STATUTORY RULES OF NORTHERN IRELAND

# 2006 No. 206

## EMPLOYMENT

# The Labour Relations Agency (Flexible Working) Arbitration Scheme Order (Northern Ireland) 2006

| | |
|---|---|
| *Made - - - - -* | *2nd May 2006* |
| *Coming into operation* | *21st May 2006* |

Whereas:

(1) Under Article 84A(1) of the Industrial Relations (Northern Ireland) Order 1992(**a**) ("the 1992 Order") the Labour Relations Agency ("the Agency") 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 industrial tribunal under, or arising out of a contravention or alleged contravention of Article 112G(1) or Article 112H(1)(b) of the Employment Rights (Northern Ireland) Order 1996(**b**) (flexible working);

(2) In pursuance of Article 84A(1) of the 1992 Order, the Agency has prepared an arbitration scheme for flexible working cases;

(3) In pursuance of Article 84A(2) of the 1992 Order, the Agency has submitted a draft of the scheme to the Department for Employment and Learning(**c**) which has approved the scheme:

Now, therefore, the Department for Employment and Learning, in exercise of the powers conferred by Article 84A(2) and (6) of the 1992 Order, and now vested in it(**d**), hereby makes the following Order:

### Citation, commencement and interpretation

**1.**—(1) This Order may be cited as the Labour Relations Agency (Flexible Working) Arbitration Scheme Order (Northern Ireland) 2006 and shall come into operation on 21st May 2006.

(2) In this Order—

"the 1996 Order" means the Employment Rights (Northern Ireland) Order 1996;

"the Scheme" means the arbitration scheme set out in the Schedule with the exception of paragraphs 43, 93, 111, 113 to 118, 122, 128 and 129.

### Commencement of the Scheme

**2.** The Scheme shall come into effect on 25th May 2006.

(**a**) S.I. 1992/807 (N.I. 5); Article 84A was inserted by Article 8 of the Employment Rights (Dispute Resolution) (Northern Ireland) Order 1998 (S.I. 1998/1265 (N.I. 8)) and amended by paragraph 3 of Schedule 2 to the Employment (Northern Ireland) Order 2002 (S.I. 2002/2836 (N.I. 2))
(**b**) S.I. 1996/1919 (N.I. 16); Articles 112G and 112H were inserted by Article 15 of the Employment (Northern Ireland) Order 2002 (S.I. 2002/2836 (N.I. 2))
(**c**) Formerly the Department of Higher and Further Education, Training and Employment; *see* 2001 c. 15 (N.I.)
(**d**) *See* S.R. 1999 No. 481 Departments (Transfer and Assignment of Functions) Order (Northern Ireland) 1999

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

**3.** The provisions of Part I of the Arbitration Act 1996(**a**) referred to in paragraphs 43, 93, 111, 113 to 118, 122, 128 and 129 of the Schedule and shown in italics shall, as modified in those paragraphs, apply to arbitrations conducted in accordance with the Scheme.

**4.**—(1) Section 46(1)(b) of the Arbitration Act 1996 shall apply to 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 13 of the arbitration scheme set out in the Schedule to the Labour Relations Agency (Flexible Working) Arbitration Scheme Order (Northern Ireland) 2006".

Sealed with the Official Seal of the Department for Employment and Learning on 2nd May 2006.

(L.S.) *D. S. S. McAuley*

A senior officer of the Department for Employment and Learning

(**a**) 1996 c. 23

## SCHEDULE

Articles 2 and 3

## THE LABOUR RELATIONS AGENCY (FLEXIBLE WORKING) ARBITRATION SCHEME

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## I. INTRODUCTION

**1.** The Labour Relations Agency (Flexible Working) Arbitration Scheme ("the Scheme") is implemented pursuant to Article 84A of the Industrial Relations (Northern Ireland) Order 1992(**a**) ("the 1992 Order").

**2.** The Scheme provides a voluntary alternative, in the form of arbitration, to the industrial tribunal for the resolution of disputes arising out of an employee's application for a change in his/her terms and conditions of employment made under Article 112F of the Employment Rights (Northern Ireland) Order 1996(**b**) ("the 1996 Order").

**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 an industrial tribunal or the courts. For example (as explained in more detail below), the Scheme avoids the use of formal pleadings, formal witness and documentary procedures; strict rules of evidence do not apply. Arbitral decisions, including "awards", are final. There are limited opportunities to appeal or otherwise challenge the result.

**4.** The Scheme also caters for requirements imposed as a matter of law (e.g. the Human Rights Act 1998, and existing domestic law in the field of arbitration and European Community (hereafter referred to as EC) law).

## II. THE ROLE OF THE LRA

**5.** As more fully explained below, cases enter the Scheme by reference to the Labour Relations Agency (hereafter referred to as "the LRA"), which appoints an arbitrator from a panel (see paragraphs 35-37 below) to determine the dispute. The LRA provides administrative assistance during the proceedings. The LRA may scrutinise awards and refer any clerical or other similar errors back to the arbitrator. Disputes are determined, however, by arbitrators and not by the LRA.

### Routing of communications

**6.** All communications between either party and the arbitrator shall be sent via the LRA, other than in the course of a hearing.

**7.** Paragraph 123 below sets out the manner in which any document, notice or communication must be served on, or transmitted to, the LRA.

## III. TERMS AND ABBREVIATIONS

**8.** The term "employee" is used to denote the claimant, including any person entitled to pursue a claim arising out of a contravention, or alleged contravention, of Article 112G(1) or 112H(1)(b) of the 1996 Order (flexible working)(**c**).

**9.** The term "employer" is used to denote the respondent.

**10.** The term "EC law" means:

(i) any provision in the domestic legislation of Northern Ireland giving effect to rights, powers, liabilities, obligations and restrictions from time to time created or arising by or under the European Community Treaties; and

(ii) any such rights, powers, liabilities, obligations and restrictions which are not given effect by any such provision.

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(**a**) S.I. 1992/807 (N.I. 5); Article 84A was inserted by Article 8 of the Employment Rights (Dispute Resolution) (Northern Ireland) Order 1998 (S.I. 1998/1265 (N.I. 8)) and amended by paragraph 3 of Schedule 2 to the Employment (Northern Ireland) Order 2002 (S.I. 2002/2836 (N.I. 2))

(**b**) S.I. 1996/1919 (N.I. 16); Article 112F was inserted by Article 15 of the Employment (Northern Ireland) Order 2002 (S.I. 2002/2836 (N.I. 2))

(**c**) S.I. 1996/1919 (N.I. 16); Articles 112G and 112H were inserted by Article 15 of the Employment (Northern Ireland) Order 2002 (S.I. 2002/2836 (N.I. 2))

**11.** The term “Flexible Working Claim” means a claim by the employee that his/her employer has failed to deal with an application made under Article 112F of the 1996 Order in accordance with Article 112G(1) of that Order or that a decision by his/her employer to reject the application was based on incorrect facts.

**12.** With the exception of paragraph 21(i) below (“Requirements for entry into the Scheme”), references to anything being written or in writing include its being recorded by any means so as to be usable for subsequent reference.

## IV. ARBITRATOR’S TERMS OF REFERENCE

**13.** 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 to uphold the Flexible Working Claim the arbitrator:
>
> (i) shall have regard to relevant provisions of the Flexible Working (Procedural Requirements) Regulations (Northern Ireland) 2003(**a**) and to any relevant LRA Guidance;
>
> (ii) shall apply EC law;
>
> (iii) may make recommendations, as appropriate, within the remit of promoting the improvement of employment relations.
>
> The arbitrator shall not decide the case by substituting what he/she would have done for the actions taken by the employer.
>
> If the arbitrator upholds the Flexible Working Claim, he/she shall determine the appropriate remedy under the terms of this Scheme.

Nothing in the Terms of Reference affects the operation of the Human Rights Act 1998 in so far as this is applicable and relevant and (with respect to procedural matters) has not been waived by virtue of the provisions of this Scheme.

## V. SCOPE OF THE SCHEME

**Cases that are covered by the Scheme**

**14.** This Scheme only applies to disputes involving proceedings, or claims which could be the subject of proceedings, before an industrial tribunal arising out of a contravention, or alleged contravention, of Article 112G(1) or Article 112H(1)(b) of the 1996 Order.

**15.** The Scheme does not extend to other kinds of claim which may be related to, or raised at the same time as, a Flexible Working Claim. For example, sex discrimination cases, and religious and political discrimination cases are not covered by the Scheme.

**16.** If a Flexible Working Claim 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 an industrial tribunal, or withdrawn. In the event that different aspects of the same dispute are being heard in an industrial tribunal as well as under the Scheme, the arbitrator may decide, if appropriate or convenient, to postpone the arbitration proceedings pending a determination by an industrial tribunal.

**Waiver of jurisdictional issues**

**17.** The Scheme is not designed for disputes that raise jurisdictional issues, for example:

— whether or not the claimant is an employee of 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.

(**a**) S.R. 2003 No. 173

**18.** 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.

**Inappropriate cases**

**19.** 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 an industrial tribunal or settling their dispute by other means.

## VI. ACCESS TO THE SCHEME

**20.** 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**

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

(i) the agreement 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 the LRA has taken action under Article 20 of the Industrial Tribunals (Northern Ireland) Order 1996(**a**) (a "Conciliated Settlement"); or

(b) through a compromise agreement, where the conditions regulating such agreements under the 1996 Order are satisfied (a "Compromise Agreement");

(v) the agreement must be accompanied by a completed Waiver Form for each party, in the form of Appendix A.

**22.** Where an agreement fails to satisfy any one of these requirements, 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 an industrial tribunal.

**23.** Where:

(i) a dispute concerning a Flexible Working Claim as well as other claims has been referred to an industrial tribunal; and

(ii) the parties have agreed to settle the other claims and refer the Flexible Working Claim to arbitration under the Scheme,

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

**Notification to the LRA of an Arbitration Agreement**

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

**25.** 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.

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(**a**) S.I. 1996/1921 (N.I. 18); Article 20 was amended by paragraph 5 of Schedule 2 to the Employment (Northern Ireland) Order 2002 (S.I. 2002/2836 (N.I. 2))

**26.** Where an Arbitration Agreement is not notified to the LRA within two weeks, the LRA 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 the LRA of an Arbitration Agreement outside this period must explain in writing to the LRA the reason for the delay. The LRA 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.

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

**Consolidation of proceedings**

**28.** Where all parties so agree in writing, the LRA may consolidate, as appropriate, arbitral proceedings under the Scheme.

## VII. SETTLEMENT AND WITHDRAWAL FROM THE SCHEME

**Withdrawal by the Employee**

**29.** At any stage of the arbitration process, once an Arbitration Agreement has been concluded and the reference has been accepted by the LRA, the party bringing the Flexible Working Claim (the employee) may withdraw from the Scheme, provided that any such withdrawal is in writing. Such a withdrawal shall constitute a dismissal of the claim.

**Withdrawal by the Employer**

**30.** Once an Arbitration Agreement has been concluded and the reference has been accepted by the LRA, the party against whom a claim is brought (the employer) cannot unilaterally withdraw from the Scheme.

**Settlement**

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

**32.** If such an agreement is reached:

(i) upon the joint written request of the parties to the LRA, the arbitrator (if appointed) or the LRA (if no arbitrator has been appointed) shall terminate the arbitration proceedings;

(ii) if so requested by the parties, and where an arbitrator has been appointed, the arbitrator may record the settlement in the form of an agreed award (on a covering proforma). The LRA, on the request of the parties, will appoint an arbitrator to record the settlement in the form of an agreed award (on a covering proforma).

**33.** 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.

**34.** 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 the LRA.

## VIII. APPOINTMENT OF ARBITRATORS

**The LRA Arbitration Panel**

**35.** Arbitrators are selected to serve on the LRA Arbitration Panel on the basis of their practical knowledge and experience of employment issues in the workplace and good employment relations practice. 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 three years, although it may be renewed by the LRA, at the latter's discretion. Payment is made by the LRA on the basis of a fee for each case heard.

**Appointment to a case**

**36.** Arbitral appointments are made exclusively by the LRA from the LRA Arbitration Panel. Parties will have no choice of arbitrator.

**37.** Once the LRA 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. In making or reviewing an appointment the LRA will take into account matters such as conflicts of interest.

**Arbitrator's duty of disclosure**

**38.** Arbitrators have a continuing duty to disclose to the LRA any matter relating to the appropriateness, propriety, impartiality or conflict of interest concerning their appointment to hear a case. In support of this arbitrators will be required to disclose their interests to the LRA. The LRA will hold a register of arbitrators' interests. Notwithstanding arbitrators disclosing their continuing interests, the register will be formally updated on an annual basis.

**39.** Once appointed, and until the arbitration is concluded, every arbitrator shall be under a continuing duty forthwith to disclose to the LRA any such interests which may have arisen since appointment.

**Removal of an arbitrator**

**40.** Arbitrators may only be removed by the LRA or the court (under the provisions in paragraphs 41 to 43 below).

**41.** 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 shall be made in the first instance to the LRA.

**42.** If the LRA refuses such an application, a party may thereafter apply to the court.

*43.—(1) 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.*

*(2) 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 Labour Relations Agency) apply to the High Court or the Belfast Recorder's Court".*

*(3) In subsection (2)—*

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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."

(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 "the Labour Relations Agency".*

**44.** The arbitrator may continue the proceedings and make an award while an application to the LRA (as well as the court) to remove him/her is pending.

**Death of an arbitrator**

**45.** The authority of an arbitrator is personal and ceases on his/her death.

**Replacement of an arbitrator**

**46.** Where an arbitrator ceases to hold an appointment for any reason, he/she shall be replaced by the LRA in accordance with the appointment provisions above.

**47.** Once appointed, the replacement arbitrator shall determine whether and, if so, to what extent the previous proceedings should stand.

## IX. GENERAL DUTY OF THE ARBITRATOR

**48.** The arbitrator shall:
(i) act fairly and impartially as between the parties, giving each party a reasonable opportunity of putting his/her case and dealing with that of the other party; 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 to be determined.

**49.** The arbitrator shall comply with the general duty (see paragraph 48 above) in conducting the arbitral proceedings, in his/her decisions on matters of procedure and evidence and in the exercise of all other powers conferred on him/her.

## X. GENERAL DUTY OF THE PARTIES

**50.** 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.

## XI. CONFIDENTIALITY AND PRIVACY

**51.** Arbitrations, and all associated procedures under the Scheme, are strictly private and confidential.

**52.** The arbitrator, the parties and an officer of the LRA will attend the hearings. In addition only the representatives of the parties, any interpreters, witnesses and a legal adviser if appointed (paragraph 91) may attend hearings. If the parties so agree, an arbitrator and/or an LRA officer in training may also attend.

## XII. ARRANGEMENTS FOR THE HEARING

**Initial arrangements**

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

**54.** Once an arbitrator has been appointed a hearing shall be arranged as soon as reasonably practicable by the LRA.

**55.** The LRA, in conjunction with the arbitrator, shall decide the date and venue for the hearing.

**56.** The LRA shall contact all parties with details of the date and venue for the hearing.

**Expedited hearings**

**57.** On the application of any party, the LRA may, at its discretion, expedite the hearing.

**Venue**

**58.** Hearings will be held in the LRA Head or Regional Office. In exceptional circumstances alternative venues may be considered. Any formal application for a venue other than the LRA offices must be made, in writing, with reasons, to the LRA within 14 days of the date of the letter notifying of the hearing arrangements. Such applications will be determined by the LRA after all parties have received a copy of the formal application and been given a reasonable opportunity to respond.

**59.** Where premises have to be hired for a hearing, the LRA shall meet the reasonable costs of so doing.

**Assistance**

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

**Travelling expenses/loss of earnings**

**61.** Every party shall meet its own travelling expenses and those of its representatives and witnesses.

**62.** No loss of earnings is payable by the LRA to anyone involved in the arbitration. However, where an arbitrator upholds a Flexible Working Claim, he/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 initial hearings**

**63.** Any application for a postponement of an initial hearing must be made in writing, with reasons, to the LRA 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.

**64.** If the application is rejected, the initial hearing will be held on the original date.

**65.** 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.

## XIII. NON-COMPLIANCE WITH PROCEDURE

**66.** 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 section X 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 inferences from the act of non-compliance as the circumstances justify.

## XIV. OUTLINE OF PROCEDURE BEFORE THE HEARING

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

**Written materials**

**68.** At least 14 days before the date of the hearing, each party shall send to the LRA (for forwarding to the arbitrator and the other party, and for retention by the LRA Arbitration Section) three copies of a written statement of case, together with three copies of:

(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 persons who will accompany each party to the hearing or be called as a witness.

**69.** 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 to the Flexible Working Claim being brought including an account of the outcome of any relevant meetings.

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

(i) the employee's application under Article 112F of the 1996 Order;

(ii) contracts of employment;

(iii) notes of meetings held between employee and employer to consider the employee's application under Article 112F of the 1996 Order;

(iv) letters of appointment;

(v) written statement of particulars of employment;

(vi) time sheets;

(vii) written reasons for refusing the employee's application under Article 112F of the 1996 Order, where these have been given;

(viii) company handbooks, rules and procedures;

(ix) any other written information which may assist the arbitrator in deciding the Flexible Working Claim;

(x) any information which will help the arbitrator to assess compensation, including (without limitation) pay slips, P60s or wage records;

(xi) signed statements of any witnesses or outlines of evidence to be given by witnesses at the hearing.

**71.** 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.

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

**73.** No information on the conciliation process, if any, in respect of the case to be heard by the arbitrator shall be disclosed by the LRA to the arbitrator.

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

**74.** Written statements of case and documentary or other material that have not been provided to the LRA prior to the hearing (in accordance with paragraph 68 above) may only be relied upon at the hearing with the arbitrator's permission.

**75.** 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 LRA prior to the hearing may only be called with the arbitrator's permission.

**Requests for documents**

**76.** Any party may request the other party to include in their submission, or submit through the LRA or the arbitrator (as appropriate), copies of relevant documents that are not in the requesting party's possession, custody or control. Although the LRA and the arbitrator have no power to compel

a party to comply, the arbitrator may draw an inference from a party's failure to comply with a reasonable request.

**Requests for attendance of witnesses**

**77.** Although the arbitrator has no power to compel the attendance of any person at the hearing, the arbitrator may draw an 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**

**78.** 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, through the LRA, the parties to a preliminary hearing to address such issues, or he/she may determine procedural directions.

**79.** In the course of a preliminary hearing and/or through the LRA, the arbitrator may express views on the desirability of information and/or evidence being available at the hearing.

## XV. OUTLINE OF PROCEDURE AT THE HEARING

**Arbitrator's overall discretion**

**80.** Subject to the arbitrator's general duty (section IX above), and subject to the provisions set out below, the conduct of the hearing and all procedural and evidential matters (including applications for adjournments) shall be for the arbitrator to decide.

**Administration**

**81.** The LRA shall provide administrative services to the arbitrator during the course of the hearing. However, no formal minute of the proceedings will be kept.

**Witnesses**

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

**Examination by the arbitrator**

**83.** 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.

**Representatives**

**84.** 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 persons. Each party is liable for any fees or expenses incurred by any person attending on their behalf.

**Strict rules of evidence**

**85.** 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.

**Non-attendance at the hearing**

**86.** 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 or in the absence of that party's representative, 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.

**87.** In the case of the non-attendance of the employee, if the arbitrator decides to adjourn the hearing, he/she may request, in writing, through the LRA that the employee provides an explanation for the non-attendance. If the arbitrator decides that the employee has not demonstrated sufficient cause for the non-attendance, he/she may rule in an award that the claim be treated as dismissed.

### Post-hearing written materials

**88.** 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 LRA, to be forwarded to the arbitrator and all other parties.

## XVI. QUESTIONS OF EC LAW AND THE HUMAN RIGHTS ACT 1998

### Appointment of legal adviser

**89.** The arbitrator shall have the power, on the application of any party or of his/her own volition, to require the appointment of a legal adviser to assist with respect to any issue of EC law or the Human Rights Act 1998 that, in the arbitrator's view and subject to paragraph 13 above (Arbitrator's Terms of Reference), might be involved and relevant to the resolution of the dispute.

**90.** The legal adviser will be appointed by the LRA, to report to the arbitrator and the parties, and shall be subject to the duty of disclosure set out in paragraphs 38 and 39 above.

**91.** The arbitrator shall allow the legal adviser to attend the proceedings, and may order an adjournment to facilitate this.

**92.** The parties shall be given a reasonable opportunity to comment to the arbitrator 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

*93.—(1) Section 45 of the Arbitration Act 1996(**a**) shall apply to arbitrations conducted in accordance with the Scheme, subject to the following modifications.*

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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."

*(2) In subsection (1)—*

*(a) for "Unless otherwise agreed by the parties, the court" substitute "The High Court or the Belfast Recorder's 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"; and*

*(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.".*

*(3) In subsection (2)(b) omit sub-paragraph (i).*

*(4) Omit subsection (4).*

*(5) After subsection (6), insert—*

*"(7) In this section "EC law" means—*

*(a) any provision in the domestic legislation of Northern Ireland giving effect to rights, powers, liabilities, obligations and restrictions from time to time created or arising by or under the European Community Treaties; and*

*(b) any such rights, powers, liabilities, obligations and restrictions which are not given effect by any such provision."*

## XVII. AWARDS

**Form of the award**

**94.** The award shall be in writing, signed by the arbitrator.

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

(i) state the decision(s) of the arbitrator;

(ii) contain the main considerations which were taken into account in reaching the decision(s);

(iii) state the remedy awarded, together with an explanation;

(iv) state the date when it was made.

**Remedies**

**96.** In the event that the arbitrator upholds the employee's Flexible Working Claim, the arbitrator may make an award ordering:

(i) the reconsideration of the application made under Article 112F of the 1996 Order; and

(ii) compensation (subject to the limits provided for below) to be paid by the employer to the employee.

## XVIII. AWARDS OF COMPENSATION

**97.** Subject to paragraph 98 below, when an arbitrator makes an award of compensation in respect of any contravention of Article 112G(1) or 112H(1)(b) of the 1996 Order, whether or not in conjunction with an award for reconsideration, such compensation shall be such an amount, not exceeding 8 weeks' pay, as the arbitrator considers just and equitable in all the circumstances.

**98.** When an arbitrator makes an award of compensation in respect of breaches of regulation 14(2), (4) or (8) of the Flexible Working (Procedural Requirements) Regulations (Northern Ireland) 2003(**a**) such compensation shall be such an amount, not exceeding 2 weeks' pay, as the arbitrator considers just and equitable in all the circumstances.

(**a**) S.R. 2003 No. 173

**99.** In calculating the amount of a week's pay of an employee, the arbitrator shall have regard to Chapter IV of Part I of the 1996 Order, as amended from time to time, or any other relevant statutory provision applicable to the calculation of a week's pay.

## XIX. ISSUE OF AWARDS AND CONFIDENTIALITY

**100.** The arbitrator's award shall be sent by the LRA to both parties.

**101.** 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 the LRA, or lodged with an industrial tribunal by the LRA, although awards may be retained by the LRA for monitoring and evaluation purposes, and, from time to time, the LRA may publish general summary information concerning cases heard under the Scheme, without identifying any individual cases.

## XX. CORRECTION OF AWARDS

**Scrutiny of awards by the LRA**

**102.** Before being sent to the parties, awards may be scrutinised by the LRA 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, the LRA may refer the award back to the arbitrator (under the provisions below) in order to draw his/her attention to any such point.

**Correction by the arbitrator**

**103.** The arbitrator may, on his/her own initiative or on the application of a party or the LRA:

(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.

**104.** 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.

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

**106.** 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/her own initiative, within 28 days of the date of the award.

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

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

## XXI. EFFECT OF AWARDS, ENFORCEMENT AND INTEREST

**Effect of awards**

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

**110.** 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.

**Enforcement**

*111.—(1) Section 66 of the Arbitration Act 1996(***a***) shall apply to arbitrations conducted in accordance with the Scheme, subject to the following modifications.*

*(2) In subsection (1) for "tribunal pursuant to an arbitration agreement" substitute "arbitrator pursuant to the Scheme".*

*(3) In subsection (3) for "(see section 73)" substitute "(see section XXIII of the Scheme)".*

*(4) After subsection (4) insert—*

*"(5) In this section—*

*"the court" means the High Court or the Belfast Recorder's Court; and*

*"the Scheme" means the arbitration scheme set out in the Schedule to the Labour Relations Agency (Flexible Working) Arbitration Scheme Order (Northern Ireland) 2006.".*

**Interest**

**112.** Awards of compensation that are not paid within 42 days of the date on which the award was despatched by the LRA to the employer will attract interest on the same basis as for industrial tribunal awards.

## XXII. CHALLENGING THE AWARD

**Challenges on grounds of substantive jurisdiction**

*113.—(1) Section 67 of the Arbitration Act 1996(***b***) shall apply to arbitrations conducted in accordance with the Scheme, subject to the following modifications.*

*(2) 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 the Labour Relations Agency) apply to the High Court or the Belfast Recorder's Court";*

*(b) for "(see section 73)" substitute "(see section XXIII of the Scheme)";*

*(c) after "section 70(2) and (3)" insert "as modified for the purposes of the Scheme".*

*(3) After subsection (1) insert—*

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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 enforced 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."

(**b**) 1996 c. 23;
Section 67 of the Arbitration Act 1996 provides as follows:
"**67.**—(1) A party to the 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."

*"(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 Labour Relations Agency (Flexible Working) Arbitration Scheme Order (Northern Ireland) 2006; 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 for serious irregularity

*114.—(1) Section 68 of the Arbitration Act 1996(***a***) shall apply to arbitrations conducted in accordance with the Scheme, subject to the following modifications.*

*(2) 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 the Labour Relations Agency) apply to the High Court or Belfast Recorder's Court";*

*(b) for "(see section 73)" substitute "(see Part XXIII of the Scheme)";*

*(c) after "section 70(2) and (3)" insert "as modified for the purposes of the Scheme".*

*(3) In subsection (2)—*

*(a) in paragraph (a) for "section 33 (general duty of tribunal)" substitute "Part IX 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";*

*(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 "the Labour Relations Agency";*

*(e) in paragraph (g) after ";" insert "or";*

*(f) omit paragraph (h);*

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(**a**) 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 requirement 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."

*(g) 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 "the Labour Relations Agency".*

*(4) 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.".*

*(5) After subsection (4) insert—*

*"(5) In this section, "the Scheme" means the arbitration scheme set out in the Schedule to the Labour Relations Agency (Flexible Working) Arbitration Scheme Order (Northern Ireland) 2006.".*

**Appeals on questions of EC law and the Human Rights Act 1998**

*115.—(1) Section 69 of the Arbitration Act 1996(**a**) shall apply to arbitrations conducted in accordance with the Scheme, subject to the following modifications.*

*(2) 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 the Labour Relations Agency) appeal to the High Court or the Belfast Recorder's 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";*

*(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.".*

*(3) In subsection (2) after "section 70(2) and (3)" insert "as modified for the purposes of the Scheme".*

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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."

*(4) In subsection (3)—*

*(a) omit paragraph (b);*

*(b) in paragraph (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".*

*(5) 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.".*

*(6) After subsection (8) insert—*

*"(9) In this section—*

*"EC law" means—*

*(a) any provision in the domestic legislation of Northern Ireland giving effect to rights, powers, liabilities, obligations and restrictions from time to time created or arising by or under the European Community Treaties; and*

*(b) any such rights, powers, liabilities, obligations and restrictions which are not given effect by any such provision; and*

*"the Scheme" means the arbitration scheme set out in the Schedule to the Labour Relations Agency (Flexible Working) Arbitration Scheme Order (Northern Ireland) 2006.".*

**Time limits and other procedural restrictions on challenges to awards**

*116.—(1) Section 70 of the Arbitration Act 1996(***a***) shall apply to arbitrations conducted in accordance with the Scheme, subject to the following modifications.*

*(2) In subsection (1) after "section 67, 68 or 69" insert "(as modified for the purposes of the Scheme)".*

*(3) In subsection (2)—*

*(a) omit paragraph (a);*

*(b) in paragraph (b) for "section 57 (correction of award or additional award)" substitute "section XX of the Scheme (Correction of Awards)".*

*(4) In 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 the Labour Relations Agency".*

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(**a**) 1996 c. 23;

Section 70 of the Arbitration Act 1996 provides as follows:

"**70.**—(1) The following provisions apply to an application or appeal under section 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."

*(5) Omit subsection (5).*

*(6) After subsection (8) insert—*

*"(9) In this section, "the Scheme" means the arbitration scheme set out in the Schedule to the Labour Relations Agency (Flexible Working) Arbitration Scheme Order (Northern Ireland) 2006.".*

**Common law challenges and saving**

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

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

*118.—(1) Section 71 of the Arbitration Act 1996(**b**) shall apply to arbitrations conducted in accordance with the Scheme, subject to the following modifications.*

*(2) In subsection (1) after "section 67, 68 and 69" insert "(as modified for the purposes of the Scheme)".*

*(3) After subsection (3) insert—*

*"(3A) In this section, "the Scheme" means the arbitration scheme set out in the Schedule to the Labour Relations Agency (Flexible Working) Arbitration Scheme Order (Northern Ireland) 2006.".*

*(4) Omit subsection (4).*

## XXIII. LOSS OF RIGHT TO OBJECT

**119.** 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) that the arbitrator lacks substantive jurisdiction (as defined in paragraph 113 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/she may not raise that objection later, before the arbitrator or the court, unless he/she shows that, at the time he/she took part or continued to take part in the proceedings, he/she did not know and could not with reasonable diligence have discovered the grounds for the objection.

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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**) 1996 c. 23;
Section 71 of the Arbitration Act 1996 provides as follows:
"**71.**—(1) The following provisions have effect where the court makes an order under section 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."

## XXIV. IMMUNITY

**120.** An arbitrator under this Scheme is not liable for anything done or omitted in the discharge or purported discharge of his/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 the LRA as it applies to the arbitrator himself/herself.

**121.** The LRA, 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/her functions.

## XXV. MISCELLANEOUS PROVISIONS

**Requirements in connection with legal proceedings**

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

*(2) 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 the Labour Relations Agency".*

**Service of documents and notices on the LRA**

**123.** Any notice or other document required or authorised to be given or served on the LRA for the purposes of the arbitral proceedings shall be sent by pre-paid post to the following address:

The Arbitration Secretary
Labour Relations Agency
2-8 Gordon Street
Belfast
BT1 2LG

or transmitted by facsimile, addressed to the Arbitration Secretary, at the number stipulated in the LRA Guide to the Scheme,

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

**124.** Paragraph 123 (above) does not apply to the service of documents on the LRA for the purposes of legal proceedings.

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(**a**) 1996 c. 23;
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 the LRA)**

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

**126.** 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/she is or has been carrying on a trade, profession or business, his/her last known principal business address; or

(ii) where the address is a body corporate, to the body's registered or principal office,

it shall be treated as effectively served.

**127.** Paragraphs 125 and 126 (above) 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**

*128.—(1) Section 77 of the Arbitration Act 1996(***a***) shall apply to arbitrations conducted in accordance with the Scheme, subject to the following modifications.*

*(2) In subsection (1) omit "in the manner agreed by the parties, or in accordance with provisions of section 76 having effect in default of agreement,".*

*(3) In subsection (2) for "Unless otherwise agreed by the parties, the court" substitute "The High Court or the Belfast Recorder's Court".*

*(4) In subsection (3) for "Any party to the arbitration agreement may apply" substitute "The Labour Relations Agency or any party to the Arbitration Agreement may apply".*

**Reckoning periods of time**

*129.—(1) Sections 78(2), (3), (4) and (5) of the Arbitration Act 1996(***b***) shall apply to arbitrations conducted in accordance with the Scheme, subject to the following modifications:*

*(2) In subsection (2)—*

*(a) omit "If or to the extent that there is no such agreement,";*

*(b) after "periods of time" insert "provided for in any provision of this Part".*

---

(**a**) 1996 c. 23;
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**) 1996 c. 23;
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."

## XXVI. TERRITORIAL OPERATION OF THE SCHEME

**Territorial application**

**130.** The Scheme applies to disputes involving an employer who resides or carries on business in Northern Ireland.

## APPENDIX A

## WAIVER OF RIGHTS

The Labour Relations Agency 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 an industrial 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 section VI 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 the LRA 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 an industrial tribunal, is contained in the LRA Guide to the Flexible Working Arbitration Scheme ("the LRA (Flexible Working) 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 an industrial tribunal, or settling their dispute by other means.

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

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

**1.** Unlike proceedings in an industrial tribunal, all proceedings under the Scheme, including all hearings, are conducted in private. There are no public hearings, and the final award will be confidential.

**2.** All arbitrators under the Scheme are appointed by the LRA from the LRA Arbitration Panel (which is a panel of impartial, mainly non-lawyer, arbitrators appointed by the LRA on fixed, but renewable, terms). The appointment process and the LRA Arbitration Panel is described in the Scheme and the LRA Guide. Neither party will have any choice of arbitrator.

**3.** Proceedings under the Scheme are conducted differently from an industrial tribunal. In particular:

- arbitrators will conduct proceedings in an informal 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 statements;
- the arbitrator's decision will only contain the main considerations that have led to the result; it will not contain full or detailed reasons.

**4.** Once parties have agreed to refer their dispute to arbitration in accordance with the Scheme, the parties cannot then return to an industrial tribunal.

**5.** In deciding whether the employee's complaint that his/her employer has failed to deal with an application under Article 112F of the Employment Rights (Northern Ireland) Order 1996 in accordance with Article 112G(1) of that Order or that a decision by his/her employer to reject the application was based on incorrect facts, the arbitrator shall have regard to the Flexible Working (Procedural Requirements) Regulations (Northern Ireland) 2002, as well as any relevant LRA guidance. Unlike an industrial tribunal, the arbitrator will not apply strict rules of evidence.

6. Unlike an industrial 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).
7. Unlike an industrial tribunal, in agreeing to arbitration under the Scheme, parties agree that there is no jurisdictional argument, i.e. no reason why the claim cannot be heard and determined by the arbitrator.

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 and brings into operation a flexible working Arbitration Scheme ("the Scheme") submitted to the Department for Employment and Learning by the Labour Relations Agency pursuant to Article 84A of the Industrial Relations (Northern Ireland) Order 1992.

The Schedule to the Order sets out details of the Scheme, providing for arbitration in the case of disputes involving proceedings, or claims which could be the subject of proceedings, before an industrial tribunal arising out of a contravention or alleged contravention of Articles 112G(1) or 112H(1)(b) of the Employment Rights (Northern Ireland) Order 1996 (flexible working). The Order provides for the Scheme to come into effect on 25th May 2006. The Scheme will provide from that date a voluntary alternative to an industrial tribunal for the resolution of claims arising out of an application for flexible working made under Article 112F(1) of the 1996 Order by arbitration where both parties agree.

The Order also provides for certain provisions of the Arbitration Act 1996, as modified by the Order, to apply to arbitrations conducted in accordance with the Scheme.

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