

SCHEDULE

THE LABOUR RELATIONS AGENCY (FLEXIBLE WORKING) ARBITRATION SCHEME XXII CHALLENGING THE AWARD

Challenges on grounds of substantive jurisdiction

113. –

(1) *Section 67 of the Arbitration Act 1996(1) shall apply to arbitrations conducted in accordance with the Scheme, subject to the following modifications.*

(2) *In subsection (1)–*

(a) *for “(upon notice to the other parties and to the tribunal) apply to the court” substitute “(upon notice to the other party, to the arbitrator and to the Labour Relations Agency) apply to the High Court or the Belfast Recorder’s Court”;*

(b) *for “(see section 73)” substitute “(see section XXIII of the Scheme)”;*

(c) *after “section 70(2) and (3)” insert “as modified for the purposes of the Scheme”.*

(3) *After subsection (1) insert–*

“(1A) 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 (Flexible Working) Arbitration Scheme Order (Northern Ireland) 2006; 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*

(1) 1996 c. 23;

Section 67 of the Arbitration Act 1996 provides as follows:

“67. –

(1) A party to the arbitral proceedings may (upon notice to the other parties and to the tribunal) apply to the 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 section 73) and the right to apply is subject to the restrictions in section 70(2) and (3).

(2) 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.

(3) 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.

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

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- (c) *the matters which have been submitted to arbitration in accordance with the Arbitration Agreement.*”.

Challenges for serious irregularity

114. –

(1) *Section 68 of the Arbitration Act 1996(2) shall apply to arbitrations conducted in accordance with the Scheme, subject to the following modifications.*

(2) *In subsection (1)–*

- (a) *for “(upon notice to the other parties and to the tribunal) apply to the court” substitute “(upon notice to the other party, to the arbitrator and to the Labour Relations Agency) apply to the High Court or Belfast Recorder’s Court”;*
- (b) *for “(see section 73)” substitute “(see Part XXIII of the Scheme)”;*
- (c) *after “section 70(2) and (3)” insert “as modified for the purposes of the Scheme”.*

(3) *In subsection (2)–*

(2) [1996 c. 23](#);

Section 68 of the Arbitration Act provides as follows:

“68. –

(1) A party to arbitral proceedings may (upon notice to the other parties and to the tribunal) apply to the 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 section 73) and the right to apply is subject to the restrictions in section 70(2) and (3).

(2) 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 section 33 (general duty of tribunal);
- (b) the tribunal exceeding its powers (otherwise than by exceeding its substantive jurisdiction: see section 67);
- (c) failure by the tribunal to conduct the proceedings in accordance with the procedure agreed by the parties;
- (d) failure by the tribunal to deal with all the issues that were put to it;
- (e) any arbitral or other institution or person vested by the parties with powers in relation to the proceedings or the award 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) failure to comply with the requirement as to the form of the award; or
- (i) any irregularity in the conduct of the proceedings or in the award which is admitted by the tribunal or by any arbitral or other institution or person vested by the parties with powers in relation to the proceedings or the award.

(3) 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) set the award aside in whole or in part, or
- (c) declare the award to be of no effect, in whole or in part.

The court shall not exercise its power to set aside or to declare an award to be of no effect, in whole or in part, unless it is satisfied that it would be inappropriate to remit the matters in question to the tribunal for reconsideration.

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

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- (a) in paragraph (a) for “section 33 (general duty of tribunal)” substitute “Part IX of the Scheme (General Duty of the Arbitrator)”;
 - (b) in paragraph (b) after “see section 67” insert “as modified for the purposes of the Scheme”;
 - (c) in paragraph (c) for “agreed by the parties” substitute “as set out in the Scheme”;
 - (d) in paragraph (e) for “any arbitral or other institution or person vested by the parties with powers in relation to the proceedings or the award” substitute “the Labour Relations Agency”;
 - (e) in paragraph (g) after “;” insert “or”;
 - (f) omit paragraph (h);
 - (g) in paragraph (i) for “any arbitral or other institution or person vested by the parties with powers in relation to the proceedings or the award” substitute “the Labour Relations Agency”.
- (4) In subsection (3)–
- (a) in paragraph (b) insert “vary the award or” before “set the award aside”;
 - (b) omit “The court shall not exercise its power to set aside or to declare an award to be of no effect, in whole or in part, unless it is satisfied that it would be inappropriate to remit the matters in question to the tribunal for reconsideration.”.
- (5) After subsection (4) insert–
- “(5) In this section, “the Scheme” means the arbitration scheme set out in the Schedule to the Labour Relations Agency (Flexible Working) Arbitration Scheme Order (Northern Ireland) 2006.”.

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

115. –

(1) Section 69 of the Arbitration Act 1996(3) shall apply to arbitrations conducted in accordance with the Scheme, subject to the following modifications.

- (3) [1996 c. 23](#);
Section 69 of the Arbitration Act 1996 provides as follows:

“69. –

(1) Unless otherwise agreed by the parties, a party to arbitral proceedings may (upon notice to the other parties and to the tribunal) appeal to the court on a question of law arising out of an award made in the proceedings.

An agreement to dispense with reasons for the tribunal’s award shall be considered an agreement to exclude the court’s jurisdiction under this section.

(2) 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).

(3) 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 the question is one which the tribunal was asked to determine,
- (c) that, on the basis of the findings of fact in the award–
 - (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

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- (2) *In subsection (1)–*
- (a) *omit “Unless otherwise agreed by the parties,”;*
 - (b) *for “(upon notice to the other parties and to the tribunal) appeal to the court” substitute “(upon notice to the other party, to the arbitrator and to the Labour Relations Agency) appeal to the High Court or the Belfast Recorder’s Court”;*
 - (c) *for “a question of law” substitute “a question (a) of EC law, or (b) concerning the application of the Human Rights Act 1998”;*
 - (d) *omit “An agreement to dispense with reasons for the tribunal’s award shall be considered an agreement to exclude the court’s jurisdiction under this section.”.*
- (3) *In subsection (2) after “section 70(2) and (3)” insert “as modified for the purposes of the Scheme”.*
- (4) *In subsection (3)–*
- (a) *omit paragraph (b);*
 - (b) *in paragraph (c) after the words “on the basis of the findings of fact in the award” insert “, 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”.*
- (5) *In subsection (7) omit “The court shall not exercise its power to set aside an award, in whole or in part, unless it is satisfied that it would be inappropriate to remit the matters in question to the tribunal for reconsideration.”.*
- (6) *After subsection (8) insert–*
- “(9) *In this section–*
- “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*

(d) 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.

(4) 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.

(5) 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.

(6) 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.

(7) 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.

The court shall not exercise its power to set aside an award, in whole or in part, unless it is satisfied that it would be inappropriate to remit the matters in question to the tribunal for reconsideration.

(8) 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.”

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(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 (Flexible Working) Arbitration Scheme Order (Northern Ireland) 2006.”.

Time limits and other procedural restrictions on challenges to awards

116. –

(1) Section 70 of the Arbitration Act 1996(4) shall apply to arbitrations conducted in accordance with the Scheme, subject to the following modifications.

(2) In subsection (1) after “section 67, 68 or 69” insert “(as modified for the purposes of the Scheme)”.

(3) In subsection (2)–

(a) omit paragraph (a);

(b) in paragraph (b) for “section 57 (correction of award or additional award)” substitute “section XX of the Scheme (Correction of Awards)”.

(4) 1996 c. 23;

Section 70 of the Arbitration Act 1996 provides as follows:

“70. –

(1) The following provisions apply to an application or appeal under section 67, 68 or 69.

(2) An application or appeal may not be brought if the applicant or appellant has not first exhausted–

(a) any available arbitral process of appeal or review, and

(b) any available recourse under section 57 (correction of award or additional award).

(3) Any application or appeal must be brought within 28 days of the date of the award or, if there has been any arbitral process of appeal or review, of the date when the applicant or appellant was notified of the result of that process.

(4) 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.

(5) Where the court makes an order under subsection (4), it may make such further order as it thinks fit with respect to any additional costs of the arbitration resulting from its order.

(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).

This does not affect the general discretion of the court to grant leave subject to conditions.”

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(4) In subsection (3) for “of the award or, if there has been any arbitral process of appeal or review, of the date when the applicant or appellant was notified of the result of that process” substitute “the award was despatched to the applicant or appellant by the Labour Relations Agency”.

(5) Omit subsection (5).

(6) After subsection (8) insert–

“(9) In this section, “the Scheme” means the arbitration scheme set out in the Schedule to the Labour Relations Agency (Flexible Working) Arbitration Scheme Order (Northern Ireland) 2006.”.

Common law challenges and saving

117. Sections 81(1)(c) and 81(2) of the Arbitration Act 1996(5) shall apply to arbitrations conducted in accordance with the Scheme.

Challenge or appeal: effect of order of the court

118. –

(1) Section 71 of the Arbitration Act 1996(6) shall apply to arbitrations conducted in accordance with the Scheme, subject to the following modifications.

(2) In subsection (1) after “section 67, 68 and 69” insert “(as modified for the purposes of the Scheme)”.

(3) After subsection (3) insert–

“(3A) In this section, “the Scheme” means the arbitration scheme set out in the Schedule to the Labour Relations Agency (Flexible Working) Arbitration Scheme Order (Northern Ireland) 2006.”.

(4) Omit subsection (4).

(5) [1996 c. 23](#);

Sections 81(1)(c) and 81(2) of the Arbitration Act 1996 provide as follows:

“**81.** –

(1) 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–

... ..

(c) the refusal of recognition or enforcement of an arbitral award on grounds of public policy.

(2) 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.”

(6) [1996 c. 23](#);

Section 71 of the Arbitration Act 1996 provides as follows:

“**71.** –

(1) The following provisions have effect where the court makes an order under section 67, 68 or 69 with respect to an award.

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

(3) 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.

(4) Where the award is set aside or declared to be of no effect, in whole or in part, the court may also order that any provision that an award is a condition precedent to the bringing of legal proceedings in respect of a matter to which the arbitration agreement applies, is of no effect as regards the subject matter of the award or, as the case may be, the relevant part of the award.”

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Changes and effects yet to be applied to the whole Rule associated Parts and Chapters:

- Order revoked with savings by [S.R. 2012/301 art. 3\(1\)](#)