employment Tribunal.

## PART XVIII

### Issue of awards and confidentiality

97. The arbitrator's award shall be sent by the LRA to both parties.

98. The award shall be confidential, and shall be issued only to the parties or to their nominated advisers or representatives. Awards will not be published by the LRA but the LRA may publish general summary information concerning cases heard under the Scheme, without identifying any individual case.

## PART XIX

### Correction of Awards

#### Scrutiny of awards by the LRA

99. Before being sent to the parties, awards may be scrutinised by the LRA to check for clerical or computational mistakes, errors arising from accidental slips or omissions, or linguistic or presentational issues likely to impair clear interpretation of the award. Without affecting the arbitrator's liberty of decision, the LRA may refer the award back to the arbitrator under paragraphs 100 to 105 in order to draw his or her attention to any such point.

#### Correction by the arbitrator

100. The arbitrator may, on his or her own initiative or on the application of the LRA or of a party:

- (a) correct the award so as to remove any clerical or computational mistake, or error arising from an accidental slip or omission, or linguistic or presentational issue in the award; or
- (b) make an additional award in respect of any part of the claim which was presented to the arbitrator but was not dealt with in the award.

101. In so far as any such correction or additional award involves a new issue that was not previously before the parties, this power shall not be exercised without first affording the parties a reasonable opportunity to make written representations to the arbitrator.

102. Any application by a party for the exercise of this power must be made through the LRA within 28 days beginning with the date the award was sent to that party by the LRA.

103. Any correction of the award shall be made within 28 days beginning with the date the application was received by the arbitrator or, where the correction is made by the arbitrator on his or her own initiative, within 28 days beginning with the date of the award.

104. Any additional award shall be made within 56 days beginning with the date of the original award.

105. Any correction of the award shall form part of the award.

## PART XX

### Effect of awards, enforcement and interest

#### Effect of awards

106. Awards made by arbitrators under this Scheme are final and binding both on the parties and on any persons claiming through or under them.

107. This does not affect the right of a person to challenge an award under the provisions of the Arbitration Act 1996 as applied to this Scheme.

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## **Enforcement**

108.—(1) Section 66 of the Arbitration Act 1996 shall apply to arbitrations conducted in accordance with the Scheme, modified as shown in sub-paragraphs (2) to (6).

(2) An award made by the arbitrator pursuant to the Scheme may be enforced as if it had been made by an industrial tribunal or the Fair Employment Tribunal, and for the purposes of enforcement the arbitrator may exercise the powers that, but for the arbitral proceedings, could have been exercised by that tribunal.

(3) Judgment may be entered in terms of the award.

(4) Judgment shall not be entered in terms of the award where, or to the extent that, the person against whom it is sought to be enforced shows that the tribunal lacked substantive jurisdiction to make the award.

The right to raise such an objection may have been lost (see Part XXII of the Scheme).

(5) Nothing in this section affects the recognition or enforcement of an award under any other enactment or rule of law, in particular under Part II of the Arbitration Act 1950 (enforcement of awards under Geneva Convention) or the provisions of Part III of this Act relating to the recognition and enforcement of awards under the New York Convention or by an action on the award.

(6) In this section—

“the court” means the High Court or the county court; and

“the Scheme” means the arbitration scheme set out in the Schedule to the Labour Relations Agency Arbitration Scheme Order (Northern Ireland) 2012.

## **Interest**

109. An award of compensation that is not paid within 42 days beginning with the date on which the award was sent by the LRA to the respondent will attract interest as if it were an award of an industrial tribunal or the Fair Employment Tribunal.

# **PART XXI**

## **Challenging the award**

### **Challenges on grounds of substantive jurisdiction**

110.—(1) Section 67 of the Arbitration Act 1996 shall apply to arbitrations conducted in accordance with the Scheme, modified as shown in sub-paragraphs (2) to (6).

(2) A party to arbitral proceedings may (upon notice to the other party, to the arbitrator and to the Labour Relations Agency) apply to the High Court or the county court—

(a) challenging any award of the arbitral tribunal as to its substantive jurisdiction; or

(b) for an order declaring an award made by the tribunal on the merits to be of no effect, in whole or in part, because the tribunal did not have substantive jurisdiction.

A party may lose the right to object (see Part XXII of the Scheme) and the right to apply is subject to the restrictions in section 70(2) and (3) as modified for the purposes of the Scheme.

(3) The arbitral tribunal may continue the arbitral proceedings and make a further award while an application to the court under this section is pending in relation to an award as to jurisdiction.

(4) On an application under this section challenging an award of the arbitral tribunal as to its substantive jurisdiction, the court may by order—

(a) confirm the award,



- (b) vary the award, or
  - (c) set aside the award in whole or in part.
- (5) The leave of the court is required for any appeal from a decision of the court under this section.
- (6) In this section—
- “Arbitration Agreement” means an agreement to refer a dispute to arbitration in accordance with, and satisfying the requirements of, the Scheme;
  - “the Scheme” means the arbitration scheme set out in the Schedule to the Labour Relations Agency Arbitration Scheme Order (Northern Ireland) 2012; and
  - “substantive jurisdiction” means any issue as to—
- (a) the validity of the Arbitration Agreement and the application of the Scheme to the dispute or difference in question;
  - (b) the constitution of the arbitral tribunal; or
  - (c) the matters which have been submitted to arbitration in accordance with the Arbitration Agreement.

### **Challenging the award: serious irregularity**

111.—(1) Section 68 of the Arbitration Act 1996<sup>(12)</sup> shall apply to arbitrations conducted in accordance with the Scheme, modified as shown in sub-paragraphs (2) to (6).

(2) A party to arbitral proceedings may (upon notice to the other party, to the arbitrator and to the Labour Relations Agency) apply to the High Court or the county court challenging an award in the proceedings on the ground of serious irregularity affecting the tribunal, the proceedings or the award. A party may lose the right to object (see Part XXII of the Scheme) and the right to apply is subject to the restrictions in section 70(2) and (3) as modified for the purposes of the Scheme.

(3) Serious irregularity means an irregularity of one or more of the following kinds which the court considers has caused or will cause substantial injustice to the applicant—

- (a) failure by the tribunal to comply with Part IX of the Scheme (General duty of the arbitrator);
- (b) the tribunal exceeding its powers (otherwise than by exceeding its substantive jurisdiction: see section 67 as modified for the purposes of the Scheme);
- (c) failure by the tribunal to conduct the proceedings in accordance with the procedure as set out in the Scheme;
- (d) failure by the tribunal to deal with all the issues that were put to it;
- (e) the Labour Relations Agency exceeding its powers;
- (f) uncertainty or ambiguity as to the effect of the award;
- (g) the award being obtained by fraud or the award or the way in which it was procured being contrary to public policy;
- (h) any irregularity in the conduct of the proceedings or in the award which is admitted by the tribunal or by the Labour Relations Agency.

(4) If there is shown to be serious irregularity affecting the tribunal, the proceedings or the award, the court may—

- (a) remit the award to the tribunal, in whole or in part, for reconsideration,
- (b) vary the award or set the award aside in whole or in part, or

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- (c) declare the award to be of no effect, in whole or in part.
- (5) The leave of the court is required for any appeal from a decision of the court under this section.
- (6) In this section, “the Scheme” means the arbitration scheme set out in the Schedule to the Labour Relations Agency Arbitration Scheme Order (Northern Ireland) 2012.

### **Appeals on questions of EC law and the Human Rights Act 1998**

112.—(1) Section 69 of the Arbitration Act 1996 shall apply to arbitrations conducted in accordance with the Scheme, modified as shown in sub-paragraphs (2) to (10).

(2) A party to arbitral proceedings may (upon notice to the other party, to the arbitrator and to the LRA) appeal to the High Court or the county court on a question—

- (a) of EC law, or
  - (b) concerning the application of the Human Rights Act 1998.
- (3) An appeal shall not be brought under this section except—
- (a) with the agreement of all the other parties to the proceedings, or
  - (b) with the leave of the court.

The right to appeal is also subject to the restrictions in section 70(2) and (3), as modified for the purposes of the Scheme.

- (4) Leave to appeal shall be given only if the court is satisfied—
- (a) that the determination of the question will substantially affect the rights of one or more of the parties,
  - (b) that, on the basis of the findings of fact in the award in so far as the question for appeal raises a point of EC law, the point is capable of serious argument, and in so far as the question for appeal does not raise a point of EC law —
    - (i) the decision of the tribunal on the question is obviously wrong, or
    - (ii) the question is one of general public importance and the decision of the tribunal is at least open to serious doubt, and
  - (c) that, despite the agreement of the parties to resolve the matter by arbitration, it is just and proper in all the circumstances for the court to determine the question.

(5) An application for leave to appeal under this section shall identify the question of law to be determined and state the grounds on which it is alleged that leave to appeal should be granted.

(6) The court shall determine an application for leave to appeal under this section without a hearing unless it appears to the court that a hearing is required.

(7) The leave of the court is required for any appeal from a decision of the court under this section to grant or refuse leave to appeal.

- (8) On an appeal under this section the court may by order—
- (a) confirm the award,
  - (b) vary the award,
  - (c) remit the award to the tribunal, in whole or in part, for reconsideration in the light of the court’s determination, or
  - (d) set aside the award in whole or in part.

(9) The decision of the court on an appeal under this section shall be treated as a judgment of the court for the purposes of a further appeal.

But no such appeal lies without the leave of the court which shall not be given unless the court considers that the question is one of general importance or is one which for some other special reason should be considered by the Court of Appeal.

(10) In this section—

“EC law” means—

- (a) any provision in the domestic legislation of Northern Ireland and giving effect to rights, powers, liabilities, obligations and restrictions from time to time created or arising by or under the European Community Treaties, and
- (b) any such rights, powers, liabilities, obligations and restrictions which are not given effect by any such provision; and

“the Scheme” means the arbitration scheme set out in the Schedule to the Labour Relations Agency Arbitration Scheme Order (Northern Ireland) 2012.

### **Time limits and other procedural restrictions on challenges to awards**

113.—(1) Section 70 of the Arbitration Act 1996 shall apply to arbitrations conducted in accordance with the Scheme, modified as shown in sub-paragraphs (2) to (10).

(2) The following provisions apply to an application or appeal under section 67, 68 or 69 (as modified for the purposes of the Scheme)—

(3) An application or appeal may not be brought if the applicant or appellant has not first exhausted any available recourse under Part XIX of the Scheme (correction of awards).

(4) Any application or appeal must be brought within 28 days beginning with the date the award was dispatched to the applicant or appellant by the LRA.

(5) If on an application or appeal it appears to the court that the award—

- (a) does not contain the tribunal’s reasons, or
- (b) does not set out the tribunal’s reasons in sufficient detail to enable the court properly to consider the application or appeal,

the court may order the tribunal to state the reasons for its award in sufficient detail for that purpose.

(6) The court may order the applicant or appellant to provide security for the costs of the application or appeal, and may direct that the application or appeal be dismissed if the order is not complied with.

The power to order security for costs shall not be exercised on the ground that the applicant or appellant is—

- (a) an individual ordinarily resident outside the United Kingdom, or
- (b) a corporation or association incorporated or formed under the law of a country outside the United Kingdom, or whose central management and control is exercised outside the United Kingdom.

(7) The court may order that any money payable under the award shall be brought into court or otherwise secured pending the determination of the application or appeal, and may direct that the application or appeal be dismissed if the order is not complied with.

(8) The court may grant leave to appeal subject to conditions to the same or similar effect as an order under subsection (6) or (7).

(9) This does not affect the general discretion of the court to grant leave subject to conditions.

(10) In this section “the Scheme” means the arbitration scheme set out in the Schedule to the Labour Relations Agency Arbitration Scheme Order (Northern Ireland) 2012.

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### **Common law challenges and saving**

114.—(1) Section 81(1)(c) and (2) of the Arbitration Act 1996 shall apply to arbitrations conducted in accordance with the Scheme, modified as shown in sub-paragraphs (2) to (3).

(2) Nothing in this Part shall be construed as excluding the operation of any rule of law consistent with the provisions of this Part, in particular, any rule of law as to the refusal of recognition or enforcement of an arbitral award on grounds of public policy.

(3) Nothing in this Act shall be construed as reviving any jurisdiction of the court to set aside or remit an award on the ground of errors of fact or law on the face of the award.

### **Challenge or appeal: effect of order of the court**

115.—(1) Section 71 of the Arbitration Act 1996 shall apply to arbitrations conducted in accordance with the Scheme, modified as shown in sub-paragraphs (2) to (5).

(2) The following provisions have effect where the court makes an order under section 67, 68 or 69 (as modified for the purposes of the Scheme) with respect to an award.

(3) Where the award is varied, the variation has effect as part of the tribunal’s award.

(4) Where the award is remitted to the tribunal, in whole or in part, for reconsideration, the tribunal shall make a fresh award in respect of the matters remitted within three months of the date of the order for remission or such longer or shorter period as the court may direct.

(5) In this section, “the Scheme” means the arbitration scheme set out in the Schedule to the Labour Relations Agency Arbitration Scheme Order (Northern Ireland) 2012.

## **PART XXII**

### **Loss of right to object**

116. If a party to arbitral proceedings under this Scheme takes part, or continues to take part, in the proceedings without making, either forthwith or within such time as is allowed by the arbitrator or by any provision in this Scheme, any objection:

- (a) that the arbitrator lacks substantive jurisdiction (as defined in paragraph 110);
- (b) that the proceedings have been improperly conducted;
- (c) that there has been a failure to comply with the Arbitration Agreement or any provision of this Scheme; or
- (d) that there has been any other irregularity affecting the arbitrator or the proceedings,

he or she may not raise that objection later, before the arbitrator or the court, unless he or she shows that, at the time he or she took part or continued to take part in the proceedings, he or she did not know and could not with reasonable diligence have discovered the grounds for the objection.

## **PART XXIII**

### **Immunity**

117. An arbitrator under this Scheme is not liable for any act or omission in the discharge or purported discharge of his or her functions as arbitrator unless the act or omission is shown to have been in bad faith. This paragraph applies to a legal adviser appointed by the LRA as it applies to the arbitrator.

118. The LRA, by reason of having appointed an arbitrator or nominated a legal adviser, is not liable for any act or omission by the arbitrator or legal adviser in the discharge or purported discharge of his or her functions.

## PART XXIV

### Miscellaneous provisions

#### **Requirements in connection with legal proceedings**

119.—(1) Sections 80(1), (2), (4), (5), (6) and (7) of the Arbitration Act 1996 shall apply to arbitrations conducted in accordance with the Scheme, modified as shown in sub-paragraphs (2) to (7).

(2) References in this Part to an application, appeal or other step in relation to legal proceedings being taken “upon notice” to the other party to the arbitral proceedings, or to the arbitrator, or to the LRA, are to such notice of the originating process as is required by rules of court and do not impose any separate requirement.

(3) Rules of court shall be made—

- (a) requiring such notice to be given as indicated by any provision of this Part, and
- (b) as to the manner, form and content of any such notice.

(4) References in this Part to making an application or appeal to the court within a specified period are to the issue within that period of the appropriate originating process in accordance with rules of court.

(5) Where any provision of this Part requires an application or appeal to be made to the court within a specified time, the rules of court relating to the reckoning of periods, the extending or abridging of periods, and the consequences of not taking a step within the period prescribed by the rules, apply in relation to that requirement.

(6) Provision may be made by rules of court amending the provisions of this Part—

- (a) with respect to the time within which any application or appeal to the court must be made,
- (b) so as to keep any provision made by this Part in relation to arbitral proceedings in step with the corresponding provision of rules of court applying in relation to proceedings in the court, or
- (c) so as to keep any provision made by this Part in relation to legal proceedings in step with the corresponding provision of rules of court applying generally in relation to proceedings in the court.

(7) Nothing in this section affects the generality of the power to make rules of court.

#### **Service of documents and notices to the LRA**

120. Any notice or other document required or authorised to be given or served on the LRA for the purposes of the arbitral proceedings shall be—

- (a) sent by pre-paid post to the following address:  
The Arbitration Secretary  
Labour Relations Agency  
2-16 Gordon Street  
Belfast  
BT1 2LG

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- or such other address as the LRA may notify to the parties;
- (b) transmitted by facsimile, addressed to the Arbitration Secretary, at the number stipulated in the LRA Guide to the Scheme; or
- (c) by electronic means, as stipulated from time to time in the LRA Guide to the Scheme.

### **Service of documents or notices on any other person or entity (other than the LRA)**

121. Any notice or other document required or authorised to be given or served on any person or body (other than the LRA) for the purposes of the arbitral proceedings may be served by any effective means.

122. If such a notice or other document is addressed, pre-paid and delivered by post:

- (a) to the addressee's last known principal residence or, if he or she is or has been carrying on a trade, profession or business, his or her last known principal business address; or
- (b) where the address is a body corporate, to the body's registered or principal office,

it shall be treated as effectively served.

### **Powers of court in relation to service of documents**

123.—(1) Section 77 of the Arbitration Act 1996(13) shall apply to arbitrations conducted in accordance with the Scheme, modified as shown in sub-paragraphs (2) to (5).

(2) This section applies where service of a document on a person is not reasonably practicable.

(3) The High Court or the county court may make such order as it thinks fit—

- (a) for service in such manner as the court may direct, or
- (b) dispensing with service of the document.

(4) The LRA or any party to the arbitration agreement may apply for an order, but only after exhausting any available arbitral process for resolving the matter.

(5) The leave of the court is required for any appeal from a decision of the court under this section.

### **Reckoning periods of time**

124.—(1) Sections 78(2), (3), (4) and (5) of the Arbitration Act 1996 shall apply to arbitrations conducted in accordance with the Scheme, modified as shown in sub-paragraphs (2) to (6).

(2) Periods of time provided for in any provision of this Part shall be reckoned in accordance with the following provisions.

(3) Where the act is required to be done within a certain number of days of or from an event, the date of that event shall not be included in the calculation..

(4) Where the act is required to be done a certain number of days before or after an event, the date of that event shall not be included in the calculation.

(5) Where the act is required to be done within a certain period ending upon a Sunday or a public holiday, that period ends on the first day following that is not a Sunday or a public holiday.

(6) A “public holiday” means Christmas Day, Good Friday or a day which under the Banking and Financial Dealings Act 1971 is a bank holiday.

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## PART XXV

### Territorial operation of the Scheme

#### **Territorial application**

125. The Scheme applies to disputes involving a respondent who resides or carries on business in Northern Ireland.