

SCHEDULE

ACAS (FLEXIBLE WORKING) ARBITRATION SCHEME

PART XXIII

CHALLENGING THE AWARD

Challenges for serious irregularity: English/Welsh arbitrations

145EW. *Section 68 of the Arbitration Act 1996(1) shall apply to English/Welsh arbitrations conducted in accordance with the Scheme, subject to the following modifications.*

(i) *In subsection (1) –*

(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 XXIV of the Scheme)”;*

(1) 1996 c. 23. Section 68 of the Arbitration Act 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.”

Status: This is the original version (as it was originally made).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

- (c) after “section 70(2) and (3)” insert “as modified for the purposes of the Scheme”.
- (ii) In subsection (2)—
 - (a) in paragraph (a) for “section 33 (general duty of tribunal)” substitute “Part X of the Scheme (General Duty of the Arbitrator)”;
 - (b) in paragraph (b) after “see section 67” insert “as modified for the purposes of the Scheme”; and
 - (c) in paragraph (c) for “agreed by the parties” substitute “as set out in the Scheme”;
 - (d) in paragraph (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”;
 - (e) omit paragraph (h);
 - (f) in paragraph (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”.
- (iii) In subsection (3)—
 - (a) in paragraph (b) insert “vary the award or” before “set the award aside”;
 - (b) 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.”.
- (iv) After subsection (4) insert—
 - “(5) In this section, “the Scheme” means the arbitration scheme set out in the Schedule to the ACAS (Flexible Working) Arbitration Scheme (Great Britain) Order 2004.”