

SCHEDULE

ACAS ARBITRATION SCHEME

XXIV.

CHALLENGING THE AWARD

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

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

(1) [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.

Status: This is the original version (as it was originally made).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

- (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 ACAS) appeal to the High Court or Central London County Court”;*
 - (c) *for “a question of law” substitute “a question (a) of EC law, or (b) concerning the application of the Human Rights Act 1998”;*
 - (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”.*
- (4) *In subsection (3)—*
- (a) *omit paragraph (b);*

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.”

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.”

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