

**2004 No. 753**

**TERMS AND CONDITIONS OF EMPLOYMENT**

**The ACAS Arbitration Scheme (Great Britain) Order 2004**

<i>Made</i> - - - - -	<i>9th March 2004</i>
<i>Laid before Parliament</i>	<i>15th March 2004</i>
<i>Coming into force</i> - -	<i>6th April 2004</i>

Whereas—

(1) Under section 212A(1) of the Trade Union and Labour Relations (Consolidation) Act 1992(a) (“the 1992 Act”) the Advisory, Conciliation and Arbitration Service (“ACAS”) may prepare a scheme providing for arbitration in the case of disputes involving proceedings, or claims which could be the subject of proceedings, before an employment tribunal arising out of a contravention or alleged contravention of Part X of the Employment Rights Act 1996(b) (unfair dismissal);

(2) In pursuance of sections 212A(1) and (3) of the 1992 Act, ACAS has prepared a revised version of an arbitration scheme for unfair dismissal cases;

(3) In pursuance of section 212A(3) of the 1992 Act, ACAS has submitted a draft of the revised scheme to the Secretary of State and the Secretary of State approves the revised scheme; Now, therefore, the Secretary of State, in exercise of the powers conferred on her by sections 212A(1), (3), (6), (7), (8) and (9) of the 1992 Act, hereby makes the following Order:—

**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;

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(a) 1992 c. 52; Section 212A was inserted by section 7 of the Employment Rights (Dispute Resolution) Act 1998 (c. 8).  
(b) 1996 c. 18.

“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(a) is revoked.

### **Application of Part I of the Arbitration Act 1996**

4. The provisions of Part I of the Arbitration Act 1996(b) 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.

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(c) 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.

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(a) S.I. 2001/1185.

(b) 1996 c. 23.

(c) 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.

(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<sup>(a)</sup> (which specifies such an award as a debt which the Secretary of State must satisfy if the employer has become insolvent).

### **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.

9th March 2004

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

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

SCHEDULE

Articles 2 and 3

ACAS ARBITRATION SCHEME

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## I. INTRODUCTION

1. The ACAS Arbitration Scheme (“the Scheme”) is implemented pursuant to section 212A of the Trade Union and Labour Relations (Consolidation) Act 1992 (“the 1992 Act”).

2. The Scheme provides a voluntary alternative to the employment tribunal for the resolution of unfair dismissal disputes, in the form of arbitration.

3. Resolution of disputes under the Scheme is intended to be confidential, informal, relatively fast and cost efficient. Procedures under the Scheme are non-legalistic, and far more flexible than the traditional model of the employment tribunal and the courts. For example (as explained in more detail below), the Scheme avoids the use of formal pleadings and formal witness and documentary procedures. Strict rules of evidence will not apply, and, as far as possible, instead of applying strict law or legal precedent, general principles of fairness and good conduct will be taken into account (including, for example, principles referred to in any relevant ACAS “Disciplinary and Grievance Procedures” Code of Practice or “Discipline and Grievances at Work” Handbook). Arbitral decisions (“awards”) will be final, with very limited opportunities for parties to appeal or otherwise challenge the result.

4. The Scheme also caters for requirements imposed as a matter of law (eg, the Human Rights Act 1998, devolution issues, existing law in the field of arbitration and EC law).

5. The Scheme accommodates certain differences between the law of Scotland and the law of England and Wales relating to arbitrations generally. It does so by providing, to the extent necessary in order to accommodate those differences, separate provisions applicable to Scottish arbitrations on the one hand and to English or Welsh arbitrations on the other. For convenience, paragraphs that apply only to Scottish arbitrations are marked “S” and paragraphs that apply only to English or Welsh arbitrations are marked “EW”.

## II. THE ROLE OF ACAS

6. As more fully explained below, cases enter the Scheme by reference to ACAS, which appoints an arbitrator from a panel (see paragraphs 41 to 43 below) to determine the dispute. ACAS provides administrative assistance during the proceedings, and may scrutinise awards and refer any clerical or other similar errors back to the arbitrator. Disputes are determined, however, by arbitrators and not by ACAS.

### Routing of Communications

7. Unless in the course of a hearing, all communications between either party and the arbitrator shall be sent via the ACAS Arbitration Section.

8. Paragraph 218 below sets out the manner in which any document, notice or communication must be served on, or transmitted to, ACAS or the ACAS Arbitration Section.

## III. TERMS AND ABBREVIATIONS

9. The term “Employee” is used to denote the claimant (ie the former employee), including any person entitled to pursue a claim arising out of a contravention, or alleged contravention, of Part X of the Employment Rights Act 1996.

10. The term “Employer” is used to denote the respondent.

11. The term “EC law” means:

- (i) any enactment in the domestic legislation of England and Wales or of Scotland giving effect to rights, powers, liabilities, obligations and restrictions from time to time created or arising by or under the Community Treaties, and
- (ii) any such rights, powers, liabilities, obligations and restrictions, which are not given effect by any such enactment.

12. The term “English/Welsh arbitration” means an arbitration under this Scheme, which the parties have agreed shall be an English/Welsh arbitration.

13. The term “Scottish arbitration” means an arbitration under this Scheme, which the parties have agreed shall be a Scottish arbitration.

14. The term “devolution issue” means a devolution issue as defined in paragraph 1 of Schedule 6 to the Scotland Act 1998 or a devolution issue as defined in paragraph 1 of Schedule 8 to the Government of Wales Act 1998.

15. With the exception of paragraphs 26(i) (“Requirements for entry into the Scheme”), 114EW (“Form of the award: English/Welsh arbitrations”) and 117S (“Form of the award: Scottish arbitrations”) below, references to anything being written or in writing include its being recorded by any means so as to be usable for subsequent reference.

#### IV. APPLICATION OF THE SCHEME

16. Paragraphs 46EW, 47EW, 48EW, 49EW, 50EW, 51EW, 52EW, 53EW, 110EW, 114EW, 115EW, 116EW, 177EW, 181EW, 183EW, 187EW, 194EW, 200EW, 205EW, 209EW, 212EW, 217EW, 223EW, 224EW and 226EW below shall apply only to English/Welsh arbitrations. Paragraphs 54S, 55S, 56S, 57S, 58S, 59S, 111S, 112S, 117S, 118S, 119S, 178S, 182S, 184S, 188S, 189S, 190S, 191S, 192S, 193S, 195S, 196S, 197S, 198S, 199S, 201S, 202S, 203S, 204S, 206S, 207S, 208S, 210S, 211S, 213S, 225S and 227S below shall apply only to Scottish arbitrations.

#### V. ARBITRATOR'S TERMS OF REFERENCE

17. Every agreement to refer a dispute to arbitration under this Scheme shall be taken to be an agreement that the arbitrator decide the dispute according to the following Terms of Reference:

In deciding whether the dismissal was fair or unfair, the arbitrator shall:

- (i) have regard to general principles of fairness and good conduct in employment relations (including, for example, principles referred to in any relevant ACAS "Disciplinary and Grievance Procedures" Code of Practice or "Discipline and Grievances at Work" Handbook), instead of applying legal tests or rules (eg court decisions or legislation);
- (ii) apply EC law.

The arbitrator shall not decide the case by substituting what he or she would have done for the actions taken by the Employer.

If the arbitrator finds the dismissal unfair, he or she shall determine the appropriate remedy under the terms of this Scheme.

#### VI. SCOPE OF THE SCHEME

##### **Cases that are covered by the Scheme**

18. This Scheme only applies to cases of alleged unfair dismissal (ie disputes involving proceedings, or claims which could be the subject of proceedings, before an employment tribunal arising out of a contravention, or alleged contravention, of Part X of the Employment Rights Act 1996).

19. The Scheme does not extend to other kinds of claim which are often related to, or raised at the same time as, a claim of unfair dismissal. For example, sex discrimination cases, and claims for unpaid wages are not covered by the Scheme.

20. If a claim of unfair dismissal has been referred for resolution under the Scheme, any other claim, even if part of the same dispute, must be settled separately, or referred to the employment tribunal, or withdrawn. In the event that different aspects of the same dispute are being heard in the employment tribunal as well as under the Scheme, the arbitrator may decide, if appropriate or convenient, to postpone the arbitration proceedings pending a determination by the employment tribunal.

##### **Waiver of Jurisdictional Issues**

21. Because of its informal nature, the Scheme is not designed for disputes raising jurisdictional issues, such as for example:

- whether or not the Employee was employed by the Employer;
- whether or not the Employee had the necessary period of continuous service to bring the claim;
- whether or not time limits have expired and/or should be extended.

22. Accordingly, when agreeing to refer a dispute to arbitration under the Scheme, both parties will be taken to have accepted as a condition of the Scheme that no jurisdictional issue is in dispute between them. The arbitrator will not therefore deal with such issues during the arbitration process, even if they are raised by the parties, and the parties will be taken to have waived any rights in that regard.

23. In particular, in agreeing to arbitration under the Scheme, the parties will be treated as having agreed that a dismissal has taken place.

##### **Inappropriate cases**

24. The Scheme is not intended for disputes involving complex legal issues. Whilst such cases will be accepted for determination (subject to the Terms of Reference), parties are advised, where appropriate, to consider applying to the employment tribunal or settling their dispute by other means.

## VII. ACCESS TO THE SCHEME

25. The Scheme is an entirely voluntary system of dispute resolution: it will only apply if parties have so agreed.

### Requirements for entry into the Scheme

26. Any agreement to submit a dispute to arbitration under the Scheme must satisfy the following requirements (an "Arbitration Agreement"):

- (i) the agreement of each party (which may be expressed in the same or in separate documents) must be in writing;
- (ii) the agreement must concern an existing dispute;
- (iii) the agreement must not seek to alter or vary any provision of the Scheme;
- (iv) the agreement must have been reached either:
  - (a) where a conciliation officer has taken action under section 18 of the Employment Tribunals Act 1996, or
  - (b) through a compromise agreement, where the conditions regulating such agreements under the Employment Rights Act 1996 are satisfied; and
- (v) the agreement must be accompanied by a completed Waiver Form for each party. Parties applying for English/Welsh arbitrations should complete Appendix A; parties applying for Scottish arbitrations should complete Appendix B.

27. Where an agreement fails to satisfy any one of these requirements or where the parties are unable to agree whether the arbitration should be an English/Welsh arbitration or a Scottish arbitration, no valid reference to the Scheme will have been made, and the parties will have to settle their dispute by other means or have recourse to the employment tribunal.

28. Where:

- (i) a dispute concerning unfair dismissal claims as well as other claims has been referred to the employment tribunal, and
- (ii) the parties have agreed to settle the other claims and refer the unfair dismissal claim to arbitration under the Scheme,

a separate settlement must be reached referring the unfair dismissal claim to arbitration which satisfies all the requirements listed above (although it may form part of one overall settlement document).

### Notification to ACAS of an Arbitration Agreement

29. All Arbitration Agreements must be notified to ACAS within two weeks of their conclusion, by either of the parties or their independent advisers or representatives, or an ACAS conciliator, sending a copy of the agreement and Waiver Forms, together with IT1 and IT3 forms if these have been completed, to the ACAS Arbitration Section.

30. For the purposes of the previous paragraph, an Arbitration Agreement is treated as "concluded" on the date it is signed, or if signed by different people at different times, on the date of the last signature.

31. Where an Arbitration Agreement is not notified to ACAS within two weeks, ACAS will not arrange for the appointment of an arbitrator under the Scheme, unless notification within that time was not reasonably practicable. Any party seeking to notify ACAS of an Arbitration Agreement outside this period must explain in writing to the ACAS Arbitration Section the reason for the delay. ACAS shall appoint an arbitrator, in accordance with the appointment provisions below, to consider the explanation, and that arbitrator may seek the views of the other party, and may call both parties to a hearing to establish the reasons for the delay. The arbitrator shall then rule in an award on whether or not the agreement can be accepted for hearing under the Scheme.

32. Any such hearing and award will be governed by the provisions of this Scheme.

### Consolidation of proceedings

33. Where all parties so agree in writing, ACAS may consolidate different arbitral proceedings under the Scheme.

## VIII. SETTLEMENT AND WITHDRAWAL FROM THE SCHEME

### Withdrawal by the Employee

34. At any stage of the arbitration process, once an Arbitration Agreement has been concluded and the reference has been accepted by ACAS, the party bringing the unfair dismissal claim may withdraw from the Scheme, provided that any such withdrawal is in writing. Such a withdrawal shall constitute a dismissal of the claim and the arbitrator shall upon receipt of such withdrawal in writing issue an award dismissing the claim.

### **Withdrawal by the Employer**

35. Once an Arbitration Agreement has been concluded and the reference has been accepted by ACAS, the party against whom a claim is brought cannot unilaterally withdraw from the Scheme.

### **Settlement**

36. Parties are free to reach an agreement settling the dispute at any stage.

37. If such an agreement is reached:

- (i) upon the joint written request of the parties to the arbitrator or the ACAS Arbitration Section, the arbitrator (if appointed) or the ACAS Arbitration Section (if no arbitrator has been appointed) shall terminate the arbitration proceedings;
- (ii) if so requested by the parties, the arbitrator (if appointed) may record the settlement in the form of an agreed award.

38. An agreed award shall state that it is an award of the arbitrator by consent and shall have the same status and effect as any other award on the merits of the case.

39. If the agreement settling the dispute includes an agreement that one party (the “paying party”) shall pay a sum of money to the other (the “receiving party”) the arbitrator shall (unless the parties have agreed that the said agreement shall not be the subject of an award) draft an award ordaining the paying party to pay the agreed sum to the receiving party together (if the parties have agreed that interest shall run on the agreed sum) with interest thereon at such rate as the parties may have agreed and from such date or dates as the parties may have agreed until payment. The arbitrator shall send a copy of the said award in draft to each party and invite each party to confirm that the draft award accurately reflects the agreement between them. Upon receiving confirmation to that effect the arbitrator shall issue an award in the terms of the agreed draft.

40. Subject to paragraph 39, in rendering an agreed award, the arbitrator:

- (i) may only record the parties’ agreed wording;
- (ii) may not approve, vary, transcribe, interpret or ratify a settlement in any way;
- (iii) may not record any settlement beyond the scope of the Scheme, the Arbitration Agreement or the reference to the Scheme as initially accepted by ACAS.

## **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 discipline and dismissal 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 53EW 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 48EW, 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.

**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 (a) shall apply to 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,”; and
  - (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 to 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.

**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 arbitrator; or

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(a) 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.”

(iii) that the arbitrator is physically or mentally incapable of conducting the proceedings or there are justifiable doubts as to his 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.

### **X. GENERAL DUTY OF THE ARBITRATOR**

**63.** The arbitrator shall:

- (i) act fairly and impartially as between the parties, giving each party a reasonable opportunity of putting his or her case and dealing with that of his or her opponent, and
- (ii) adopt procedures suitable to the circumstances of the particular case, avoiding unnecessary delay or expense, so as to provide a fair means for the resolution of the matters falling to be determined.

**64.** The arbitrator shall comply with the general duty (see paragraph 63 above) in conducting the arbitral proceedings, in his or her decisions on matters of procedure and evidence and in the exercise of all other powers conferred on him or her.

### **XI. GENERAL DUTY OF THE PARTIES**

**65.** The parties shall do all things necessary for the proper and expeditious conduct of the arbitral proceedings. This includes (without limitation) complying without delay with any determination of the arbitrator as to procedural or evidential matters, or with any order or directions of the arbitrator, and co-operating in the arrangement of any hearing.

### **XII. CONFIDENTIALITY AND PRIVACY**

**66.** Arbitrations, and all associated procedures under the Scheme, are strictly private and confidential. This rule does not prevent a party to the arbitration taking any step reasonably necessary for the purposes of any application to the court or enforcement of an award.

**67.** Hearings may only be attended by the arbitrator, the parties, their representatives, any interpreters, signers or communicators, witnesses and a legal adviser, if appointed. If the parties so agree, an ACAS official or arbitrator in training may also attend.

### **XIII. ARRANGEMENTS FOR THE HEARING**

#### **Initial arrangements**

**68.** A hearing must be held in every case, notwithstanding any agreement between the parties to a purely written procedure.

**69.** Once an arbitrator has been appointed by ACAS, a hearing shall be arranged as soon as reasonably practicable by him or her, with the administrative assistance of the ACAS Arbitration Section.

**70.** The arbitrator shall decide the date and venue for the hearing, in so far as an agreement cannot be reached with all parties within 28 days of the initial notification to ACAS of the Arbitration Agreement.

**71.** The ACAS Arbitration Section shall contact all parties with details of the date and venue for the hearing.

#### **Expedited hearings**

**72.** If:

- (i) before the parties have agreed to refer a dispute to arbitration under the Scheme, an employment tribunal makes an order under interim relief provisions, or
- (ii) in the arbitrator's discretion, other relevant circumstances exist,

the arbitrator may expedite the hearing, on the application of any party.

### **Venue**

73. Hearings may be held in any venue, provided that the hearing will only be held at the Employee's former workplace, or a similarly non-neutral venue, if all parties so agree.

74. Where premises have to be hired for a hearing, ACAS shall meet the reasonable costs of so doing.

### **Assistance**

75. Where a party needs the services of an interpreter, signer or communicator at the hearing, ACAS should be so informed well in advance of the hearing. Where an arbitrator agrees that such assistance is required, ACAS shall meet the reasonable costs of providing this.

### **Travelling expenses/loss of earnings**

76. Every party shall meet their own travelling expenses and those of their representatives and witnesses.

77. No loss of earnings are payable by ACAS to anyone involved in the arbitration. However, where an arbitrator rules that a dismissal was unfair, he or she may include in the calculation of any compensation a sum to cover reasonable travelling expenses and loss of earnings incurred by the Employee personally in attending the hearing.

### **Applications for postponements of, or different venues for, initial hearings**

78. Any application for a postponement of, or a different venue for, an initial hearing must be made in writing, with reasons, to the arbitrator via the ACAS Arbitration Section within 14 days of the date of the letter notifying the hearing arrangements or, where this is not practicable, as soon as is reasonably practicable. Such applications will be determined by the arbitrator without an oral hearing after all parties have received a copy of the application and been given a reasonable opportunity to respond.

79. If the application is rejected, the initial hearing will be held on the original date and/or in the original venue.

80. This provision does not affect the arbitrator's general discretion (set out below) with respect to postponements after an initial hearing has been fixed, or with respect to other aspects of the procedure. In particular, procedural applications may be made to the arbitrator at the hearing itself.

## **XIV. NON-COMPLIANCE WITH PROCEDURE**

81. If a party fails to comply with any aspect of the procedure set out in this Scheme, or any order or direction by the arbitrator, or fails to comply with the general duty in Part XI above, the arbitrator may (in addition to any other power set out in this Scheme):

- (i) adjourn any hearing, where it would be unfair on any party to proceed; and/or
- (ii) draw such adverse inferences from the act of non-compliance as the circumstances justify.

## **XV. OUTLINE OF PROCEDURE BEFORE THE HEARING**

82. Once a hearing has been fixed, the following procedure shall apply, subject to any direction by the arbitrator.

### **Written materials**

83. At least 14 days before the date of the hearing, each party shall send to the ACAS Arbitration Section (for forwarding to the arbitrator and the other party) one copy of a written statement of case, together with:

- (i) any supporting documentation or other material to be relied upon at the hearing; and where appropriate
- (ii) a list of the names and title/role of all those people who will accompany each party to the hearing or be called as a witness.

84. Written statements of case should briefly set out the main particulars of each party's case, which can then be expanded upon if necessary at the hearing itself. The statement should include an explanation of the events which led up to the dismissal, including an account of the sequence and outcome of any relevant meetings, interviews or discussions. The parties should come to the hearing prepared to address the practicability of reinstatement or re-engagement, in so far as the Employee seeks such remedies.

85. Supporting documentation or other material may include (without limitation) copies of:

- (i) contracts of employment;
- (ii) letters of appointment;
- (iii) written statement of particulars of employment;
- (iv) time sheets and attendance records;

- (v) performance appraisal reports;
- (vi) warning and dismissal letters;
- (vii) written reasons for dismissal, where these have been given;
- (viii) company handbooks, rules and procedures;
- (ix) any information which will help the arbitrator to assess compensation, including (without limitation):
  - (a) pay slips, P60s or wage records;
  - (b) details of benefits paid to the Employee such as travelling expenses and free or subsidised accommodation;
  - (c) guidance about, and (if available) actuarial assessments of, pension entitlements;
  - (d) details of any welfare benefits received;
  - (e) evidence of attempts to find other work, or otherwise mitigate the loss arising from the dismissal;
- (x) signed statements of any witnesses or outlines of evidence to be given by witnesses at the hearing.

86. The parties must also supply details of any relevant awards of compensation that may have been made by any other tribunal or court in connection with the subject matter of the claim.

87. Legible copies of documents must be supplied to ACAS even if they have already been supplied to an ACAS conciliator before the Arbitration Agreement was concluded.

88. No information on the conciliation process, if any, shall be disclosed by an ACAS conciliator to the arbitrator.

#### **Submissions, evidence and witnesses not previously notified**

89. Written statements of case and documentary or other material that have not been provided to the ACAS Arbitration Section prior to the hearing (in accordance with paragraph 83 above) may only be relied upon at the hearing with the arbitrator's permission.

90. All representatives and witnesses who have been listed as accompanying a party at the hearing should be present at the start of the hearing. Witnesses who have not been included in a list submitted to the ACAS Arbitration Section prior to the hearing may only be called with the arbitrator's permission.

#### **Requests for documents**

91. Any party may request the other party to produce copies of relevant documents which are not in the requesting party's possession, custody or control. Although the arbitrator has no power to compel a party to comply, the arbitrator may draw an adverse inference from a party's failure to comply with a reasonable request.

#### **Requests for attendance of witnesses**

92. Although the arbitrator has no power to compel the attendance of anybody at the hearing, the arbitrator may draw an adverse inference if an employer who is a party to the arbitration fails or refuses to allow current employees or other workers (who have relevant evidence to give) time off from work to attend the hearing, should such an employer be so requested.

#### **Preliminary hearings and directions**

93. Where the arbitrator believes that there may be considerable differences between the parties over any issue, including the availability or exchange of documents, or the availability of witnesses, the arbitrator may call the parties to a preliminary hearing to address such issues, or he or she may give procedural directions in correspondence.

94. In the course of a preliminary hearing or in correspondence, the arbitrator may express views on the desirability of information and/or evidence being available at the hearing.

### **XVI. OUTLINE OF PROCEDURE AT THE HEARING**

#### **Arbitrator's overall discretion**

95. Subject to the arbitrator's general duty (Part X above), and subject to the points set out below, the conduct of the hearing and all procedural and evidential matters (including applications for adjournments and changes in venue) shall be for the arbitrator to decide.

#### **Language**

96. The language of the proceedings shall be English, unless the Welsh language is applicable by virtue of the Welsh Language Act 1993 (as amended from time to time). Reference should be made to paragraph 75 above if the Welsh language is to be used.

### **Witnesses**

97. No party or witness shall be cross-examined by a party or representative, or examined on oath or affirmation.

### **Examination by the arbitrator**

98. The arbitrator shall have the right to address questions directly to either party or to anybody else attending the hearing, and to take the initiative in ascertaining the facts and (where applicable) the law.

### **Explanation of available remedies**

99. In every case, the arbitrator shall:

- (i) explain to the Employee what orders for reinstatement or re-engagement may be made in an award and under what circumstances these may be granted; and
- (ii) ask the Employee whether he or she wishes the arbitrator to make such an award.

### **Representatives**

100. The parties may be accompanied by any person chosen by them to help them to present their case at the hearing, although no special status will be accorded to legally qualified representatives. Each party is liable for any fees or expenses incurred by any representatives they appoint.

### **Strict rules of evidence**

101. The arbitrator will not apply strict rules of evidence (or any other rules) as to the admissibility, relevance or weight of any material (oral, written or other) sought to be tendered on any matters of fact or opinion.

### **Interim relief**

102. The arbitrator shall have no power to order provisional or interim relief, but may expedite the proceedings where appropriate.

### **Non-attendance at the hearing**

103. If, without showing sufficient cause, a party fails to attend or be represented at a hearing, the arbitrator may:

- (i) continue the hearing in that party's absence, and in such a case shall take into account any written submissions and documents that have already been submitted by that party; or
- (ii) adjourn the hearing.

104. In the case of the non-attendance of the Employee, if the arbitrator decides to adjourn the hearing, he or she may write to the Employee to request an explanation for the non-attendance. If the arbitrator decides that the Employee has not demonstrated sufficient cause for the non-attendance, he or she may rule in an award that the claim be treated as dismissed.

### **Post-hearing written materials**

105. No further submissions or evidence will be accepted after the end of the substantive hearing without the arbitrator's permission, which will only be granted in exceptional circumstances. Where permission is granted, any material is to be sent to the ACAS Arbitration Section, to be forwarded to the arbitrator and all other parties.

## **XVII. QUESTIONS OF EC LAW, DEVOLUTION ISSUES AND THE HUMAN RIGHTS ACT 1998**

### **Appointment of legal adviser**

106. 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 17 above (Arbitrator's Terms of Reference), might be involved and relevant to the resolution of the dispute.

107. 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.

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

109. 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

**110EW.** Section 45 of the Arbitration Act 1996 (a) shall apply to English/Welsh arbitrations conducted in accordance with the Scheme, subject to the following modifications:

- (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 Schedule 6 to the Scotland Act 1998 or a devolution issue as defined in paragraph 1 Schedule 8 to the Government of Wales Act 1998.”.

### Court determination of preliminary points: Scottish arbitrations

**111S.** 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.

**112S.** The arbitrator shall not make a reference under paragraph 111S 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.

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(a) 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.

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.”

## XVIII. AUTOMATIC UNFAIRNESS

**113.** In deciding whether the dismissal was fair or unfair, subject to paragraph 17 above (Arbitrator's Terms of Reference), the arbitrator shall have regard to:

- (i) any provision of Part X of the Employment Rights Act 1996 (as amended from time to time) requiring a dismissal for a particular reason to be regarded as unfair, and
- (ii) any other legislative provision requiring a dismissal for a particular reason to be regarded as unfair for the purpose of Part X of the Employment Rights Act 1996.

## XIX. AWARDS

### **Form of the award: English/Welsh arbitrations**

**114EW.** The award in an English/Welsh arbitration shall be in writing, signed by the arbitrator.

**115EW.** The award (unless it is an agreed award) shall:

- (i) identify the reason (or, if more than one, the principal reason) for the dismissal (or, in a redundancy case, the reason for which the employee was selected for dismissal);
- (ii) contain the main considerations which were taken into account in reaching the decision that the dismissal was fair or unfair;
- (iii) state the decision(s) of the arbitrator;
- (iv) state the remedy awarded, together with an explanation;
- (v) state the date when it was made.

**116EW.** If the award contains an order for the payment of money the award shall—

- (i) order the Employer to pay the Employee the amount of the award of compensation; and
- (ii) order the Employer to pay interest thereon in accordance with paragraph 186 of the Scheme.

### **Form of the award: Scottish arbitrations**

**117S.** The award in a Scottish arbitration shall—

- (i) be in writing;
- (ii) state the date upon which it was made;
- (iii) specify the arbitrator's order;
- (iv) be signed by the arbitrator;
- (v) be signed by a witness to the arbitrator's signature; and
- (vi) specify the name and address of the witness.

**118S.** If the award contains an order for the payment of money the award shall—

- (i) ordain the Employer to pay to the Employee the amount of the award of compensation; and
- (ii) ordain the Employer to pay interest thereon in accordance with paragraph 186 of the Scheme.

**119S.** The arbitrator shall issue with his award (unless it is an agreed award) a Note, which shall—

- (i) identify the reason (or, if more than one, the principal reason) for the dismissal (or, in a redundancy case, the reason for which the employee was selected for dismissal);
- (ii) contain the main considerations which were taken into account in reaching the decision that the dismissal was fair or unfair;
- (iii) state the decision(s) of the arbitrator;
- (iv) state the remedy awarded, together with an explanation;
- (v) state the date when the Note was issued; and
- (vi) be signed by the arbitrator.

### **Awards on different issues**

**120.** The arbitrator may make more than one award at different times on different aspects of the matters to be determined.

**121.** The arbitrator may, in particular, make an award relating:

- (i) to an issue affecting the whole claim, or
- (ii) to a part only of the claim submitted to him or her for decision.

**122.** If the arbitrator does so, he or she shall specify in his or her award the issue, or the claim or part of a claim, which is the subject matter of the award.

## **Remedies**

**123.** In the event that the arbitrator finds that the dismissal was unfair:

- (i) if the Employee expresses such a wish, the arbitrator may make, in an award, an order for reinstatement or re-engagement (in accordance with the provisions below); or
- (ii) if no such order for reinstatement or re-engagement is made, the arbitrator shall make an award of compensation (calculated in accordance with the provisions below) to be paid by the Employer to the Employee.

**124.** In cases where the arbitrator finds that the dismissal was unfair by reason of the operation of EC law, the arbitrator shall in an English/Welsh arbitration apply the relevant provisions of English law and shall in a Scottish arbitration apply the relevant provisions of Scots law with respect to remedies for unfair dismissal, in so far as these may differ from Parts XX and XXI of the Scheme.

## **XX. AWARDS OF REINSTATEMENT OR RE-ENGAGEMENT**

### **Definitions**

**125.** An order for reinstatement (which must be in the form of an award) is an order that the Employer shall treat the Employee in all respects as if he or she had not been dismissed.

**126.** An order for re-engagement (which must be in the form of an award) is an order, on such terms as the arbitrator may decide, that the Employee be engaged by the Employer, or by a successor of the Employer or by an associated employer, in employment comparable to that from which he or she was dismissed or in other suitable employment.

### **Choice of remedy**

**127.** In exercising his or her discretion with respect to the remedy to be awarded under paragraph 123(i) above, the arbitrator shall first consider whether to make an order for reinstatement, and in so doing shall take into account:

- (i) whether the Employee wishes to be reinstated;
- (ii) whether it is practicable for the Employer to comply with an order for reinstatement; and
- (iii) where the Employee caused or contributed to some extent to the dismissal, whether it would be just to order his or her reinstatement.

**128.** If the arbitrator decides not to make an order for reinstatement, he or she shall then consider whether to make an order for re-engagement and, if so, on what terms. In so doing, the arbitrator shall take into account:

- (i) any wish expressed by the Employee as to the nature of the order to be made;
- (ii) whether it is practicable for the Employer (or a successor or an associated employer) to comply with an order for re-engagement, and
- (iii) where the Employee caused or contributed to some extent to the dismissal, whether it would be just to order his or her re-engagement and, if so, on what terms.

**129.** If ordering re-engagement, the arbitrator shall do so on terms which are, so far as is reasonably practicable, as favourable as an order for reinstatement (with the exception of cases where contributory fault has been taken into account under paragraph 127(iii) above).

### **Permanent replacements**

**130.** Where in any case an Employer has engaged a permanent replacement for a dismissed Employee, the arbitrator shall not take that fact into account in determining, for the purposes of paragraphs 127(ii) and 128(ii) above, whether it is practicable to comply with an order for reinstatement or re-engagement. This does not apply, however, where the Employer shows:

- (i) that it was not practicable for him or her to arrange for the dismissed Employee's work to be done without engaging a permanent replacement, or
- (ii) that:
  - (a) he or she engaged the replacement after the lapse of a reasonable period, without having heard from the dismissed Employee that he or she wished to be reinstated or re-engaged, and
  - (b) when the Employer engaged the replacement it was no longer reasonable for him or her to arrange for the dismissed Employee's work to be done except by a permanent replacement.

### **Reinstatement**

131. On making an order for reinstatement, the arbitrator shall specify:
- (i) any amount payable by the Employer in respect of any benefit which the Employee might reasonably be expected to have had but for the dismissal (including arrears of pay) for the period between the date of termination of employment and the date of reinstatement,
  - (ii) any rights and privileges (including seniority and pension rights) which must be restored to the Employee, and
  - (iii) the date by which the order must be complied with.

132. If the Employee would have benefited from an improvement in his or her terms and conditions of employment had he or she not been dismissed, an order for reinstatement shall require him or her to be treated as if he or she had benefited from that improvement from the date on which he or she would have done so but for being dismissed.

133. In calculating for the purposes of paragraph 131(i) above any amount payable by the Employer, the arbitrator shall take into account, so as to reduce the Employer's liability, any sums received by the Employee in respect of the period between the date of termination of employment and the date of reinstatement by way of:

- (i) wages in lieu of notice or ex gratia payments paid by the Employer, or
- (ii) remuneration paid in respect of employment with another employer,

and such other benefits as the arbitrator thinks appropriate in the circumstances.

### **Re-engagement**

134. On making an order for re-engagement the arbitrator shall specify the terms on which re-engagement is to take place, including:

- (i) the identity of the employer,
- (ii) the nature of the employment,
- (iii) the remuneration for the employment,
- (iv) any amount payable by the employer in respect of any benefit which the Employee might reasonably be expected to have had but for the dismissal (including arrears of pay) for the period between the date of termination of employment and the date of re-engagement,
- (v) any rights and privileges (including seniority and pension rights) which must be restored to the Employee, and
- (vi) the date by which the order must be complied with.

135. In calculating, for the purposes of paragraph 131(iv) above, any amount payable by the Employer, the arbitrator shall take into account, so as to reduce the Employer's liability, any sums received by the Employee in respect of the period between the date of termination of employment and the date of re-engagement by way of:

- (i) wages in lieu of notice or ex gratia payments paid by the Employer, or
- (ii) remuneration paid in respect of employment with another employer,

and such other benefits as the arbitrator thinks appropriate in the circumstances.

### **Continuity of employment**

136. The Employee's continuity of employment will be preserved in the same way as it would be under an award of the employment tribunal.

## **XXI. AWARDS OF COMPENSATION**

137. When an arbitrator makes an award of compensation, instead of an award for reinstatement or re-engagement, such compensation shall consist of a *basic amount* and a *compensatory amount*.

138. Where paragraph 163 below applies, an award of compensation shall also include a *supplementary amount*.

### **The basic amount**

139. Subject to the following provisions, the *basic amount* shall be calculated by:
- (i) determining the period, ending with the effective date of termination (see paragraph 140 below), during which the Employee has been continuously employed (see paragraph 141 below),
  - (ii) reckoning backwards from the end of that period the number of years of employment falling within that period, and
  - (iii) allowing the appropriate amount (see paragraph 142 below) for each of those years of employment.

**140.** As to the “effective date of termination”:

- (i) the “effective date of termination” means:
  - (a) in relation to an Employee whose contract of employment is terminated by notice, whether given by his or her Employer or by the Employee, the date on which the notice expires;
  - (b) in relation to an Employee whose contract of employment is terminated without notice, the date on which the termination takes effect; and
  - (c) in relation to an Employee who is employed under a contract for a fixed term which expires without being renewed under the same contract, the date on which the term expires.
- (ii) Where:
  - (a) the contract of employment is terminated by the Employer, and
  - (b) the notice required by section 86 of the Employment Rights Act 1996 (as amended from time to time) to be given by an Employer would, if duly given on the material date, expire on a date later than the effective date of termination (as defined in paragraph 140(i) above),

the later date is the effective date of termination.

(iii) In paragraph 140(ii)(b) above, “the material date” means:

- (a) the date when notice of termination was given by the Employer, or
- (b) where no notice was given, the date when the contract of employment was terminated by the Employer.

(iv) Where:

- (a) the contract of employment is terminated by the Employee, and
- (b) the material date does not fall during a period of notice given by the Employer to terminate that contract, and
- (c) had the contract been terminated not by the Employee but by notice given on the material date by the Employer, that notice would have been required by section 86 of the Employment Rights Act 1996 (as amended from time to time) to expire on a date later than the effective date of termination (as defined in paragraph 140(i) above),

the later date is the effective date of termination.

(v) In paragraph 140(iv) above, “the material date” means:

- (a) the date when notice of termination was given by the Employee, or
- (b) where no notice was given, the date when the contract of employment was terminated by the Employee.

**141.** In determining “continuous employment”, the arbitrator shall have regard to Chapter I of Part XIV of the Employment Rights Act 1996 (as amended from time to time).

**142.** The “appropriate amount” means:

- (i) one and a half weeks’ pay for a year of employment in which the Employee was not below the age of forty-one,
- (ii) one week’s pay for a year of employment (not within sub-paragraph (i) above) in which he or she was not below the age of twenty-two, and
- (iii) half a week’s pay for a year of employment not within sub-paragraphs (i) or (ii) above.

**143.** In calculating the amount of a week’s pay of an Employee, the arbitrator shall have regard to Chapter II of Part XIV of the Employment Rights Act 1996, as amended from time to time, or any other relevant statutory provision applicable to the calculation of a week’s pay.

**144.** Where twenty years of employment have been reckoned under paragraph 139 above, no account shall be taken under that paragraph of any year of employment earlier than those twenty years.

**145.** Where the effective date of termination is after the sixty-fourth anniversary of the day of the Employee’s birth, the amount arrived at under paragraphs 139, 142 and 144 above shall be reduced by the “appropriate fraction” (see paragraph 146 below).

**146.** The “appropriate fraction” means the fraction of which:

- (i) the numerator is the number of whole months reckoned from the sixty-fourth anniversary of the day of the Employee’s birth in the period beginning with that anniversary and ending with the effective date of termination (see paragraph 140 above), and
- (ii) the denominator is twelve.

#### **Minimum basic amounts in certain cases**

**147.** A “minimum basic amount” shall apply where the arbitrator has found that the dismissal was unfair, and where the reason (or, if more than one, the principal reason):

- in a redundancy case (see paragraph 150(i) below), for selecting the Employee for dismissal, or
- otherwise, for the dismissal

was one of the following:

*Health and safety cases*

- (i) having been designated by the Employer to carry out activities in connection with preventing or reducing risks to health and safety at work, the Employee carried out (or proposed to carry out) any such activities;
- (ii) being a representative of workers on matters of health and safety at work or a member of a safety committee:
  - (a) in accordance with arrangements established under or by virtue of any enactment, or
  - (b) by reason of being acknowledged as such by the Employer,
 the Employee performed (or proposed to perform) any functions as such a representative or a member of such a committee;

*Working time cases*

- (iii) being:
  - (a) a representative of members of the workforce for the purposes of Schedule 1 to the Working Time Regulations 1998 (as amended from time to time), or
  - (b) a candidate in an election in which any person elected will, on being elected, be such a representative,
 performed (or proposed to perform) any functions or activities as such a representative or candidate;

*Trustees of occupational pension schemes*

- (iv) being a trustee of a relevant occupational pension scheme which relates to his or her employment, the Employee performed (or proposed to perform) any functions as such a trustee;

*Employee representatives*

- (v) being:
  - (a) an employee representative for the purposes of Chapter II of Part IV of the Trade Union and Labour Relations (Consolidation) Act 1992 (redundancies) or Regulations 10 and 11 of the Transfer of Undertakings (Protection of Employment) Regulations 1981 (as amended from time to time), or
  - (b) a candidate in an election in which any person elected will, on being elected, be such an employee representative,
 performed (or proposed to perform) any functions or activities as such an employee representative or candidate;
- (vi) the Employee took part in an election of employee representatives for the purposes of Chapter II of Part IV of the Trade Union and Labour Relations (Consolidation) Act 1992 (redundancies) or Regulations 10 and 11 of the Transfer of Undertakings (Protection of Employment) Regulations 1981 (as amended from time to time);

*Union membership or activities*

- (vii) the Employee:
  - (a) was, or proposed to become, a member of an independent trade union, or
  - (b) had taken part, or proposed to take part, in the activities of an independent trade union at an appropriate time, or
  - (c) was not a member of any trade union, or of a particular trade union, or of one of a number of particular trade unions, or had refused, or proposed to refuse, to become or remain a member.
- (viii) for the purposes of paragraphs (vii) above to (xi) below, in defining the terms “trade union” and “independent trade union”, the arbitrator shall have regard to sections 1 and 5 of the Trade Union and Labour Relations (Consolidation) Act 1992, as amended from time to time.
- (ix) for the purposes of paragraph (vii)(b) above, an “appropriate time” means:
  - (a) a time outside the Employee’s working hours, or
  - (b) a time within his or her working hours at which, in accordance with arrangements agreed with or consent given by his or her employer, it is permissible for him or her to take part in the activities of a trade union;
 and for this purpose “working hours”, in relation to an Employee, means any time when, in accordance with his or her contract of employment, he or she is required to be at work.

- (x) where the reason, or one of the reasons, for the dismissal was:
  - (a) the Employee's refusal, or proposed refusal, to comply with a requirement (whether or not imposed by his or her contract of employment or in writing) that, in the event of his or her not being a member of any trade union, or of a particular trade union, or of one of a number of particular trade unions, he or she must make one or more payments, or
  - (b) his or her objection, or proposed objection, (however expressed) to the operation of a provision (whether or not forming part of his or her contract of employment or in writing) under which, in the event mentioned in paragraph (x)(a) above, his or her Employer is entitled to deduct one or more sums from the remuneration payable to him or her in respect of his or her employment,
 the reason shall be treated as falling within paragraph (vii)(c) above.
- (xi) references in paragraphs (vii) to (x) above to being, becoming or ceasing to remain a member of a trade union include references to being, becoming or ceasing to remain a member of a particular branch or section of that union or of one of a number of particular branches or sections of that trade union; and references to taking part in the activities of a trade union shall be similarly construed.

*Other categories*

- (xii) where the reason or principal reason for the dismissal of the Employee qualifies under any other applicable legislative provision for a minimum basic award.

**148.** Before any reductions are taken into account under paragraphs 151 to 155 below ("Reductions to the basic amount"), the "minimum basic amount" shall not be less than:

- (i) in cases within paragraph 147(i), (ii), (iii), (iv), (v) and (vi) above, the amount provided for in section 120(1) of the Employment Rights Act 1996, as amended from time to time;
- (ii) in cases within paragraph 147(vii) above, the amount provided for in section 156 of the Trade Union and Labour Relations (Consolidation) Act 1992, as amended from time to time;
- (iii) in cases within paragraph 147(xii) above, the amount provided for in the relevant legislation.

**Basic amount of two weeks' pay in certain cases**

**149.** Where:

- (i) the arbitrator finds that the reason (or, where there is more than one, the principal reason) for the dismissal of the Employee is that he or she was redundant and
- (ii) the Employee:
  - (a) by virtue of section 138 of the Employment Rights Act 1996, as amended from time to time, is not regarded as dismissed for the purposes of Part XI of that Act, or
  - (b) by virtue of section 141 of that Act, as amended from time to time, is not, or (if he or she were otherwise entitled) would not be, entitled to a redundancy payment,
 the basic amount shall be two weeks' pay (for the definition of "week's pay", see paragraph 143 above).

**150.** For the purposes of this Scheme:

- (i) for the definition of "redundancy", the arbitrator shall have regard to section 139 of the Employment Rights Act 1996, as amended from time to time;
- (ii) for the definition of "redundancy payment", the arbitrator shall have regard to Part XI of the Employment Rights Act 1996, as amended from time to time.

**Reductions to the basic amount**

**151.** Where the arbitrator finds that the Employee has unreasonably refused an offer by the Employer which (if accepted) would have the effect of reinstating the Employee in his or her employment in all respects as if he or she had not been dismissed, the arbitrator shall reduce or further reduce the basic amount to such extent as he or she considers just and equitable having regard to that finding.

**152.** Where the arbitrator considers that any conduct of the Employee before the dismissal (or, where the dismissal was with notice, before the notice was given) was such that it would be just and equitable to reduce or further reduce the basic amount to any extent, the arbitrator shall reduce or further reduce that amount accordingly. In assessing such conduct, the arbitrator shall disregard (if relevant) those matters set out in section 155 of the Trade Union and Labour Relations (Consolidation) Act 1992, as amended from time to time.

**153.** The preceding paragraph does not apply in a redundancy case (see paragraph 150(i) above) unless the reason for selecting the Employee for dismissal was one of those specified in paragraph 147 above ("Minimum basic amounts in certain cases"), and in such a case, the preceding paragraph applies only to so much of the basic amount as is payable because of paragraph 147 above.

**154.** Where the Employee has been awarded any amount in respect of the dismissal under a dismissal procedures agreement designated under section 110 of the Employment Rights Act 1996 (as amended from time to time), the arbitrator shall reduce or further reduce the amount of the basic award to such extent as he or she considers just and equitable having regard to that award.

**155.** The basic amount shall be reduced or further reduced by the amount of any payment made by the Employer to the Employee on the ground that the dismissal was by reason of redundancy (whether in pursuance of Part XI of the Employment Rights Act 1996, as amended from time to time, or otherwise).

#### **The compensatory amount**

**156.** Subject to the following provisions, the *compensatory amount* shall be such as the arbitrator considers just and equitable in all the circumstances having regard to the loss sustained by the Employee in consequence of the dismissal, in so far as that loss is attributable to action taken by the Employer.

**157.** The loss referred to in paragraph 156 above shall be taken to include:

- (i) any expenses reasonably incurred by the Employee in consequence of the dismissal; and
- (ii) subject to sub-paragraph (iii) below, loss of any benefit which he or she might reasonably be expected to have had but for the dismissal;
- (iii) in respect of any loss of:
  - (a) any entitlement or potential entitlement to a payment on account of dismissal by reason of redundancy (whether in pursuance of Part XI of the Employment Rights Act 1996, as amended from time to time, or otherwise); or
  - (b) any expectation of such a paymentonly the loss referable to the amount (if any) by which such a payment would have exceeded the basic amount in respect of the same dismissal (as calculated under the provisions set out above—but excluding any reductions under paragraphs 151 to 155 above (“Reductions to the basic amount”)).

**158.** In ascertaining the loss referred to in paragraph 152 above, the arbitrator shall apply the principle that a person has a duty to mitigate his or her loss.

**159.** In determining, for the purposes of paragraph 152 above, how far any loss sustained by the Employee was attributable to action taken by the Employer, no account shall be taken of any pressure which by:

- (i) calling, organising, procuring or financing a strike or other industrial action, or
- (ii) threatening to do so,

was exercised on the Employer to dismiss the Employee; and that question shall be determined as if no such pressure had been exercised.

#### **Reductions to the compensatory amount**

**160.** Where the arbitrator finds that the dismissal was to any extent caused or contributed to by any conduct of the Employee, he or she shall reduce the compensatory amount by such proportion as he or she considers just and equitable having regard to that finding. In assessing such conduct, the arbitrator shall disregard (if relevant) those matters set out in section 155 of the Trade Union and Labour Relations (Consolidation) Act 1992, as amended from time to time.

**161.** If :

- (i) any payment was made by the Employer to the Employee on the ground that the dismissal was by reason of redundancy (whether in pursuance of Part XI of the Employment Rights Act 1996, as amended from time to time, or otherwise); and
- (ii) the amount of such a payment exceeds the basic amount that would have been payable under the provisions set out above (excluding for this purpose reductions on account of redundancy payments (see paragraph 150 above)),

that excess goes to reduce the compensatory amount.

#### **Internal appeal procedures**

**162.** Where an award of compensation is to be made, and the arbitrator finds that:

- (i) the Employer provided a procedure for appealing against dismissal; and
- (ii) the Employee was, at the time of the dismissal or within a reasonable period afterwards, given written notice stating that the Employer provided the procedure and including details of it; but
- (iii) the Employee did not appeal against the dismissal under the procedure (otherwise than because the Employer prevented him or her from doing so),

the arbitrator shall reduce the compensatory amount included in an award of compensation by such amount (if any) as he or she considers just and equitable.

- 163.** Where an award of compensation is to be made, and the arbitrator finds that:
- (i) the Employer provided a procedure for appealing against dismissal; but
  - (ii) the Employer prevented the Employee from appealing against the dismissal under the procedure,

the award of compensation shall include a supplementary amount, being such amount (if any) as the arbitrator considers just and equitable.

**164.** In determining the amount of a reduction under paragraph 162 above or a supplementary amount under paragraph 163 above, the arbitrator shall have regard to all the circumstances of the case, including in particular the chances that an appeal under the procedure provided by the Employer would have been successful.

**165.** The amount of such a reduction or supplementary amount shall not exceed the amount of two weeks' pay (for the definition of "week's pay", see paragraph 143 above).

#### **Limits on the compensatory amount**

- 166.** With the exception of:
- (i) cases falling within sections 100 or 105(3) (Health and Safety Cases) of the Employment Rights Act 1996, as amended from time to time; and
  - (ii) cases where the reason (or, if more than one, the principal reason):
    - (a) in a redundancy case, for selecting the Employee for dismissal; or
    - (b) otherwise for the dismissal,

was that the Employee made a protected disclosure (within the meaning of Part IVA of the Employment Rights Act 1996, as amended from time to time); and

- (iii) cases falling within any other exception to the statutory limit,

no compensatory amount awarded by an arbitrator shall exceed the statutory limit provided for in section 124(1) of the Employment Rights Act 1996, as amended from time to time.

**167.** The limit referred to above applies to the amount which the arbitrator would award (apart from paragraph 166 above) in respect of the subject matter of the complaint, after taking into account:

- (i) any payment made by the Employer to the Employee in respect of that matter, and
- (ii) any reduction in the amount of the award required by any enactment or rule of law.

#### **Double recovery**

- 168.** Where the same acts of the Employer are relied upon by the Employee:
- (i) to ground a claim for unfair dismissal in arbitration as well as
  - (ii) to ground a claim in the employment tribunal for discrimination (under the Sex Discrimination Act 1975 and/or the Race Relations Act 1976 and/or the Disability Discrimination Act 1995, and/or any other relevant Act or subordinate legislation),

the arbitrator shall not award compensation in respect of any loss or other matter which is to be or has been taken into account by the employment tribunal in awarding compensation with respect to the discrimination claim.

In this regard, the arbitrator shall have regard to any information supplied by the parties under paragraph 86 above.

## **XXII. ISSUE OF AWARDS AND CONFIDENTIALITY**

**169.** The arbitrator's award shall be sent by ACAS to both parties.

**170.** Subject to any steps which may be reasonably necessary for the purposes of any application to the Court or enforcement of the award, the award shall be confidential, and shall only be issued to the parties or to their nominated advisers or representatives. Awards will not be published by ACAS, or lodged with the employment tribunal by ACAS, although awards may be retained by ACAS for monitoring and evaluation purposes, and, from time to time, ACAS may publish general summary information concerning cases heard under the Scheme, without identifying any individual cases.

## **XXIII. CORRECTION OF AWARDS**

### **Scrutiny of awards by ACAS**

**171.** Before being sent to the parties, awards may be scrutinised by ACAS to check for clerical or computational mistakes, errors arising from accidental slips or omissions, ambiguities, or errors of form.

Without affecting the arbitrator's liberty of decision, ACAS may refer the award back to the arbitrator (under the provisions below) in order to draw his or her attention to any such point.

#### **Correction by the arbitrator**

- 172.** The arbitrator may, on his or her own initiative or on the application of a party or ACAS:
- (i) correct the award so as to remove any clerical or computational mistake, or error arising from an accidental slip or omission, or to clarify or remove any ambiguity in the award, or
  - (ii) make an additional award in respect of any part of the claim which was presented to the arbitrator but was not dealt with in the award.

**173.** In so far as any such correction or additional award involves a new issue that was not previously before the parties, this power shall not be exercised without first affording the parties a reasonable opportunity to make written representations to the arbitrator.

**174.** Any application by a party for the exercise of this power must be made via the ACAS Arbitration Section within 28 days of the date the award was despatched to the applying party by ACAS.

**175.** Any correction of the award shall be made within 28 days of the date the application was received by the arbitrator or, where the correction is made by the arbitrator on his or her own initiative, within 28 days of the date of the award.

**176.** Any additional award shall be made within 56 days of the date of the original award.

**177EW.** Any additional award in an English/Welsh arbitration shall so far as relevant comply with paragraphs 114EW, 115EW and 116EW.

**178S.** Any additional award in a Scottish arbitration shall so far as relevant comply with paragraphs 117S and 118S. Any correction to an award shall be issued on a memorandum of correction which shall:

- (i) specify the correction;
- (ii) be signed by the arbitrator;
- (iii) be signed by a witness to the arbitrator's signature;
- (iv) state the name and address of the witness; and
- (v) state the date upon which it was signed by the arbitrator.

**179.** Any correction of the award shall form part of the award.

## **XXIV. EFFECT OF AWARDS, ENFORCEMENT AND INTEREST**

### **Effect of awards**

**180.** Awards made by arbitrators under this Scheme are final and binding both on the parties and on any persons claiming through or under them.

**181EW.** This does not affect the right of a person to challenge an award under the provisions of the Arbitration Act 1996 as applied to this Scheme.

**182S.** This does not affect the right of a person to challenge an award under Part XXV below.

### **Enforcement**

**183EW.** *Section 66 of the Arbitration Act 1996(a) shall apply to English and Welsh arbitrations conducted in accordance with the Scheme, subject to the following modifications—*

- (i) *in subsection (1), for "tribunal pursuant to an arbitration agreement" substitute "arbitrator pursuant to the Scheme (except for an award of reinstatement or re-engagement)";*
- (ii) *in subsection (3), for "(see section 73)" substitute "(see Part XXVI of the Scheme)"; and*

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(a) 1996 c. 23. Section 66 of the Arbitration Act 1996 provides as follows:

"66.—(1) An award made by the tribunal pursuant to an arbitration agreement may, by leave of the court, be enforced in the same manner as a judgment or order of the court to the same effect.

(2) Where leave is so given, judgment may be entered in terms of the award.

(3) Leave to enforce an award shall not be given where, or to the extent that, the person against whom it is sought to be enforced shows that the tribunal lacked substantive jurisdiction to make the award.

The right to raise such an objection may have been lost (see section 73).

(4) Nothing in this section affects the recognition or enforcement of an award under any other enactment or rule of law, in particular under Part II of the Arbitration Act 1950 (enforcement of awards under Geneva Convention) or the provisions of Part III of this Act relating to the recognition and enforcement of awards under the New York Convention or by an action on the award."

(iii) after subsection (4), insert—

“(5) In this section—

“the court” means the High Court or a county court; and

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

**184S.** Any award requiring the payment of money which may be made in a Scottish arbitration under the Scheme may be registered for execution.

**185.** Awards of reinstatement or re-engagement will be enforced by the employment tribunal in accordance with section 117 of the Employment Rights Act 1996 (enforcement by award of compensation).

#### Interest

**186.** Awards of compensation that are not paid within 42 days of the date on which the award was despatched by ACAS to the Employer will attract interest on the same basis as for employment tribunal awards.

### XXV. CHALLENGING THE AWARD

#### Challenges on grounds of substantive jurisdiction: English/Welsh arbitrations

**187EW.** Section 67 of the Arbitration Act 1996 (a) shall apply to English/Welsh arbitrations conducted in accordance with the Scheme, subject to the following modifications—

(i) 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 ACAS) apply to the High Court or the Central London County Court”;

(b) for “(see section 73)” substitute “(see Part XXVI of the Scheme)”;

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

(ii) 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 ACAS Arbitration Scheme (Great Britain) Order 2004; 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

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

#### Challenges on grounds of substantive jurisdiction: Scottish arbitrations

**188S.** A party to a Scottish arbitration may appeal to the Court of Session—

(i) challenging any award of the arbitrator as to his or her substantive jurisdiction; or

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(a) Section 67 of the Arbitration Act 1996 provides as follows:

“67.—(1) A party to 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.”

- (ii) on the ground that an award made by the arbitrator on the merits is of no effect, in whole or in part, because the arbitrator did not have substantive jurisdiction.

**189S.** A party may lose the right to appeal under paragraph 188S in accordance with Part XXVI below.

**190S.** Appeals under paragraph 188S are subject to the provisions of paragraphs 206S, 207S and 208S below.

**191S.** For the purposes of paragraph 188S “substantive jurisdiction” means any issue as to—

- (i) the validity of the Arbitration Agreement and the application of the Scheme to the dispute or difference in question;
- (ii) the constitution of the arbitral tribunal; or
- (iii) the matters which have been submitted to arbitration in accordance with the Arbitration Agreement.

**192S.** The arbitrator may continue the arbitral proceedings and make a further award while an appeal to the Court under paragraph 188S is pending in relation to an award of the arbitrator as to his substantive jurisdiction.

**193S.** On an appeal under paragraph 188S the Court may (without prejudice to any other power which it may exercise or remedy which it may grant)—

- (i) confirm the award;
- (ii) vary the award;
- (iii) declare the award to be of no effect in whole or in part; or
- (iv) reduce the award in whole or in part.

#### **Challenges for serious irregularity: English/Welsh arbitrations**

**194EW.** *Section 68 of the Arbitration Act 1996 (a) shall apply to English/Welsh arbitrations conducted in accordance with the Scheme, subject to the following modifications.*

(i) *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 ACAS) apply to the High Court or Central London County Court”;*
- (b) *for “(see section 73)” substitute “(see Part XXVI of the Scheme)”;* and

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(a) Section 68 of the Arbitration Act 1996 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 requirements 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.”

- (c) after “section 70(2) and (3)” insert “as modified for the purposes of the Scheme”;
- (ii) in subsection (2)(a), for “section 33 (general duty of tribunal)” substitute “Part X of the Scheme (General Duty of the Arbitrator)”;
- (iii) in subsection (2)(b), after “see section 67” insert “as modified for the purposes of the Scheme”;
- (iv) in subsection (2)(c), for “agreed by the parties” substitute “as set out in the Scheme”;
- (v) in subsection (2)(e), for “any arbitral or other institution or person vested by the parties with powers in relation to the proceedings or the award” substitute “ACAS”;
- (vi) omit paragraph (h) from subsection (2);
- (vii) in subsection (2)(i), for “any arbitral or other institution or person vested by the parties with powers in relation to the proceedings or the award” substitute “ACAS”;
- (viii) in subsection (3)(b) insert “vary the award or” before “set the award aside”;
- (ix) in subsection (3), 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.”; and
- (x) after subsection (4), insert—

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

### **Challenges for serious irregularity: Scottish arbitrations**

**195S.** A party to a Scottish arbitration may appeal to the Court of Session against an award in the proceedings on the ground of serious irregularity affecting the arbitrator, the proceedings or the award.

**196S.** A party may lose the right to appeal under paragraph 195S above in accordance with Part XXVI below.

**197S.** Appeals under paragraph 195S are subject to the provisions of paragraphs 206S, 207S and 208S.

**198S.** For the purposes of paragraph 195S, “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 appellant—

- (i) failure by the arbitrator to comply with Part X above (General Duty of Arbitrator);
- (ii) the arbitrator exceeding his or her powers (otherwise than by exceeding its substantive jurisdiction (as defined in paragraph 191S above));
- (iii) failure by the arbitrator to conduct the proceedings in accordance with the procedure set out in the Scheme;
- (iv) failure by the arbitrator to deal with all the issues put to him or her;
- (v) ACAS exceeding its powers;
- (vi) uncertainty or ambiguity as to the effect of the award;
- (vii) the award having been obtained by fraud or the way in which it was procured being contrary to public policy; or
- (viii) any irregularity in the conduct of the proceedings or in the award which is admitted by the arbitrator or ACAS.

**199S.** If there is shown to be serious irregularity affecting the arbitrator, the proceedings or the award, the Court may (without prejudice to any other power which it may exercise or remedy which it may grant)—

- (i) remit the award to the arbitrator, in whole or in part, for reconsideration,
- (ii) vary the award,
- (iii) declare the award to be of no effect in whole or in part, or
- (iv) reduce the award in whole or in part.

## Appeals on questions of EC law and the Human Rights Act 1998: English/Welsh arbitrations

**200EW.** Section 69 of the Arbitration Act 1996 (a) shall apply to English/Welsh arbitrations conducted in accordance with the Scheme, subject to the following modifications—

- (i) 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 ACAS) appeal to the High Court or Central London County 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 or (c) any devolution issue”;
  - (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.”;
- (ii) In subsection (2), after “section 70(2) and (3)” insert “as modified for the purposes of the Scheme”;
- (iii) omit paragraph (b) from subsection (3);
- (iv) in subsection (3)(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”;
- (v) 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.”; and
- (vi) after subsection (8), insert—

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(a) 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
  - (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.”

“(9) *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;*

“*the Scheme*” means *the arbitration scheme set out in the Schedule to the ACAS Arbitration Scheme (Great Britain) Order 2004, and*

“*devolution issue*” means *a devolution issue as defined in paragraph 1 of Schedule 6 to the Scotland Act 1998 or a devolution issue as defined in paragraph 1 of Schedule 8 of the Government of Wales Act 1998.*

#### **Appeals on questions of EC law, devolution issues and the Human Rights Act 1998: Scottish arbitrations**

**201S.** A party to a Scottish arbitration may appeal to the Court of Session:

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

arising out of an award made in the arbitration.

**202S.** An appeal shall not be brought under paragraph 201S except—

- (i) with the agreement of all the other parties to the proceedings; or
- (ii) with the leave of the Court.

**203S.** Leave to appeal shall be given only if the Court is satisfied—

- (i) that the determination of the question will substantially affect the rights of one or more of the parties;
- (ii) that on the basis of the findings of fact in the Note appended to the award, insofar as the question for appeal raises a point of EC law, the point is capable of serious argument, and insofar as the question for appeal does not raise a point of EC law:
  - (a) the decision of the arbitrator on the question is obviously wrong, or
  - (b) the question is one of general public importance and the decision of the arbitrator is at least open to serious doubt, and
- (iii) 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.

**204S.** On an appeal under paragraph 201S the Court may (without prejudice to any other power which it may exercise or remedy which it may grant)—

- (i) confirm the award,
- (ii) vary the award,
- (iii) remit the award to the arbitrator, in whole or in part, for reconsideration in light of the Court’s determination,
- (iv) declare the award to be of no effect in whole or in part,
- (v) reduce the award in whole or in part, or
- (vi) recall the award in whole or in part.

### **Time limits and other procedural restrictions on challenges to awards: English/Welsh arbitrations**

**205EW.** Section 70 of the Arbitration Act 1996(a) shall apply to English/Welsh arbitrations conducted in accordance with the Scheme, subject to the following modifications—

- (i) in subsection (1), after the words “section 67, 68 or 69” insert the words “(as modified for the purposes of the Scheme)”;
- (ii) omit paragraph (a) from subsection (2);
- (iii) in subsection (2)(b), for “section 57 (correction of award or additional award)” substitute “Part XXIII of the Scheme (Correction of Awards)”;
- (iv) for 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 ACAS, or if an application for a correction or additional award under paragraph 172 has been made and declined, the date on which the arbitrator’s decision was despatched to the applicant or appellant by ACAS”;
- (v) omit subsection (5);
- (vi) after subsection (8), insert—

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

### **Time limits and procedural restrictions on challenges to awards: Scottish arbitrations**

**206S.** An appeal under paragraphs 188S, 195S or 201S may not be brought if the appellant has not first exhausted any available recourse under Part XXIII of the Scheme (Correction of Awards).

**207S.** An appeal under paragraphs 188S, 195S or (where the parties have agreed under paragraph 202S(i)) 201S or an application for leave to appeal under paragraph 202S(ii) shall be lodged within 28 days of whichever is the later of:

- (i) the date on which the award was despatched to the appellant by ACAS;
- (ii) where, a correction or additional award has been made in accordance with Part XXIII above, the date on which a memorandum of correction or additional award under Part XXIII above was despatched to the appellant by ACAS; and
- (iii) where a party has applied for a correction or additional award under paragraph 172 above but the arbitrator has declined to make any correction or additional award, the date on which intimation of the arbitrator’s decision was despatched to the appellant by ACAS.

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(a) Section 70 of the Arbitration Act 1996 provides as follows:

“70.—(1) The following provisions apply to an application or appeal under sections 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.”

**208S.** If on an appeal under paragraphs 188S, 195S or 201S it appears to the Court that the award and the arbitrator’s Note:

- (i) do not contain the arbitrator’s reasons, or
- (ii) do not set out the arbitrator’s reasons in sufficient detail to enable the Court properly to consider the application or appeal,

the Court may order the arbitrator to state the reasons for his or her award in sufficient detail for that purpose.

#### **Common law challenges and saving**

**209EW.** Sections 81(1)(c) and 81(2) of the Arbitration Act 1996(a) shall apply to English/Welsh arbitrations conducted in accordance with the Scheme.

**210S.** Nothing in this Part of the Scheme shall be construed as excluding the operation of any rule of law as to the refusal of recognition or enforcement of an arbitral award in a Scottish arbitration on grounds of public policy.

#### **Exclusion of Stated Case Procedure**

**211S.** Section 3 of the Administration of Justice (Scotland) Act 1972(b) shall not apply to any arbitration under the Scheme.

#### **Challenge or appeal: effect of order of the court**

**212EW.—(1)** Section 71 of the Arbitration Act 1996(c) shall apply to English/Welsh arbitrations conducted in accordance with the Scheme, subject to the following modifications—

- (i) in subsection (1), after the words “section 67, 68 and 69” insert the words “(as modified for the purposes of the Scheme)”;
- (ii) after subsection (3), insert—

“(3A) In this section, “the Scheme” means the arbitration scheme set out in the Schedule to the ACAS Arbitration Scheme (Great Britain) Order 2004.”; and
- (iii) omit subsection (4).

**213S.** The following provisions have effect where the Court makes an order under paragraph 193S, 199S or 204S of the Scheme with respect to an award.

- (i) Where the award is varied, the variation has effect as part of the arbitrator’s award.
- (ii) Where the award is remitted to the arbitrator in whole or in part for reconsideration the arbitrator 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.

### **XXVI. LOSS OF RIGHT TO OBJECT**

**214.** If a party to arbitral proceedings under this Scheme takes part, or continues to take part, in the proceedings without making, either forthwith or within such time as is allowed by the arbitrator or by any provision in this Scheme, any objection:

- (i) in an English/Welsh arbitration, that the arbitrator lacks substantive jurisdiction as defined in paragraph 187EW, or in a Scottish arbitration that the arbitrator lacks substantive jurisdiction

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(a) 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.”

(b) 1972 c. 59.

(c) Section 71 of the Arbitration Act 1996 provides as follows:

“71.—(1) The following provisions have effect where the court makes an order under sections 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.”

as defined in paragraph 191S, aside from any jurisdictional objection with respect to the circumstances of the dismissal, which will be waived in any event, as set out in paragraphs 21 to 23 above,

- (ii) that the proceedings have been improperly conducted,
- (iii) that there has been a failure to comply with the Arbitration Agreement or any provision of this Scheme, or
- (iv) that there has been any other irregularity affecting the arbitrator or the proceedings,

he or she may not raise that objection later, before the arbitrator or the court, unless he or she shows that, at the time he or she took part or continued to take part in the proceedings, he or she did not know and could not with reasonable diligence have discovered the grounds for the objection.

## XXVII. IMMUNITY

**215.** An arbitrator under this Scheme is not liable for anything done or omitted in the discharge or purported discharge of his or her functions as arbitrator unless the act or omission is shown to have been in bad faith. This applies to a legal adviser appointed by ACAS as it applies to the arbitrator himself or herself.

**216.** ACAS, by reason of having appointed an arbitrator or nominated a legal adviser, is not liable for anything done or omitted by the arbitrator or legal adviser in the discharge or purported discharge of his or her functions.

## XXVIII. MISCELLANEOUS PROVISIONS

### Requirements in connection with legal proceedings

**217EW.** Sections 80(1), (2), (4), (5), (6) and (7) of the Arbitration Act 1996(a) shall apply to English/Welsh arbitrations conducted in accordance with the Scheme, subject to the following modification:

*In subsection (1), for “to the other parties to the arbitral proceedings, or to the tribunal” substitute “to the other party to the arbitral proceedings, or to the arbitrator, or to ACAS”.*

### Service of documents and notices on ACAS or the ACAS Arbitration Section

**218.** Any notice or other document required or authorised to be given or served on ACAS or the ACAS Arbitration Section for the purposes of the arbitral proceedings shall be sent by pre-paid post to the address in the ACAS Guide to the Scheme

*or* transmitted by facsimile, addressed to the ACAS Arbitration Section, at the number stipulated in the ACAS Guide to the Scheme,

*or* by electronic mail, at the address stipulated in the ACAS Guide to the Scheme.

**219.** Paragraph 218 does not apply to the service of documents on the ACAS Arbitration Section for the purposes of legal proceedings.

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(a) Sections 80(1), (2), (4), (5), (6) and (7) of the Arbitration Act 1996 provide as follows:

“**80.**—(1) References in this Part to an application, appeal or other step in relation to legal proceedings being taken “upon notice” to the other parties to the arbitral proceedings, or to the tribunal, are to such notice of the originating process as is required by rules of court and do not impose any separate requirement.

(2) Rules of court shall be made—

- (a) requiring such notice to be given as indicated by any provision of this Part, and
- (b) as to the manner, form and content of any such notice.

. . .

(4) References in this Part to making an application or appeal to the court within a specified period are to the issue within that period of the appropriate originating process in accordance with rules of court.

(5) Where any provision of this Part requires an application or appeal to be made to the court within a specified time, the rules of court relating to the reckoning of periods, the extending or abridging of periods, and the consequences of not taking a step within the period prescribed by the rules, apply in relation to that requirement.

(6) Provision may be made by rules of court amending the provisions of this Part—

- (a) with respect to the time within which any application or appeal to the court must be made,
- (b) so as to keep any provision made by this Part in relation to arbitral proceedings in step with the corresponding provision of rules of court applying in relation to proceedings in the court, or
- (c) so as to keep any provision made by this Part in relation to legal proceedings in step with the corresponding provision of rules of court applying generally in relation to proceedings in the court.

(7) Nothing in this section affects the generality of the power to make rules of court.”

**Service of documents or notices on any other person or entity (other than ACAS or the ACAS Arbitration Section)**

**220.** Any notice or other document required or authorised to be given or served on any person or entity (other than ACAS or the ACAS Arbitration Section) for the purposes of the arbitral proceedings may be served by any effective means.

**221.** If such a notice or other document is addressed, pre-paid and delivered by post:

- (i) to the addressee's last known principal residence or, if he or she is or has been carrying on a trade, profession or business, his or her last known principal business address, or
- (ii) where the addressee is a body corporate, to the body's registered or principal office,

it shall be treated as effectively served.

**222.** Paragraphs 220 and 221 do not apply to the service of documents for the purposes of legal proceedings, for which provision is made by rules of court.

**Powers of court in relation to service of documents**

**223EW.** Section 77 of the Arbitration Act 1996(a) shall apply to English/Welsh arbitrations conducted in accordance with the Scheme, subject to the following modifications—

- (i) in subsection (1), for “in the manner agreed by the parties, or in accordance with provisions of section 76 having effect in default of agreement,” substitute “in accordance with paragraphs 220 and 221”;
- (ii) in subsection (2), for “Unless otherwise agreed by the parties, the court” substitute “The High Court or Central London County Court”;
- (iii) in subsection (3), for “Any party to the arbitration agreement may apply” substitute “ACAS or any party to the Arbitration Agreement may apply”.

**Reckoning periods of time**

**224EW.** Sections 78(2), (3), (4) and (5) of the Arbitration Act 1996(b) shall apply to English/Welsh arbitrations conducted in accordance with the Scheme, subject to the following modification to subsection (2) of that section.

- (i) omit “If or to the extent that there is no such agreement,”;
- (ii) after “periods of time” insert “provided for in any provision of this Part”.

**225S.** Except as otherwise specified in the Scheme, periods of time shall in Scottish arbitrations be reckoned in accordance with the following provisions:

- (i) Where the act is required to be done within a specified period after or from a specified date, the period begins immediately after that date;
- (ii) Where the act is required to be done a specified number of clear days after a specified date, at least that number of days must intervene between the day on which the act is done and that date;
- (iii) Where the period is a period of seven days or less which would include a Saturday, Sunday or a public holiday in the place where anything which has to be done within the period falls to be done, that day shall be excluded.

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(a) Section 77 of the Arbitration Act 1996 provides as follows:

“77.—(1) This section applies where service of a document on a person in the manner agreed by the parties, or in accordance with provisions of section 76 having effect in default of agreement, is not reasonably practicable.

(2) Unless otherwise agreed by the parties, the court may make such order as it thinks fit—

- (a) for service in such manner as the court may direct, or
- (b) dispensing with service of the document.

(3) Any party to the arbitration agreement may apply for an order, but only after exhausting any available arbitral process for resolving the matter.

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

(b) Sections 78(2), (3), (4) and (5) of the Arbitration Act 1996 provide as follows:

“78.—(2) If or to the extent there is no such agreement, periods of time shall be reckoned in accordance with the following provisions.

(3) Where the act is required to be done within a specified period after or from a specified date, the period begins immediately after that date.

(4) Where the act is required to be done a specified number of clear days after a specified date, at least that number of days must intervene between the day on which the act is done and that date.

(5) Where the period is a period of seven days or less which would include a Saturday, Sunday or a public holiday in the place where anything which has to be done within the period falls to be done, that day shall be excluded.

In relation to England and Wales or Northern Ireland, a “public holiday” means Christmas Day, Good Friday or a day which under the Banking and Financial Dealings Act 1971 is a bank holiday.”

- (iv) In relation to Scotland a “public holiday” means a day which under the Banking and Financial Dealings Act 1971(a) is to be a bank holiday in Scotland and in relation to England and Wales or Northern Ireland a “public holiday” means Christmas Day, Good Friday or a day which under the Banking and Financial Dealings Act 1971 is to be a bank holiday in England and Wales or Northern Ireland as the case may be.

XXIX. GOVERNING LAW

**226EW.** The seat of an English/Welsh arbitration shall be England and Wales. The arbitrator may nevertheless hold any meeting or hearing or do any act in relation to the arbitration outside England and Wales.

**227S.** The seat of a Scottish arbitration shall be Scotland. The arbitrator may nevertheless hold any meeting or hearing or do any act in relation to the arbitration outside Scotland.

APPENDIX A

Waiver of Rights

English/Welsh Arbitrations

The ACAS Arbitration Scheme (“the Scheme”) is entirely voluntary. In agreeing to refer a dispute to arbitration under the Scheme, both parties agree to waive rights that they would otherwise have if, for example, they had referred their dispute to the employment tribunal. This follows from the informal nature of the Scheme, which is designed to be a confidential, relatively fast, cost-efficient and non-legalistic process.

As required by Part VII of the Scheme, as a confirmation of the parties’ agreement to waive their rights, this form must be completed by each party and submitted to ACAS together with the agreement to arbitration.

A detailed description of the informal nature of arbitration under the Scheme, and the important differences between this and the employment tribunal, is contained in the ACAS Guide to the Scheme (“the ACAS Guide”), which should be read by each party before completing this form.

The Scheme is not intended for disputes involving complex legal issues, or questions of EC law. Parties to such disputes are strongly advised to consider applying to the employment tribunal, or settling their dispute by other means.

This form does not list all the differences between the Scheme and the employment tribunal, or all of the features of the Scheme to which each party agrees in referring their dispute to arbitration.

There are differences between the law of England and Wales on the one hand and the law of Scotland on the other. The Scheme accordingly makes separate provision for English/Welsh arbitrations and Scottish arbitrations. This form confirms the parties’ agreement that the arbitration between them will be an English/Welsh arbitration.

**I, ....., the Applicant / Respondent / Respondent’s duly authorised representative [delete as appropriate] confirm my agreement to each of the following points:**

1.	Unlike proceedings in the employment tribunal, all proceedings under the Scheme, including all hearings, are conducted in <i>private</i> . There are no public hearings, and the final award will be confidential.
2.	All arbitrators under the Scheme are appointed by ACAS from the ACAS Arbitration Panel (which is a panel of impartial, mainly non-lawyer, arbitrators appointed by ACAS on fixed, but renewable, terms). The appointment process and the ACAS Arbitration Panel are described in the Scheme and the ACAS Guide. Neither party will have any choice of arbitrator.
3.	Proceedings under the Scheme are conducted differently from the employment tribunal. In particular: — arbitrators will conduct proceedings in an <i>informal</i> manner in all cases; — the attendance of witnesses and the production of documents cannot be compelled (although failure to co-operate may be taken into account by the arbitrator); — there will be no oaths or affirmations, and no cross-examination of witnesses by parties or their representatives; — the arbitrator will take the initiative in asking questions and ascertaining the facts (with the aim of ensuring that all relevant issues are considered), as well as hearing each side’s arguments; — the arbitrator’s decision will only contain the main considerations that have led to the result; it will not contain full or detailed reasons;

(a) 1971 c. 80.

	— the arbitrator has no power to order interim relief.
4.	Once parties have agreed to refer their dispute to arbitration in accordance with the Scheme, the parties cannot then return to the employment tribunal.
5.	In deciding whether or not the dismissal was fair or unfair, the arbitrator shall have regard to general principles of fairness and good conduct in employment relations (including, for example, principles referred to in any relevant ACAS “Disciplinary and Grievance Procedures” Code of Practice or “Discipline and Grievances at Work” Handbook). Unlike the employment tribunal, the arbitrator will not apply strict legal tests or rules (eg court decisions or legislation), with certain limited exceptions set out in the Scheme (see eg paragraph 17). Similarly, in cases that do not involve EC law, the arbitrator will calculate compensation or award any other remedy in accordance with the terms of the Scheme, instead of applying strict legal tests or rules.
6.	Unlike the employment tribunal, there is no right of appeal from awards of arbitrators under the Scheme (except for a limited right to appeal questions of EC law and, aside from procedural matters set out in the Scheme, questions concerning the Human Rights Act 1998 and devolution issues).
7.	Unlike the employment tribunal, in agreeing to arbitration under the Scheme, parties agree that there is no jurisdictional argument, ie no reason why the claim cannot be heard and determined by the arbitrator. In particular, the arbitrator will assume that a dismissal has taken place, and will only consider whether or not this was unfair. This is explained further in the Scheme and in the ACAS Guide.
8.	The arbitration shall be an English/Welsh arbitration

SIGNED: .....

DATED: .....

IN THE PRESENCE OF

Signature: .....  
Full Name: .....  
Position: .....  
Address: .....  
.....

## APPENDIX B

### Waiver of Rights

#### Scottish Arbitrations

The ACAS Arbitration Scheme (“the Scheme”) is entirely voluntary. In agreeing to refer a dispute to arbitration under the Scheme, both parties agree to waive rights that they would otherwise have if, for example, they had referred their dispute to the employment tribunal. This follows from the informal nature of the Scheme, which is designed to be a confidential, relatively fast, cost-efficient and non-legalistic process.

As required by Part VII of the Scheme, as a confirmation of the parties’ agreement to waive their rights, this form must be completed by each party and submitted to ACAS together with the agreement to arbitration.

A detailed description of the informal nature of arbitration under the Scheme, and the important differences between this and the employment tribunal, is contained in the ACAS Guide to the Scheme (“the ACAS Guide”), which should be read by each party before completing this form.

The Scheme is not intended for disputes involving complex legal issues, or questions of EC law. Parties to such disputes are strongly advised to consider applying to the employment tribunal, or settling their dispute by other means.

This form does not list all the differences between the Scheme and the employment tribunal, or all of the features of the Scheme to which each party agrees in referring their dispute to arbitration.

There are differences between the law of Scotland on the one hand and the law of England and Wales on the other. The Scheme accordingly makes separate provision for Scottish arbitrations and English/Welsh arbitrations. This form confirms the parties’ agreement that the arbitration between them will be a Scottish arbitration and (as permitted in Scots law) that any award may be enforced by registration rather than by application to the Court.

I, ....., the Applicant / Respondent / Respondent's duly authorised representative  
 [delete as appropriate] confirm my agreement to each of the following points:

1.	Unlike proceedings in the employment tribunal, all proceedings under the Scheme, including all hearings, are conducted in <i>private</i> . There are no public hearings, and the final award will be confidential.
2.	All arbitrators under the Scheme are appointed by ACAS from the ACAS Arbitration Panel (which is a panel of impartial, mainly non-lawyer, arbitrators appointed by ACAS on fixed, but renewable, terms). The appointment process and the ACAS Arbitration Panel are described in the Scheme and the ACAS Guide. Neither party will have any choice of arbitrator.
3.	Proceedings under the Scheme are conducted differently from the employment tribunal. In particular: <ul style="list-style-type: none"> <li>— arbitrators will conduct proceedings in an <i>informal</i> manner in all cases;</li> <li>— the attendance of witnesses and the production of documents cannot be compelled (although failure to co-operate may be taken into account by the arbitrator);</li> <li>— there will be no oaths or affirmations, and no cross-examination of witnesses by parties or their representatives;</li> <li>— the arbitrator will take the initiative in asking questions and ascertaining the facts (with the aim of ensuring that all relevant issues are considered), as well as hearing each side's arguments;</li> <li>— the arbitrator's decision will only contain the main considerations that have led to the result; it will not contain full or detailed reasons;</li> <li>— the arbitrator has no power to order interim relief.</li> </ul>
4.	Once parties have agreed to refer their dispute to arbitration in accordance with the Scheme, the parties cannot then return to the employment tribunal.
5.	In deciding whether or not the dismissal was fair or unfair, the arbitrator shall have regard to general principles of fairness and good conduct in employment relations (including, for example, principles referred to in any relevant ACAS "Disciplinary and Grievance Procedures" Code of Practice or "Discipline and Grievances at Work" Handbook). Unlike the employment tribunal, the arbitrator will not apply strict legal tests or rules (eg court decisions or legislation), with certain limited exceptions set out in the Scheme (see eg paragraph 17). Similarly, in cases that do not involve EC law, the arbitrator will calculate compensation or award any other remedy in accordance with the terms of the Scheme, instead of applying strict legal tests or rules.
6.	Unlike the employment tribunal, there is no right of appeal from awards of arbitrators under the Scheme (except for a limited right to appeal questions of EC law and, aside from procedural matters set out in the Scheme, questions concerning the Human Rights Act 1998 and devolution issues. The provisions of section 3 of the Administration of Justice (Scotland) Act 1972 (which provides for arbitrators to state a case for the opinion of the Court of Session) shall not apply to this arbitration.
7.	Unlike the employment tribunal, in agreeing to arbitration under the Scheme, parties agree that there is no jurisdictional argument, ie no reason why the claim cannot be heard and determined by the arbitrator. In particular, the arbitrator will assume that a dismissal has taken place, and will only consider whether or not this was unfair. This is explained further in the Scheme and in the ACAS Guide.
8.	The arbitration shall be a Scottish arbitration.
9.	The parties consent to registration for execution of any award requiring the payment of money which may be made under the Scheme.

SIGNED: .....

DATED: .....

IN THE PRESENCE OF

Signature: .....

Full Name: .....

Position: .....

Address: .....

.....

## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order sets out a revised scheme, submitted to the Secretary of State by ACAS pursuant to section 212A of the Trade Union and Labour Relations (Consolidation) Act 1992, providing for arbitrations in the case of disputes involving proceedings, or claims which could be the subject of proceedings, before an employment tribunal, arising out of a contravention or alleged contravention of Part X of the Employment Rights Act 1996 (unfair dismissal). The Order revokes and replaces a previous Order which extended to England and Wales only (the “ACAS Arbitration Scheme (England and Wales) Order 2001”). This Order extends to Great Britain. The Order provides for the revised Scheme to come into effect on 6th April 2004. The revised Scheme will provide from that date a voluntary alternative to the employment tribunal for the resolution of unfair dismissal disputes by arbitration where both parties agree. The Order contains a transitional provision under which arbitration agreements signed before 6th April 2004 will continue to be determined under the Scheme set out in the 2001 Order.

The Order also provides—

- (a) for certain provisions of the Arbitration Act 1996, as modified by the Order, to apply to arbitrations conducted in accordance with the Scheme, where the parties have agreed that the arbitration will be determined according to the law of England and Wales;
- (b) for employment tribunals to enforce re-employment orders made in such arbitrations; and
- (c) for the award of a basic amount in such an arbitration to be treated as a basic award of compensation for unfair dismissal for the purposes of debts which the Secretary of State must satisfy, under Part XII of the Employment Rights Act 1996, if the employer has become insolvent.

No regulatory impact assessment has been prepared in relation to this Order. The revised Scheme offers arbitration of unfair dismissal disputes to employers and employees in Scotland, an option already available to employers and employees in England and Wales under the previous Scheme. The impact of the previous Scheme on business has been low, and the revised Scheme is expected to have a similar impact.