



# Employment Rights (Dispute Resolution) Act 1998

## 1998 CHAPTER 8

### PART II

#### OTHER METHODS OF DISPUTE RESOLUTION

##### *Arbitration*

#### **7 ACAS arbitration scheme.**

After section 212 of the <sup>M1</sup>Trade Union and Labour Relations (Consolidation) Act 1992 insert—

##### **“212A Arbitration scheme for unfair dismissal cases etc.**

- (1) ACAS may prepare a scheme providing for arbitration in the case of disputes involving proceedings, or claims which could be the subject of proceedings, before an employment tribunal arising out of a contravention or alleged contravention of—
  - (a) Part X of the <sup>M2</sup>Employment Rights Act 1996 (unfair dismissal), or
  - (b) any enactment specified in an order made by the Secretary of State.
- (2) When ACAS has prepared such a scheme it shall submit a draft of the scheme to the Secretary of State who, if he approves it, shall make an order—
  - (a) setting out the scheme, and
  - (b) making provision for it to come into effect.
- (3) ACAS may from time to time prepare a revised version of such a scheme and, when it has done so, shall submit a draft of the revised scheme to the Secretary of State who, if he approves it, shall make an order—
  - (a) setting out the revised scheme, and
  - (b) making provision for it to come into effect.

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- (4) ACAS may take any steps appropriate for promoting awareness of a scheme prepared under this section.
- (5) Where the parties to any dispute within subsection (1) agree in writing to submit the dispute to arbitration in accordance with a scheme having effect by virtue of an order under this section, ACAS shall refer the dispute to the arbitration of a person appointed by ACAS for the purpose (not being an officer or employee of ACAS).
- (6) Nothing in the <sup>M3</sup>Arbitration Act 1996 shall apply to an arbitration conducted in accordance with a scheme having effect by virtue of an order under this section except to the extent that the order provides for any provision of Part I of that Act so to apply; and the order may provide for any such provision so to apply subject to modifications.
- (7) A scheme set out in an order under this section may, in relation to an arbitration conducted in accordance with the law of Scotland, make provision—
  - (a) that a reference on a preliminary point may be made, or
  - (b) conferring a right of appeal which shall lie,
 to the relevant court on such grounds and in respect of such matters as may be specified in the scheme; and in this subsection “relevant court” means such court, being the Court of Session or the Employment Appeal Tribunal, as may be specified in the scheme, and a different court may be specified as regards different grounds or matters.
- (8) Where a scheme set out in an order under this section includes provision for the making of re-employment orders in arbitrations conducted in accordance with the scheme, the order setting out the scheme may require employment tribunals to enforce such orders—
  - (a) in accordance with section 117 of the <sup>M4</sup>Employment Rights Act 1996 (enforcement by award of compensation), or
  - (b) in accordance with that section as modified by the order.
 For this purpose “re-employment orders” means orders requiring that persons found to have been unfairly dismissed be reinstated, re-engaged or otherwise re-employed.
- (9) An order under this section setting out a scheme may provide that, in the case of disputes within subsection (1)(a), such part of an award made in accordance with the scheme as is specified by the order shall be treated as a basic award of compensation for unfair dismissal for the purposes of section 184(1)(d) of the <sup>M5</sup>Employment Rights Act 1996 (which specifies such an award as a debt which the Secretary of State must satisfy if the employer has become insolvent).
- (10) An order under this section shall be made by statutory instrument.
- (11) No order shall be made under subsection (1)(b) unless a draft of the statutory instrument containing it has been laid before Parliament and approved by a resolution of each House.
- (12) A statutory instrument containing an order under this section (other than one of which a draft has been approved by resolution of each House of Parliament) shall be subject to annulment in pursuance of a resolution of either House of Parliament.”

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#### Marginal Citations

**M1** 1992 c. 52.

**M2** 1996 c. 18.

**M3** 1996 c. 23.

**M4** 1996 c. 18.

**M5** 1996 c. 18.

## 8 Effect of arbitration agreements.

- (1) In section 77 of the <sup>M6</sup>Sex Discrimination Act 1975 (subsection (3) of which prohibits contracting out of the provisions of that Act or the <sup>M7</sup>Equal Pay Act 1970, but subject to exceptions specified in subsection (4)), after subsection (4C) insert—

“(4D) An agreement under which the parties agree to submit a dispute to arbitration—

(a) shall be regarded for the purposes of subsection (4)(a) and (aa) as being a contract settling a complaint if—

(i) the dispute is covered by a scheme having effect by virtue of an order under section 212A of the <sup>M8</sup>Trade Union and Labour Relations (Consolidation) Act 1992, and

(ii) the agreement is to submit it to arbitration in accordance with the scheme, but

(b) shall be regarded for those purposes as neither being nor including such a contract in any other case.”

- (2) In section 72 of the <sup>M9</sup>Race Relations Act 1976 (subsection (3) of which prohibits contracting out of the provisions of that Act, but subject to exceptions specified in subsection (4)), after subsection (4C) insert—

“(4D) An agreement under which the parties agree to submit a dispute to arbitration—

(a) shall be regarded for the purposes of subsection (4)(a) and (aa) as being a contract settling a complaint if—

(i) the dispute is covered by a scheme having effect by virtue of an order under section 212A of the Trade Union and Labour Relations (Consolidation) Act 1992, and

(ii) the agreement is to submit it to arbitration in accordance with the scheme, but

(b) shall be regarded for those purposes as neither being nor including such a contract in any other case.”

- (3) In section 288 of the Trade Union and Labour Relations (Consolidation) Act 1992 (subsection (1) of which prohibits contracting out of the provisions of that Act, but subject to exceptions specified in subsections (2) and (2A)), after subsection (5) insert—

“(6) An agreement under which the parties agree to submit a dispute to arbitration—

(a) shall be regarded for the purposes of subsections (2) and (2A) as being an agreement to refrain from instituting or continuing proceedings if—

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- (i) the dispute is covered by a scheme having effect by virtue of an order under section 212A, and
  - (ii) the agreement is to submit it to arbitration in accordance with the scheme, but
  - (b) shall be regarded for those purposes as neither being nor including such an agreement in any other case.”
- (4) In section 9 of the <sup>M10</sup>Disability Discrimination Act 1995 (subsection (1) of which prohibits contracting out of the provisions of Part II of that Act, but subject to exceptions specified in subsection (2)), after subsection (5) insert—
- “(6) An agreement under which the parties agree to submit a dispute to arbitration—
- (a) shall be regarded for the purposes of subsection (2) as being an agreement not to institute, or an agreement not to continue, proceedings if—
    - (i) the dispute is covered by a scheme having effect by virtue of an order under section 212A of the <sup>M11</sup>Trade Union and Labour Relations (Consolidation) Act 1992, and
    - (ii) the agreement is to submit it to arbitration in accordance with the scheme, but
  - (b) shall be regarded as neither being nor including such an agreement in any other case.”
- (5) In section 203 of the <sup>M12</sup>Employment Rights Act 1996 (subsection (1) of which prohibits contracting out of the provisions of that Act, but subject to exceptions specified in subsection (2)), after subsection (4) insert—
- “(5) An agreement under which the parties agree to submit a dispute to arbitration—
- (a) shall be regarded for the purposes of subsection (2)(e) and (f) as being an agreement to refrain from instituting or continuing proceedings if—
    - (i) the dispute is covered by a scheme having effect by virtue of an order under section 212A of the Trade Union and Labour Relations (Consolidation) Act 1992, and
    - (ii) the agreement is to submit it to arbitration in accordance with the scheme, but
  - (b) shall be regarded as neither being nor including such an agreement in any other case.”

#### Marginal Citations

<b>M6</b>	1975 c. 65.
<b>M7</b>	1970 c. 41.
<b>M8</b>	1992 c. 52.
<b>M9</b>	1976 c. 74.
<b>M10</b>	1995 c. 50.
<b>M11</b>	1992 c. 52.
<b>M12</b>	1996 c. 18.

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