STATUTORY INSTRUMENTS

2004 No. 2333

TERMS AND CONDITIONS OF EMPLOYMENT

The ACAS (Flexible Working) Arbitration Scheme (Great Britain) Order 2004

Made	-				6
Laid before Parliament					9
Coming	g into	force			

6th September 2004 9th September 2004 1st October 2004

THE ACAS (FLEXIBLE WORKING) ARBITRATION SCHEME (GREAT BRITAIN) ORDER 2004

- 1. Citation, commencement, interpretation and extent
- 2. Commencement of the Scheme
- 3. Revocation
- 4. Application of Part I of the Arbitration Act 1996
- 5. (1) Section 46(1)(b) of the Arbitration Act 1996 shall apply...
- 6. Transitional provision Signature

SCHEDULE — ACAS (FLEXIBLE WORKING) ARBITRATION SCHEME — CONTENTS PART I — INTRODUCTION

- The ACAS (Flexible Working) Arbitration Scheme ("the Scheme") is
 - implemented...
- 2. The Scheme provides a voluntary alternative, in the form of...
- 3. Resolution of disputes under the Scheme is intended to be...
- 4. The Scheme also caters for requirements imposed as a matter...
- 5. The Scheme accommodates certain differences between the law of Scotland...
 - PART II THE ROLE OF ACAS
- 6. As more fully explained below, cases enter the Scheme by...
- 7. Routing of communications
- 8. Paragraph 169 below sets out the manner in which any... PART III — TERMS AND ABBREVIATIONS
- 9. The term "Employee" is used to denote the claimant, including...

- 10. The term "Employer" is used to denote the respondent.
- 11. The term "devolution issue" means a devolution issue as defined...
- 12. The term "EC law" means: (i) any enactment in the...
- 13. The term "English/Welsh arbitration" means an arbitration under this Scheme...
- 14. The term "Flexible Working Claim" means a claim by the...
- 15. The term "Scottish arbitration" means an arbitration under this Scheme...
- 16. With the exception of paragraphs 26 ("Requirements for entry into... PART IV — APPLICATION OF THE SCHEME
- 17. Paragraphs 46EW, 47EW, 48EW, 49EW, 50EW, 51EW, 52EW, 53EW, 108EW,...

PART V — ARBITRATOR'S TERMS OF REFERENCE

- Every agreement to refer a dispute to arbitration under this...
 PART VI SCOPE OF THE SCHEME
- 19. Cases that are covered by the Scheme
- 20. The Scheme does not extend to other kinds of claim...
- 21. If a Flexible Working Claim has been referred for resolution...
- 22. Waiver of jurisdictional issues
- 23. Accordingly, when agreeing to refer a dispute to arbitration under...
- 24. Inappropriate cases PART VII — ACCESS TO THE SCHEME
- 25. The Scheme is an entirely voluntary system of dispute resolution:...
- 26. Requirements for entry into the Scheme
- 27. Where an agreement fails to satisfy any one of these...
- 28. Where: (i) a dispute concerning a Flexible Working Claim as...
- 29. Notification to ACAS of an Arbitration Agreement
- 30. For the purposes of the previous paragraph, an Arbitration Agreement...
- 31. Where an Arbitration Agreement is not notified to ACAS within...
- 32. Any such hearing and award will be governed by the...
- Consolidation of proceedings PART VIII — SETTLEMENT AND WITHDRAWAL FROM THE SCHEME
- 34. Withdrawal by the Employee
- 35. Withdrawal by the Employer
- 36. Settlement
- 37. If such an agreement is reached: (i) upon the joint...
- 38. An agreed award shall state that it is an award...
- 39. If the agreement settling the dispute includes an agreement that...
- 40. Subject to paragraph 39, in rendering an agreed award, the... PART IX — APPOINTMENT OF AN ARBITRATOR
- 41. The ACAS Arbitration Panel
- 42. Appointment to a case
- 43. Once ACAS has been notified of a valid Arbitration Agreement,...
- 44. Arbitrator's duty of disclosure
- 45. Once appointed, and until the arbitration is concluded, every arbitrator...
- 46EW Removal of arbitrators: English/Welsh arbitrations
- 47EW Applications under the Scheme to remove an arbitrator on any...
- 48EW At the same time as an application is made to...
- 49EW ACAS shall, following receipt of an application under paragraph 47EW,...
- 50EW ACAS may, after such procedures as ACAS in its sole...
- 51EW If ACAS refuses an application made under paragraph 47EW, a...
- 52EW Sections 24(1)(a) and (c), 24(2), 24(3), 24(5) and 24(6) of...
- 53EW The arbitrator may continue the proceedings and make an award...
- 54S Removal of arbitrators: Scottish arbitrations

- 55S An application under the Scheme to remove an arbitrator shall...
- 56S ACAS shall, following receipt of an application under paragraph 55S,...
- 57S ACAS may, after such procedure as ACAS in its sole...
- 58S A decision of ACAS made under paragraph 57S shall be...
- 59S The arbitrator may continue the proceedings and make an award...
- 60. Death of an arbitrator
- 61. Replacement of arbitrators
- 62. Once appointed, the replacement arbitrator shall determine whether and, if...
 - PART X GENERAL DUTY OF THE ARBITRATOR
- 63. The arbitrator shall— (i) act fairly and impartially as between...
- 64. The arbitrator shall comply with the general duty (see paragraph... PART XI — GENERAL DUTY OF THE PARTIES
- 65. The parties shall do all things necessary for the proper... PART XII — CONFIDENTIALITY AND PRIVACY
- 66. Arbitrations, and all associated procedures under the Scheme, are strictly...
- 67. Hearings may only be attended by the arbitrator, the parties,... PART XIII — ARRANGEMENTS FOR THE HEARING
- 68. Initial arrangements
- 69. Once an arbitrator has been appointed by ACAS, a hearing...
- 70. The arbitrator shall decide the date and venue for the...
- 71. The ACAS Arbitration Section shall contact all parties with details...
- 72. Expedited hearings
- 73. Venue
- 74. Where premises have to be hired for a hearing, ACAS...
- 75. Assistance
- 76. Travelling expenses / loss of earnings
- 77. No loss of earnings are payable by ACAS to anyone...
- 78. Applications for postponements of, or different venues for, initial hearings
- 79. If the application is rejected, the initial hearing will be...
- 80. This provision does not affect the arbitrator's general discretion (set... PART XIV — NON-COMPLIANCE WITH PROCEDURE
- 81. If a party fails to comply with any aspect of...
 - PART XV OUTLINE OF PROCEDURE BEFORE THE HEARING
- 82. Once a hearing has been fixed, the following procedure shall...
- 83. Written materials
- 84. Written statements of case should briefly set out the main...
- 85. Supporting documentation or other material may include (without limitation) copies...
- 86. The parties must also supply details of any relevant awards...
- 87. Legible copies of documents must be supplied to ACAS even...
- 88. No information on the conciliation process, if any, shall be...
- 89. Submissions, evidence and witnesses not previously notified
- 90. All representatives and witnesses who have been listed as accompanying...
- 91. Requests for documents
- 92. Requests for attendance of witnesses
- 93. Preliminary hearings and directions
- 94. In the course of a preliminary hearing or in correspondence,...
- PART XVI OUTLINE OF PROCEDURE AT THE HEARING
- 95. Arbitrator's overall discretion
- 96. Language
- 97. Witnesses
- 98. Examination by the arbitrator

- 99. Representatives
- 100. Strict rules of evidence
- 101. Non-attendance at the hearing
- 102. In the case of the non-attendance of the Employee, if...
- 103. Post-hearing written materials
 PART XVII QUESTIONS OF EC LAW, THE HUMAN RIGHTS ACT 1998
 AND DEVOLUTION ISSUES
- 104. Appointment of legal adviser
- 105. The legal adviser will be appointed by ACAS, to report...
- 106. The arbitrator shall allow the legal adviser to attend the...
- 107. The parties shall be given a reasonable opportunity to comment...
- 108EW Court determination of preliminary points: English/Welsh arbitrations
 - 1098 Court determination of preliminary points: Scottish arbitrations
 - 110S The arbitrator shall not make a reference under paragraph 109S... PART XVIII — AWARDS
- 111EW Form of the award: English/Welsh arbitrations
- 112EW The award in an English/Welsh arbitration (unless it is an...
- 113EW If the award contains an order for payment of money...
 - 114S Form of the award: Scottish arbitrations
 - 115S If the award contains an order for the payment of...
 - 116S The arbitrator shall issue with his award (unless it is...
 - 117. Remedies PART XIX — AWARDS OF COMPENSATION
 - 118. Subject to paragraph 119 below, when an arbitrator makes an...
 - 119. When an arbitrator makes an award of compensation in respect...
 - 120. In calculating the amount of a week's pay of an...

PART XX — ISSUE OF AWARDS AND CONFIDENTIALITY

- 121. The arbitrator's award shall be sent by ACAS to both...
- 122. Subject to any steps which may be reasonably necessary for... PART XXI — CORRECTION OF AWARDS
- 123. Scrutiny of awards by ACAS
- 124. Correction by the arbitrator
- 125. In so far as any such correction or additional award...
- 126. Any application by a party for the exercise of this...
- 127. Any correction of the award shall be made within 28...
- 128. Any additional award shall be made within 56 days of...
- 129EW Any additional award in an English/Welsh arbitration shall so far...
- 130S Any additional award in a Scottish arbitration shall so far...
- 131. Any correction of the award shall form part of the... PART XXII — EFFECT OF AWARDS, ENFORCEMENT AND INTEREST
- 132. Effect of awards
- 133. This does not affect the right of a person to...
- 134. This does not affect the right of a person to...
- 135EW Enforcement
 - 136S In a Scottish arbitration any award (including any additional award,...
 - 137. Interest
 - PART XXIII CHALLENGING THE AWARD
- 138EW Challenges on grounds of substantive jurisdiction: English/Welsh arbitrations
 - 1398 Challenges on grounds of substantive jurisdiction: Scottish arbitrations
 - 140S A party may lose the right to appeal under paragraph...
 - 141S Appeals under paragraph 139S are subject to the provisions of...
 - 142S For the purposes of paragraph 139S, "substantive jurisdiction" means any...

- 1438 The arbitrator may continue the arbitral proceedings and make a...
- 144S On the appeal under paragraph 139S the Court may (without...
- 145EW Challenges for serious irregularity: English/Welsh arbitrations
- 1468 Challenges for serious irregularity: Scottish arbitrations
- 147S A party may lose the right to appeal under paragraph...
- 148S Appeals under paragraph 146S are subject to the provisions of...
- 1498 For the purpose of paragraphs 146S "serious irregularity" means an...
- 150S If there is shown to be serious irregularity affecting the...
- 151EW Appeals on questions of EC law, the Human Rights Act 1998 and devolution issues: English/Welsh arbitrations
 - 152S Appeals on questions of EC law, the Human Rights Act 1998 and devolution issues: Scottish arbitrations
 - 1538 An appeal shall not be brought under paragraph 152S except—...
 - 154S Leave to appeal shall be given only if the Court...
 - 1558 On an appeal under paragraph 1528 the Court may (without...
- 156EW Time limits and other procedural restrictions on challenges to awards: English/Welsh arbitrations
 - 1578 Time limits and other procedural restrictions on challenges to awards: Scottish Arbitrations
 - 158S An appeal under paragraphs 139S, 146S or (where parties have...
 - 1598 If on an appeal under paragraph 1398, 1468 or 1528...
- 160EW Common law challenges and saving
- 161S Nothing in this Part of the Scheme shall be construed...
- 162S Exclusion of stated case procedure
- 163EW Challenge or appeal: effect of order of the court
- 164S The following provisions have effect where the Court makes an... PART XXIV — LOSS OF RIGHT TO OBJECT
 - 165. If a party to arbitral proceedings under this Scheme takes... PART XXV — IMMUNITY
 - 166. An arbitrator under this Scheme is not liable for anything...
 - 167. ACAS, by reason of having appointed an arbitrator or nominated... PART XXVI — MISCELLANEOUS PROVISIONS
- 168EW Requirements in connection with legal proceedings
 - 169. Service of documents and notices on ACAS or the ACAS Arbitration Section
 - 170. Paragraph 169 does not apply to the service of documents...
 - 171. Service of documents or notices on any other person or entity (other than ACAS or the ACAS Arbitration Section)
 - 172. If such a notice or other document is addressed, pre-paid...
 - 173. Paragraphs 171 and 172 (above) do not apply to the...
- 174EW Powers of court in relation to service of documents: English/Welsh arbitrations
- 175EW Reckoning periods of time
- 176S Except as otherwise specified in the Scheme, periods of time... PART XXVII — GOVERNING LAW, ETC
- 177EW The seat of an English/Welsh arbitration shall be in England...
 - 178S The seat of a Scottish arbitration shall be Scotland. The... APPENDIX A — WAIVER OF RIGHTS: English/Welsh Arbitrations

APPENDIX B — WAIVER OF RIGHTS: Scottish Arbitrations

Explanatory Note