

**EXPLANATORY MEMORANDUM TO THE
ACAS (FLEXIBLE WORKING) ARBITRATION SCHEME (GREAT
BRITAIN) ORDER 2004 No.2333**

1. This Explanatory Memorandum has been prepared by the Department of Trade and Industry and is laid before Parliament by Command of Her Majesty.

Description

2. The Order enables Acas to offer arbitration as a voluntary alternative to the employment tribunal for the resolution of disputes about flexible working. The parties must choose whether they wish the arbitration to be carried out under the laws of England and Wales (an “English/Welsh arbitration”) or whether they wish the arbitration to be determined according to the laws of Scotland (a “Scottish arbitration”). Certain provisions of the arbitration scheme apply to English/Welsh arbitrations only and certain other provisions apply to Scottish arbitrations only. The different provisions are necessary because arbitration law in England and Wales is different from arbitration law in Scotland.

Matters of special interest to the JCSI

3. None

Legislative Background

4. The Order replaces the ACAS (Flexible Working) Arbitration Scheme (England and Wales) Order 2003 (“the 2003 Order”). The 2003 Order extended to England and Wales only. This Order revokes the 2003 Order (and the Scheme made under it) and introduces a new arbitration scheme, which extends to Scotland, as well as England and Wales.

5. **Extent**

These Regulations apply to Great Britain.

6. **European Convention on Human Rights**

In my view the provisions of these Regulations are compatible with the Convention rights (as defined in section 1 of the Human Rights Act 1998).

7. **Policy background**

The Department’s objective is to increase the opportunities for appropriate use of alternative forms of dispute resolution as, at present, too many employment problems go straight to litigation in employment tribunals. This particular scheme

is entirely voluntary and will broaden the options available for the resolution of disputes relating to flexible working in Scotland.. It should provide a means for confidential, informal, relatively fast and non-legalistic resolution of disputes.

8. Impact

A Regulatory Impact Assessment has not been prepared for this instrument. The extension of the arbitration scheme to Scotland offers employers and employees the opportunity to have flexible working cases heard by an Acas appointed arbitrator, an opportunity already enjoyed by those in England and Wales. The impact of the 2003 scheme on business has been low. I expect the new scheme to have a similar impact.

9. Contact

Valerie Allcock, Alternative Dispute Resolution Section, Employment Relations Directorate, 1 Victoria Street, London SW1H 0ET. Tel: 020 7215 5787.