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STATUTORY INSTRUMENTS

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**2004 No. 753**

**TERMS AND CONDITIONS OF EMPLOYMENT**

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

*Made* - - - - - *9th March 2004*  
*Laid before Parliament* *15th March 2004*  
*Coming into force* *6th April 2004*

**THE ACAS ARBITRATION SCHEME  
(GREAT BRITAIN) ORDER 2004**

1. Citation, commencement, interpretation and extent
  2. Commencement of the Scheme
  3. Revocation
  4. Application of Part I of the Arbitration Act 1996
  5. (1) Section 46(1)(b) of the Arbitration Act 1996 shall apply...
  6. Enforcement of re-employment orders
  7. Awards of compensation
  8. Transitional provision
- Signature

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SCHEDULE — ACAS ARBITRATION SCHEME

CONTENTS

I. INTRODUCTION

1. The ACAS Arbitration Scheme (“the Scheme”) is implemented pursuant to...
2. The Scheme provides a voluntary alternative to the employment tribunal...
3. Resolution of disputes under the Scheme is intended to be...
4. The Scheme also caters for requirements imposed as a matter...
5. The Scheme accommodates certain differences between the law of Scotland...

II. THE ROLE OF  
ACAS

6. As more fully explained below, cases enter the Scheme by...

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## Routing of Communications

7. Unless in the course of a hearing, all communications between...
8. Paragraph 218 below sets out the manner in which any...

### III. TERMS AND ABBREVIATIONS

9. The term “Employee” is used to denote the claimant (ie...
10. The term “Employer” is used to denote the respondent.
11. The term “EC law” means: (i) any enactment in the...
12. The term “English/Welsh arbitration” means an arbitration under this Scheme,...
13. The term “Scottish arbitration” means an arbitration under this Scheme,...
14. The term “devolution issue” means a devolution issue as defined...
15. With the exception of paragraphs 26(i) (“Requirements for entry into...

### IV. APPLICATION OF THE SCHEME

16. Paragraphs 46EW, 47EW, 48EW, 49EW, 50EW, 51EW, 52EW, 53EW, 110EW,...

### V. ARBITRATOR'S TERMS OF REFERENCE

17. Every agreement to refer a dispute to arbitration under this...

### VI. SCOPE OF THE SCHEME

#### Cases that are covered by the Scheme

18. This Scheme only applies to cases of alleged unfair dismissal...
19. The Scheme does not extend to other kinds of claim...
20. If a claim of unfair dismissal has been referred for...

#### Waiver of Jurisdictional Issues

21. Because of its informal nature, the Scheme is not designed...
22. Accordingly, when agreeing to refer a dispute to arbitration under...
23. In particular, in agreeing to arbitration under the Scheme, the...

#### Inappropriate cases

24. The Scheme is not intended for disputes involving complex legal...
- ### VII. ACCESS TO THE SCHEME

25. The Scheme is an entirely voluntary system of dispute resolution:...

#### Requirements for entry into the Scheme

26. Any agreement to submit a dispute to arbitration under the...
27. Where an agreement fails to satisfy any one of these...
28. Where: (i) a dispute concerning unfair dismissal claims as well...

#### Notification to ACAS of an Arbitration Agreement

29. All Arbitration Agreements must be notified to ACAS within two...
30. For the purposes of the previous paragraph, an Arbitration Agreement...
31. Where an Arbitration Agreement is not notified to ACAS within...
32. Any such hearing and award will be governed by the...

#### Consolidation of proceedings

33. Where all parties so agree in writing, ACAS may consolidate...

#### VIII. SETTLEMENT AND WITHDRAWAL FROM THE SCHEME

##### Withdrawal by the Employee

34. At any stage of the arbitration process, once an Arbitration...

##### Withdrawal by the Employer

35. Once an Arbitration Agreement has been concluded and the reference...

#### Settlement

36. Parties are free to reach an agreement settling the dispute...
37. If such an agreement is reached: (i) upon the joint...
38. An agreed award shall state that it is an award...
39. If the agreement settling the dispute includes an agreement that...
40. Subject to paragraph 39, in rendering an agreed award, the...

#### IX. APPOINTMENT OF AN ARBITRATOR

##### The ACAS Arbitration Panel

41. Arbitrators are selected to serve on the ACAS Arbitration Panel...

##### Appointment to a case

42. Arbitral appointments are made exclusively by ACAS from the ACAS...
43. Once ACAS has been notified of a valid Arbitration Agreement,...

##### Arbitrator's duty of disclosure

44. Immediately following selection (and before an appointment is confirmed by...
45. Once appointed, and until the arbitration is concluded, every arbitrator...

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#### Removal of arbitrators: English/Welsh arbitrations

- 46EW An arbitrator in an English/Welsh arbitration may only be removed...
- 47EW Applications under the Scheme to remove an arbitrator on any...
- 48EW At the same time as an application is made to...
- 49EW ACAS shall, following receipt of an application under paragraph 48EW,...
- 50EW ACAS may, after such procedures as ACAS in its sole...
- 51EW If ACAS refuses an application made under paragraph 47EW, a...
- 52EW Sections 24(1)(a) and (c), 24(2), 24(3), 24(5) and 24(6) of...
- 53EW The arbitrator may continue the proceedings and make an award...

#### Removal of arbitrators: Scottish arbitrations

- 54S An arbitrator in a Scottish arbitration may be removed by...
- 55S An application under the Scheme to remove an arbitrator shall...
- 56S ACAS shall, following receipt of an application under paragraph 55S...
- 57S ACAS may, after such procedure as ACAS in its sole...
- 58S A decision of ACAS made under paragraph 57S shall be...
- 59S The arbitrator may continue the proceedings and make an award...

#### Death of an arbitrator

- 60. The authority of an arbitrator is personal and ceases on...

#### Replacement of arbitrators

- 61. Where an arbitrator ceases to hold office for any reason,...
- 62. Once appointed, the replacement arbitrator shall determine whether and, if...

#### X. GENERAL DUTY OF THE ARBITRATOR

- 63. The arbitrator shall: (i) act fairly and impartially as between...
- 64. The arbitrator shall comply with the general duty (see paragraph...

#### XI. GENERAL DUTY OF THE PARTIES

- 65. The parties shall do all things necessary for the proper...

#### XII. CONFIDENTIALITY AND PRIVACY

- 66. Arbitrations, and all associated procedures under the Scheme, are strictly...
- 67. Hearings may only be attended by the arbitrator, the parties,...

#### XIII. ARRANGEMENTS FOR THE HEARING

#### Initial arrangements

- 68. A hearing must be held in every case, notwithstanding any...
- 69. Once an arbitrator has been appointed by ACAS, a hearing...

70. The arbitrator shall decide the date and venue for the...
71. The ACAS Arbitration Section shall contact all parties with details...

Expedited hearings

72. If: (i) before the parties have agreed to refer a...

Venue

73. Hearings may be held in any venue, provided that the...
74. Where premises have to be hired for a hearing, ACAS...

Assistance

75. Where a party needs the services of an interpreter, signer...

Travelling expenses/loss of earnings

76. Every party shall meet their own travelling expenses and those...
77. No loss of earnings are payable by ACAS to anyone...

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

78. Any application for a postponement of, or a different venue...
79. If the application is rejected, the initial hearing will be...
80. This provision does not affect the arbitrator's general discretion (set...

XIV. NON-COMPLIANCE WITH PROCEDURE

81. If a party fails to comply with any aspect of...

XV. OUTLINE OF PROCEDURE BEFORE THE HEARING

82. Once a hearing has been fixed, the following procedure shall...

**Written materials**

83. At least 14 days before the date of the hearing,...
84. Written statements of case should briefly set out the main...
85. Supporting documentation or other material may include (without limitation) copies...
86. The parties must also supply details of any relevant awards...
87. Legible copies of documents must be supplied to ACAS even...
88. No information on the conciliation process, if any, shall be...

Submissions, evidence and witnesses not previously notified

89. Written statements of case and documentary or other material that...
90. All representatives and witnesses who have been listed as accompanying...

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Requests for documents

91. Any party may request the other party to produce copies...

Requests for attendance of witnesses

92. Although the arbitrator has no power to compel the attendance...

Preliminary hearings and directions

93. Where the arbitrator believes that there may be considerable differences...

94. In the course of a preliminary hearing or in correspondence,...

XVI. OUTLINE OF  
PROCEDURE AT THE  
HEARING

Arbitrator's overall discretion

95. Subject to the arbitrator's general duty (Part X above), and...

Language

96. The language of the proceedings shall be English, unless the...

Witnesses

97. No party or witness shall be cross-examined by a party...

Examination by the arbitrator

98. The arbitrator shall have the right to address questions directly...

Explanation of available remedies

99. In every case, the arbitrator shall: (i) explain to the...

Representatives

100. The parties may be accompanied by any person chosen by...

Strict rules of evidence

101. The arbitrator will not apply strict rules of evidence (or...

Interim relief

102. The arbitrator shall have no power to order provisional or...

#### Non-attendance at the hearing

- 103. If, without showing sufficient cause, a party fails to attend...
- 104. In the case of the non-attendance of the Employee, if...

#### Post-hearing written materials

- 105. No further submissions or evidence will be accepted after the...
- 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...
- 107. The legal adviser will be appointed by ACAS, to report...
- 108. The arbitrator shall allow the legal adviser to attend the...
- 109. The parties shall be given a reasonable opportunity to comment...

Court determination of preliminary points: English/Welsh arbitrations

- 110EW Section 45 of the Arbitration Act 1996 shall apply to...

Court determination of preliminary points: Scottish arbitrations

- 111S The arbitrator may make a reference to the Court of...
  - 112S The arbitrator shall not make a reference under paragraph 111S...
- XVIII. AUTOMATIC  
UNFAIRNESS
- 113. In deciding whether the dismissal was fair or unfair, subject...
- XIX. AWARDS

Form of the award: English/Welsh arbitrations

- 114EW The award in an English/Welsh arbitration shall be in writing,...
- 115EW The award (unless it is an agreed award) shall:
- 116EW If the award contains an order for the payment of...

Form of the award: Scottish arbitrations

- 117S The award in a Scottish arbitration shall—
- 118S If the award contains an order for the payment of...
- 119S The arbitrator shall issue with his award (unless it is...

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#### Awards on different issues

- 120. The arbitrator may make more than one award at different...
- 121. The arbitrator may, in particular, make an award relating:
- 122. If the arbitrator does so, he or she shall specify...

#### Remedies

- 123. In the event that the arbitrator finds that the dismissal...
- 124. In cases where the arbitrator finds that the dismissal was...

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

#### Definitions

- 125. An order for reinstatement (which must be in the form...
- 126. An order for re-engagement (which must be in the form...

#### Choice of remedy

- 127. In exercising his or her discretion with respect to the...
- 128. If the arbitrator decides not to make an order for...
- 129. If ordering re-engagement, the arbitrator shall do so on terms...

#### Permanent replacements

- 130. Where in any case an Employer has engaged a permanent...

#### Reinstatement

- 131. On making an order for reinstatement, the arbitrator shall specify:...
- 132. If the Employee would have benefited from an improvement in...
- 133. In calculating for the purposes of paragraph 131(i) above any...

#### Re-engagement

- 134. On making an order for re-engagement the arbitrator shall specify...
- 135. In calculating, for the purposes of paragraph 131(iv) above, any...

#### Continuity of employment

- 136. The Employee's continuity of employment will be preserved in the...
- #### XXI. AWARDS OF COMPENSATION
- 137. When an arbitrator makes an award of compensation, instead of...
  - 138. Where paragraph 163 below applies, an award of compensation shall...



#### The basic amount

- 139. Subject to the following provisions, the basic amount shall be...
- 140. As to the “effective date of termination”:
- 141. In determining “continuous employment”, the arbitrator shall have regard to...
- 142. The “appropriate amount” means: (i) one and a half weeks'...
- 143. In calculating the amount of a week’s pay of an...
- 144. Where twenty years of employment have been reckoned under paragraph...
- 145. Where the effective date of termination is after the sixty-fourth...
- 146. The “appropriate fraction” means the fraction of which:

#### Minimum basic amounts in certain cases

- 147. A “minimum basic amount” shall apply where the arbitrator has...
  - Health and safety cases*
  - Working time cases*
  - Trustees of occupational pension schemes*
  - Employee representatives*
  - Union membership or activities*
  - Other categories*
- 148. *Other categories*

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

- 149. Where: (i) the arbitrator finds that the reason (or, where...
- 150. For the purposes of this Scheme: (i) for the definition...

#### Reductions to the basic amount

- 151. Where the arbitrator finds that the Employee has unreasonably refused...
- 152. Where the arbitrator considers that any conduct of the Employee...
- 153. The preceding paragraph does not apply in a redundancy case...
- 154. Where the Employee has been awarded any amount in respect...
- 155. The basic amount shall be reduced or further reduced by...

#### The compensatory amount

- 156. Subject to the following provisions, the compensatory amount shall be...
- 157. The loss referred to in paragraph 156 above shall be...
- 158. In ascertaining the loss referred to in paragraph 152 above,...
- 159. In determining, for the purposes of paragraph 152 above, how...

#### Reductions to the compensatory amount

- 160. Where the arbitrator finds that the dismissal was to any...
- 161. If: (i) any payment was made by the Employer to...

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#### Internal appeal procedures

- 162. Where an award of compensation is to be made, and...
- 163. Where an award of compensation is to be made, and...
- 164. In determining the amount of a reduction under paragraph 162...
- 165. The amount of such a reduction or supplementary amount shall...

#### Limits on the compensatory amount

- 166. With the exception of: (i) cases falling within sections 100...
- 167. The limit referred to above applies to the amount which...

#### Double recovery

- 168. Where the same acts of the Employer are relied upon...

#### XXII. ISSUE OF AWARDS AND CONFIDENTIALITY

- 169. The arbitrator's award shall be sent by ACAS to both...
- 170. Subject to any steps which may be reasonably necessary for...

#### XXIII. CORRECTION OF AWARDS

#### Scrutiny of awards by ACAS

- 171. Before being sent to the parties, awards may be scrutinised...

#### Correction by the arbitrator

- 172. The arbitrator may, on his or her own initiative or...
- 173. In so far as any such correction or additional award...
- 174. Any application by a party for the exercise of this...
- 175. Any correction of the award shall be made within 28...
- 176. Any additional award shall be made within 56 days of...
- 178S Any additional award in a Scottish arbitration shall so far...
- 179. Any correction of the award shall form part of the...

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

#### Effect of awards

- 180. Awards made by arbitrators under this Scheme are final and...
- 181EW This does not affect the right of a person to...
- 182S This does not affect the right of a person to...

## Enforcement

- 183EW Section 66 of the Arbitration Act 1996 shall apply to...
- 184S Any award requiring the payment of money which may be...
- 185. Awards of reinstatement or re-engagement will be enforced by the...

## Interest

- 186. Awards of compensation that are not paid within 42 days...
- XXV. CHALLENGING  
THE AWARD

Challenges on grounds of substantive jurisdiction: English/Welsh arbitrations

- 187EW Section 67 of the Arbitration Act 1996 shall apply to...

Challenges on grounds of substantive jurisdiction: Scottish arbitrations

- 188S A party to a Scottish arbitration may appeal to the...
- 189S A party may lose the right to appeal under paragraph...
- 190S Appeals under paragraph 188S are subject to the provisions of...
- 191S For the purposes of paragraph 188S “substantive jurisdiction” means any...
- 192S The arbitrator may continue the arbitral proceedings and make a...
- 193S On an appeal under paragraph 188S the Court may (without...

Challenges for serious irregularity: English/Welsh arbitrations

- 194EW Section 68 of the Arbitration Act 1996 shall apply to...

Challenges for serious irregularity: Scottish arbitrations

- 195S A party to a Scottish arbitration may appeal to the...
- 196S A party may lose the right to appeal under paragraph...
- 197S Appeals under paragraph 195S are subject to the provisions of...
- 198S For the purposes of paragraph 195S, “serious irregularity” means an...
- 199S If there is shown to be serious irregularity affecting the...

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

- 200EW Section 69 of the Arbitration Act 1996 shall apply to...

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...
- 202S An appeal shall not be brought under paragraph 201S except—...
- 203S Leave to appeal shall be given only if the Court...
- 204S On an appeal under paragraph 201S the Court may (without...

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

205EW Section 70 of the Arbitration Act 1996 shall apply to...

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

206S An appeal under paragraphs 188S, 195S or 201S may not...

207S An appeal under paragraphs 188S, 195S or (where the parties...

208S If on an appeal under paragraphs 188S, 195S or 201S...

Common law challenges and saving

209EW Sections 81(1)(c) and 81(2) of the Arbitration Act 1996 shall...

210S Nothing in this Part of the Scheme shall be construed...

Exclusion of Stated Case Procedure

211S Section 3 of the Administration of Justice (Scotland) Act 1972...

Challenge or appeal: effect of order of the court

212EW (1) Section 71 of the Arbitration Act 1996 shall apply...

213S The following provisions have effect where the Court makes an...

XXVI. LOSS OF  
RIGHT TO OBJECT

214. If a party to arbitral proceedings under this Scheme takes...

XXVII. IMMUNITY

215. An arbitrator under this Scheme is not liable for anything...

216. ACAS, by reason of having appointed an arbitrator or nominated...

XXVIII.  
MISCELLANEOUS  
PROVISIONS

Requirements in connection with legal proceedings

217EW Sections 80(1), (2), (4), (5), (6) and (7) of the...

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

218. Any notice or other document required or authorised to be...

219. Paragraph 218 does not apply to the service of documents...

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...

221. If such a notice or other document is addressed, pre-paid...

222. Paragraphs 220 and 221 do not apply to the service...

Powers of court in relation to service of documents

223EW Section 77 of the Arbitration Act 1996 shall apply to...

Reckoning periods of time

224EW Sections 78(2), (3), (4) and (5) of the Arbitration Act...

225S Except as otherwise specified in the Scheme, periods of time...

XXIX. GOVERNING

LAW

226EW The seat of an English/Welsh arbitration shall be England and...

227S The seat of a Scottish arbitration shall be Scotland. The...

APPENDIX A — Waiver of Rights

*English/Welsh Arbitrations*

APPENDIX B — Waiver of Rights

*Scottish Arbitrations*

Explanatory Note