
STATUTORY INSTRUMENTS

2004 No. 753

The ACAS Arbitration Scheme (Great Britain) Order 2004

Citation, commencement, interpretation and extent

1.—(1) This Order may be cited as the ACAS Arbitration Scheme (Great Britain) Order 2004 and shall come into force on 6th April 2004.

(2) In this Order—

“the 1996 Act” means the Employment Rights Act 1996;

“basic amount” means such part of an award of compensation made by an arbitrator as comprises the basic amount, determined in accordance with paragraphs 139 to 146 of the Scheme;

“English/Welsh arbitration” means an arbitration under the Scheme, which the parties have agreed shall be determined under the laws of England and Wales;

“the Scheme” means the arbitration scheme set out in the Schedule with the exception of paragraphs 52EW, 110EW, 183EW, 187EW, 194EW, 200EW, 205EW, 209EW, 212EW, 217EW, 223EW and 224EW thereof;

“Scottish arbitration” means an arbitration under the Scheme, which the parties have agreed shall be determined according to the laws of Scotland.

(3) This Order extends to Great Britain;

(4) Paragraphs in the Schedule marked “EW” apply only to English/Welsh arbitrations;

(5) Paragraphs in the Schedule marked “S” apply only to Scottish arbitrations;

(6) Paragraphs in the Schedule not marked “EW” or “S” apply to both English/Welsh arbitrations and Scottish arbitrations.

Commencement of the Scheme

2. The Scheme shall come into effect on 6th April 2004.

Revocation

3. Subject to article 8, the ACAS Arbitration Scheme (England and Wales) Order 2001(1) is revoked.

Application of Part I of the Arbitration Act 1996

4. The provisions of Part I of the Arbitration Act 1996(2) referred to in the Schedule at paragraphs 52EW, 110EW, 183EW, 187EW, 194EW, 200EW, 205EW, 209EW, 212EW, 217EW, 223EW and 224EW and shown in italics shall, as modified in those paragraphs, apply to English/Welsh arbitrations conducted in accordance with the Scheme.

(1) S.I.2001/1185.

(2) 1996 c. 23.

5.—(1) Section 46(1)(b) of the Arbitration Act 1996 shall apply to English/Welsh arbitrations conducted in accordance with the Scheme, subject to the following modification.

(2) For “such other considerations as are agreed by them or determined by the tribunal” in section 46(1)(b) substitute “the Terms of Reference in paragraph 17 of the arbitration scheme set out in the Schedule to the ACAS Arbitration Scheme (Great Britain) Order 2004”.

Enforcement of re-employment orders

6.—(1) Employment tribunals shall enforce re-employment orders made in arbitrations conducted in accordance with the Scheme in accordance with section 117(3) of the 1996 Act (enforcement by award of compensation), modified as follows.

(2) In subsection (1)(a), subsection (3) and subsection (8), for the words “section 113” substitute in each case “paragraph 123(i) of the Scheme”.

(3) In subsection (2) for “section 124” substitute “section 124(1) and (5) and subsections (9) and (10)”.

(4) In subsection (3)(a) for the words “sections 118 to 127A” substitute the words “sections 118 to 123, section 124(1) and (5), sections 126 and 127A and subsections (9) and (11)”.

(5) After subsection (8) insert—

“(9) Section 124(1) shall not apply to compensation awarded, or to a compensatory award made, to a person in a case where the arbitrator finds the reason (or, if more than one, the principal reason) for the dismissal (or, in a redundancy case, for which the employee was selected for dismissal) to be a reason specified in any of the enactments mentioned in section 124(1)A.

(10) In the case of compensation awarded to a person under section 117(1) and (2), the limit imposed by section 124(1) may be exceeded to the extent necessary to enable the award fully to reflect the amount specified as payable under the arbitrator’s award in accordance with paragraphs 131(i) or 134(iv) of the Scheme.

(11) Where—

- (a) a compensatory award is an award under subsection (3)(a) of section 117, and
- (b) an additional award falls to be made under subsection (3)(b) of that section, the limit imposed by section 124(1) on the compensatory award may be exceeded to the extent necessary to enable the aggregate of the compensatory award and additional awards fully to reflect the amount specified as payable under the arbitrator’s award in accordance with paragraphs 131(i) or 134(iv) of the Scheme.

(12) In this section “the Scheme” means the arbitration scheme set out in the Schedule to the ACAS Arbitration Scheme (Great Britain) Order 2004.”.

Awards of compensation

7. An award of a basic amount shall be treated as a basic award of compensation for unfair dismissal for the purposes of section 184(1)(d) of the 1996 Act(4) (which specifies such an award as a debt which the Secretary of State must satisfy if the employer has become insolvent).

(3) Section 117 was amended by the Employment Rights (Dispute Resolution) Act 1998 (c. 8), section 1(2)(a) and 14(1), Schedule 1, paragraph 20 and Schedule 2; by the Public Interest Disclosure Act 1998 (c. 23), section 8(2); and by the Employment Relations Act 1999 (c. 26), section 33 and Schedule 9. Section 117 is prospectively amended by the Employment Act 2002 (c. 22), sections 34(1) and (4) and 53, and Schedule 7, paragraphs 24 and 37.

(4) Section 184(1)(d) was amended by the Employment Rights (Dispute Resolution) Act 1998 (c. 8), section 12(4).

Transitional provision

8.—(1) The Scheme has effect in any case where the appropriate date falls on or after 6th April 2004.

(2) In a case where the appropriate date falls before 6th April 2004, the arbitration scheme set out in the Schedule to the ACAS Arbitration Scheme (England and Wales) Order 2001 continues to apply.

(3) In this article, the “appropriate date” means the date of the Arbitration Agreement. Where the parties sign the Arbitration Agreement on different dates, the appropriate date is the date of the first signature.

(4) In this article, “Arbitration Agreement” means an agreement to submit the dispute to arbitration, as defined in paragraph 26 of the Scheme.

Gerry Sutcliffe,
Parliamentary Under Secretary of State for
Employment Relations, Competition and
Consumers
Department of Trade and Industry

9th March 2004