

## SCHEDULE

### ACAS (FLEXIBLE WORKING) ARBITRATION SCHEME

## PART XXIII

### CHALLENGING THE AWARD

#### Challenges on grounds of substantive jurisdiction: English/Welsh arbitrations

**138EW.** Section 67 of the Arbitration Act 1996(1) shall apply to English/Welsh arbitrations conducted in accordance with the Scheme, subject to the following modifications.

(i) 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 ACAS) apply to the High Court or the Central London County Court”;

(b) for “(see section 73)” substitute “(see Part XXIV of the Scheme)”; and

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

(ii) After subsection (1) insert—

“(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 ACAS (Flexible Working) Arbitration Scheme (Great Britain) Order 2004; and

“substantive jurisdiction” means any issue as to—

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(1) 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.”

**Status:** *This is the original version (as it was originally made).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

- (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.”*