

SCHEDULE

ACAS (FLEXIBLE WORKING) ARBITRATION SCHEME

PART IX

APPOINTMENT OF AN ARBITRATOR

The ACAS Arbitration Panel

41. Arbitrators are selected to serve on the ACAS Arbitration Panel on the basis of their practical knowledge and experience of employment issues in the workplace. They are recruited through an open recruitment exercise, and appointed to the Panel on the basis of standard terms of appointment. It is a condition of their appointment that they exercise their duties in accordance with the terms of this Scheme. Each appointment is initially for a period of two years, although it may be renewed by ACAS, at the latter's discretion. Payment is made by ACAS on the basis of time spent in connection with arbitral proceedings.

Appointment to a case

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

43. Once ACAS 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.

Arbitrator's duty of disclosure

44. Immediately following selection (and before an appointment is confirmed by ACAS), every arbitrator shall disclose in writing to ACAS (to be forwarded to the parties) any circumstances known to him or her likely to give rise to any justifiable doubts as to his or her impartiality, or confirm in writing that there are no such circumstances.

45. Once appointed, and until the arbitration is concluded, every arbitrator shall be under a continuing duty forthwith to disclose to ACAS (to be forwarded to the parties) any such circumstances which may have arisen since appointment.

Removal of arbitrators: English/Welsh arbitrations

46EW. An arbitrator in an English/Welsh arbitration may only be removed by ACAS or the court (under the provisions in paragraphs 47EW to 52EW below).

47EW. Applications under the Scheme to remove an arbitrator on any of the grounds set out in sections 24(1)(a) and (c) of the Arbitration Act 1996 or on the basis that such removal has been agreed by both parties, shall be made in the first instance to ACAS (addressed to the ACAS Arbitration Section).

48EW. At the same time as an application is made to ACAS to remove an arbitrator a copy of the application shall be sent to the other party to the arbitration and to the arbitrator.

49EW. ACAS shall, following receipt of an application under paragraph 47EW, give the other party to the arbitration and the arbitrator such opportunity as ACAS in its sole discretion may consider appropriate to comment on the application.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

50EW. ACAS may, after such procedures as ACAS in its sole discretion may consider appropriate, remove the arbitrator.

51EW. If ACAS refuses an application made under paragraph 47EW, a party may thereafter apply to the court.

52EW. Sections 24(1)(a) and (c), 24(2), 24(3), 24(5) and 24(6) of the Arbitration Act 1996(1) shall apply to English/Welsh arbitrations conducted in accordance with the Scheme, subject to the following modifications —

- (i) In subsection (1) for “(upon notice to the other parties, to the arbitrator concerned and to any other arbitrator) apply to the court” substitute “(upon notice to the other party, to the arbitrator concerned and to the Advisory, Conciliation and Arbitration Service (“ACAS”)) apply to the High Court or Central London County Court”.
- (ii) In subsection (2)—
 - (a) omit “If there is an arbitral or other institution or person vested by the parties with power to remove an arbitrator;”;
 - (b) for “that institution or person” substitute “ACAS”.

53EW. The arbitrator may continue the proceedings and make an award while an application to ACAS (as well as the court) to remove him or her is pending.

Removal of arbitrators: Scottish arbitrations

54S. An arbitrator in a Scottish arbitration may be removed by ACAS under the provisions in paragraphs 55S-58S below.

55S. An application under the Scheme to remove an arbitrator shall be made to ACAS (addressed to the ACAS Arbitration Section). At the same time as the application is sent to ACAS a copy of the application shall be sent to the other party to the arbitration and to the arbitrator.

56S. ACAS shall, following receipt of an application under paragraph 55S, give the other party to the arbitration and the arbitrator such opportunity as ACAS in its sole discretion may consider appropriate to comment on the application.

(1) 1996 c. 23. Sections 24(1)(a) and (c), (2), (3), (5) and (6) of the Arbitration Act 1996 provide as follows:

“**24.**—(1) A party to arbitral proceedings may (upon notice to the other parties, to the arbitrator concerned and to any other arbitrator) apply to the court to remove an arbitrator on any of the following grounds —

- (a) that circumstances exist that give rise to justifiable doubts as to his impartiality;

...

- (c) that he is physically or mentally incapable of conducting the proceedings or there are justifiable doubts as to his capacity to do so;

...

(2) If there is an arbitral or other institution or person vested by the parties with power to remove an arbitrator, the court shall not exercise its power of removal unless satisfied that the applicant has first exhausted any available recourse to that institution or person.

(3) 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.”

57S. ACAS may, after such procedure as ACAS in its sole discretion may consider appropriate, remove the arbitrator if it is satisfied:

- (i) that both parties to the arbitration agree that the arbitrator should be removed; or
- (ii) that circumstances exist that give rise to justifiable doubts as to the impartiality of the arbitration; or
- (iii) that the arbitrator is physically or mentally incapable of conducting the proceedings or there are justifiable doubts as to his or her capacity to do so.

58S. A decision of ACAS made under paragraph 57S shall be final.

59S. The arbitrator may continue the proceedings and make an award while an application to ACAS to remove him or her is pending.

Death of an arbitrator

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

Replacement of arbitrators

61. Where an arbitrator ceases to hold office for any reason, he or she shall be replaced by ACAS in accordance with the appointment provisions above.

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