



# Employment Rights (Dispute Resolution) Act 1998

## 1998 CHAPTER 8

### PART II

#### OTHER METHODS OF DISPUTE RESOLUTION

##### *Arbitration*

#### 7 ACAS arbitration scheme

After section 212 of the Trade Union and Labour Relations (Consolidation) Act 1992 insert—

##### **“212A Arbitration scheme for unfair dismissal cases etc**

- (1) ACAS may prepare a scheme providing for arbitration in the case of disputes involving proceedings, or claims which could be the subject of proceedings, before an employment tribunal arising out of a contravention or alleged contravention of—
  - (a) Part X of the Employment Rights Act 1996 (unfair dismissal), or
  - (b) any enactment specified in an order made by the Secretary of State.
- (2) When ACAS has prepared such a scheme it shall submit a draft of the scheme to the Secretary of State who, if he approves it, shall make an order—
  - (a) setting out the scheme, and
  - (b) making provision for it to come into effect.
- (3) ACAS may from time to time prepare a revised version of such a scheme and, when it has done so, shall submit a draft of the revised scheme to the Secretary of State who, if he approves it, shall make an order—
  - (a) setting out the revised scheme, and
  - (b) making provision for it to come into effect.

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- (4) ACAS may take any steps appropriate for promoting awareness of a scheme prepared under this section.
- (5) Where the parties to any dispute within subsection (1) agree in writing to submit the dispute to arbitration in accordance with a scheme having effect by virtue of an order under this section, ACAS shall refer the dispute to the arbitration of a person appointed by ACAS for the purpose (not being an officer or employee of ACAS).
- (6) Nothing in the Arbitration Act 1996 shall apply to an arbitration conducted in accordance with a scheme having effect by virtue of an order under this section except to the extent that the order provides for any provision of Part I of that Act so to apply; and the order may provide for any such provision so to apply subject to modifications.
- (7) A scheme set out in an order under this section may, in relation to an arbitration conducted in accordance with the law of Scotland, make provision—
- (a) that a reference on a preliminary point may be made, or
  - (b) conferring a right of appeal which shall lie,
- to the relevant court on such grounds and in respect of such matters as may be specified in the scheme; and in this subsection “relevant court” means such court, being the Court of Session or the Employment Appeal Tribunal, as may be specified in the scheme, and a different court may be specified as regards different grounds or matters.
- (8) Where a scheme set out in an order under this section includes provision for the making of re-employment orders in arbitrations conducted in accordance with the scheme, the order setting out the scheme may require employment tribunals to enforce such orders—
- (a) in accordance with section 117 of the Employment Rights Act 1996 (enforcement by award of compensation), or
  - (b) in accordance with that section as modified by the order.
- For this purpose “re-employment orders” means orders requiring that persons found to have been unfairly dismissed be reinstated, re-engaged or otherwise re-employed.
- (9) An order under this section setting out a scheme may provide that, in the case of disputes within subsection (1)(a), such part of an award made in accordance with the scheme as is specified by the order shall be treated as a basic award of compensation for unfair dismissal for the purposes of section 184(1)(d) of the Employment Rights Act 1996 (which specifies such an award as a debt which the Secretary of State must satisfy if the employer has become insolvent).
- (10) An order under this section shall be made by statutory instrument.
- (11) No order shall be made under subsection (1)(b) unless a draft of the statutory instrument containing it has been laid before Parliament and approved by a resolution of each House.
- (12) A statutory instrument containing an order under this section (other than one of which a draft has been approved by resolution of each House of Parliament) shall be subject to annulment in pursuance of a resolution of either House of Parliament.”

## 8 Effect of arbitration agreements

- (1) In section 77 of the Sex Discrimination Act 1975 (subsection (3) of which prohibits contracting out of the provisions of that Act or the Equal Pay Act 1970, but subject to exceptions specified in subsection (4)), after subsection (4C) insert—

“(4D) An agreement under which the parties agree to submit a dispute to arbitration—

- (a) shall be regarded for the purposes of subsection (4)(a) and (aa) as being a contract settling a complaint if—
  - (i) the dispute is covered by a scheme having effect by virtue of an order under section 212A of the Trade Union and Labour Relations (Consolidation) Act 1992, 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 a contract in any other case.”

- (2) In section 72 of the Race Relations Act 1976 (subsection (3) of which prohibits contracting out of the provisions of that Act, but subject to exceptions specified in subsection (4)), after subsection (4C) insert—

“(4D) An agreement under which the parties agree to submit a dispute to arbitration—

- (a) shall be regarded for the purposes of subsection (4)(a) and (aa) as being a contract settling a complaint if—
  - (i) the dispute is covered by a scheme having effect by virtue of an order under section 212A of the Trade Union and Labour Relations (Consolidation) Act 1992, 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 a contract in any other case.”

- (3) In section 288 of the Trade Union and Labour Relations (Consolidation) Act 1992 (subsection (1) of which prohibits contracting out of the provisions of that Act, but subject to exceptions specified in subsections (2) and (2A)), after subsection (5) insert—

“(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.”

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- (4) In section 9 of the Disability Discrimination Act 1995 (subsection (1) of which prohibits contracting out of the provisions of Part II of that Act, but subject to exceptions specified in subsection (2)), after subsection (5) insert—

“(6) An agreement under which the parties agree to submit a dispute to arbitration—

- (a) shall be regarded for the purposes of subsection (2) as being an agreement not to institute, or an agreement not to continue, proceedings if—
  - (i) the dispute is covered by a scheme having effect by virtue of an order under section 212A of the Trade Union and Labour Relations (Consolidation) Act 1992, and
  - (ii) the agreement is to submit it to arbitration in accordance with the scheme, but
- (b) shall be regarded as neither being nor including such an agreement in any other case.”

- (5) In section 203 of the Employment Rights Act 1996 (subsection (1) of which prohibits contracting out of the provisions of that Act, but subject to exceptions specified in subsection (2)), after subsection (4) insert—

“(5) An agreement under which the parties agree to submit a dispute to arbitration—

- (a) shall be regarded for the purposes of subsection (2)(e) and (f) 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 of the Trade Union and Labour Relations (Consolidation) Act 1992, and
  - (ii) the agreement is to submit it to arbitration in accordance with the scheme, but
- (b) shall be regarded as neither being nor including such an agreement in any other case.”

### *Compromise agreements*

## **9 Advice of non-lawyer**

- (1) In each of the provisions specified in subsection (2) (which provide that, for a compromise agreement to be valid, independent legal advice must have been received from a qualified lawyer), for “independent legal advice from a qualified lawyer” substitute “advice from a relevant independent adviser”.

- (2) The provisions referred to in subsection (1) are—

- (a) section 77(4A)(c) of the Sex Discrimination Act 1975,
- (b) section 72(4A)(c) of the Race Relations Act 1976,
- (c) section 288(2B)(c) of the Trade Union and Labour Relations (Consolidation) Act 1992,
- (d) section 9(3)(a) of the Disability Discrimination Act 1995, and
- (e) section 203(3)(c) of the Employment Rights Act 1996.

## **10 Indemnity cover**

- (1) In each of the provisions specified in subsection (2) (which provide that, for a compromise agreement to be valid, there must have been in force a policy of insurance covering the risk of a claim against the person who provided the advice about the agreement), for “policy of insurance” substitute “contract of insurance, or an indemnity provided for members of a profession or professional body”.
- (2) The provisions referred to in subsection (1) are—
  - (a) section 77(4A)(d) of the Sex Discrimination Act 1975,
  - (b) section 72(4A)(d) of the Race Relations Act 1976,
  - (c) section 288(2B)(d) of the Trade Union and Labour Relations (Consolidation) Act 1992,
  - (d) section 9(3)(b) of the Disability Discrimination Act 1995, and
  - (e) section 203(3)(d) of the Employment Rights Act 1996.

### *Other provisions*

## **11 Settlements of redundancy cases**

- (1) In section 18(1) of the Employment Tribunals Act 1996 (which specifies the proceedings in relation to which the provisions about conciliation apply), in paragraph (d) (proceedings under the Employment Rights Act 1996), for “or 92,” substitute “, 92 or 135,”.
- (2) In section 166(2) of the Employment Rights Act 1996 (which defines “employer’s payment” for the purposes of the provisions requiring the Secretary of State to make a payment to an employee whose employer is liable to pay him an employer’s payment), after paragraph (a) insert—
  - “(aa) a payment which his employer is liable to make to him under an agreement to refrain from instituting or continuing proceedings for a contravention or alleged contravention of section 135 which has effect by virtue of section 203(2)(e) or (f), or”.
- (3) In section 168(1) of that Act (which specifies the amount which the Secretary of State is required to pay in respect of an employer’s payment), after paragraph (a) insert—
  - “(aa) where the employer’s payment to which the employee’s application under section 166 relates is a payment which his employer is liable to make to him under an agreement having effect by virtue of section 203(2)(e) or (f), is a sum equal to the amount of the employer’s payment or of any redundancy payment which the employer would have been liable to pay to the employee but for the agreement, whichever is less, and”.

## **12 Dismissal procedures agreements**

- (1) In section 110 of the Employment Rights Act 1996 (which provides that the statutory right not to be unfairly dismissed does not apply to employees covered by a designated dismissal procedures agreement), for subsection (2) (which provides that the statutory right nevertheless applies in the case of dismissals specified in certain statutory provisions) substitute—

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- “(2) But if the agreement includes provision that it does not apply to dismissals of particular descriptions, subsection (1) does not apply in relation to a dismissal of any such description.”
- (2) In subsection (3) of that section (which specifies the matters as to which the Secretary of State must be satisfied before designating a dismissal procedures agreement), for paragraph (e) (which requires a dismissal procedures agreement to provide for arbitration or independent adjudication where a decision cannot otherwise be reached) substitute—
- “(e) the agreement includes provision either for arbitration in every case or for—
- (i) arbitration where (by reason of equality of votes or for any other reason) a decision under the agreement cannot otherwise be reached, and
  - (ii) a right to submit to arbitration any question of law arising out of such a decision, and”.
- (3) After subsection (5) of that section insert—
- “(6) Where an award is made under a designated dismissal procedures agreement—
- (a) in England and Wales it may be enforced, by leave of a county court, in the same manner as a judgment of the court to the same effect and, where leave is given, judgment may be entered in terms of the award, and
  - (b) in Scotland it may be recorded for execution in the Books of Council and Session and shall be enforceable accordingly.”
- (4) In section 184 of that Act (which specifies the debts which the Secretary of State must satisfy if an employer has become insolvent), in subsection (1)(d) (which specifies a basic award of compensation for unfair dismissal payable by the employer), after “dismissal” insert “or so much of an award under a designated dismissal procedures agreement as does not exceed any basic award of compensation for unfair dismissal to which the employee would be entitled but for the agreement”.
- (5) The amendments made by subsections (1) and (2) do not affect any dismissal procedures agreement designated by the Secretary of State before those subsections come into force.