

SCHEDULE

ACAS (FLEXIBLE WORKING) ARBITRATION SCHEME

PART XVII

QUESTIONS OF EC LAW, THE HUMAN RIGHTS ACT 1998 AND DEVOLUTION ISSUES

Appointment of legal adviser

104. The arbitrator shall have the power, on the application of any party or of his or her own motion, to require the appointment of a legal adviser to assist with respect to any issue of EC law or the Human Rights Act 1998 or any devolution issue that, in the arbitrator's view and subject to paragraph 18 above (Arbitrator's Terms of Reference), might be involved and relevant to the resolution of the dispute.

105. The legal adviser will be appointed by ACAS, to report to the arbitrator and the parties, and shall be subject to the duty of disclosure set out in paragraphs 44 and 45 above.

106. The arbitrator shall allow the legal adviser to attend the proceedings, and may order an adjournment and/or change in venue to facilitate this.

107. The parties shall be given a reasonable opportunity to comment 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: English/Welsh arbitrations

108EW. *Section 45 of the Arbitration Act 1996(1) shall apply to English/Welsh arbitrations conducted in accordance with the Scheme, subject to the following modifications.*

(1) 1996 c. 23. Section 45 of the Arbitration Act 1996 provides as follows:

“**45.**—(1) Unless otherwise agreed by the parties, the court may on the application of a party to arbitral proceedings (upon notice to the other parties) determine any question of law arising in the course of the proceedings which the court is satisfied substantially affects the rights of one or more of the parties. 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 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 –

(i) that the determination of the question is likely to produce substantial savings in costs, and

(ii) that the application was made without delay.

(3) 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.

(4) Unless otherwise agreed by the parties the arbitral tribunal may continue the arbitral proceedings and make an award while an application to the court under this section is pending.

(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.

Status: This is the original version (as it was originally made).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

- (i) *In subsection (1)—*
 - (a) *for “Unless otherwise agreed by the parties, the court” substitute “The High Court or Central London County Court”;*
 - (b) *for “any question of law” substitute “any question (a) of EC law, or (b) concerning the application of the Human Rights Act 1998”, or (c) any devolution issue;*
 - (c) *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.”.*
- (ii) *Omit sub-paragraph (i) from subsection (2)(b);*
- (iii) *Omit subsection (4); and*
- (iv) *After subsection (6), insert—*
 - “(7) In this section “EC law” means –*
 - (a) *any enactment in the domestic legislation of England and Wales giving effect to rights, powers, liabilities, obligations and restrictions from time to time created or arising by or under the Community Treaties, and*
 - (b) *any such rights, powers, liabilities, obligations and restrictions which are not given effect by any such enactment.*
 - (8) *In this section “devolution issue” means a devolution issue as defined in paragraph 1 of Schedule 6 of the Scotland Act 1998 or devolution issue as defined in paragraph 1 of Schedule 8 to the Government of Wales Act 1998.”*

Court determination of preliminary points: Scottish arbitrations

109S. The arbitrator may make a reference to the Court of Session for determination as a preliminary point—

- (i) of any question of EC law,
- (ii) of any question concerning the application of the Human Rights Act 1998, or
- (iii) of any devolution issue,

which substantially affects the rights of one or more of the parties to the arbitration.

110S. The arbitrator shall not make a reference under paragraph 109S unless—

- (i) both parties have applied for or have agreed to the making of the reference; or
- (ii) if an application for the reference has been made by one party and opposed by the other party, the arbitrator is satisfied that the application has been made without delay.

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.”