



# Arbitration (Scotland) Act 2010

## 2010 asp 1

**The Bill for this Act of the Scottish Parliament was passed by the Parliament on 18th November 2009 and received Royal Assent on 5th January 2010**

An Act of the Scottish Parliament to make provision about arbitration.

### *Introductory*

VALID FROM 07/06/2010

#### **1 Founding principles**

The founding principles of this Act are—

- (a) that the object of arbitration is to resolve disputes fairly, impartially and without unnecessary delay or expense,
- (b) that parties should be free to agree how to resolve disputes subject only to such safeguards as are necessary in the public interest,
- (c) that the court should not intervene in an arbitration except as provided by this Act.

Anyone construing this Act must have regard to the founding principles when doing so.

#### **Modifications etc. (not altering text)**

- C1** Ss. 1-15 excluded by 1962 c. 46, s. 74(6)(f) (as amended (5.6.2010) by [The Arbitration \(Scotland\) Act 2010 \(Consequential Amendments\) Order 2010 \(S.S.I. 2010/220\)](#), art. 1, [sch. para. 4\(2\)](#))
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- C3** Ss. 1-15 excluded by 1977 c. 37, s. 130(8) (as amended (5.6.2010) by [The Arbitration \(Scotland\) Act 2010 \(Consequential Amendments\) Order 2010 \(S.S.I. 2010/220\)](#), art. 1, [sch. para. 5](#))
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- C5** Ss. 1-15 excluded by 1996 c. 17, s. 6(2) (as amended (5.6.2010) by [The Arbitration \(Scotland\) Act 2010 \(Consequential Amendments\) Order 2010 \(S.S.I. 2010/220\)](#), art. 1, [sch. para. 7](#))

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## 2 Key terms

- (1) In this Act, unless the contrary intention appears—
  - “arbitration” includes—
    - (a) domestic arbitration,
    - (b) arbitration between parties residing, or carrying on business, anywhere in the United Kingdom, and
    - (c) international arbitration,
  - “arbitrator” means a sole arbitrator or a member of a tribunal,
  - “dispute” includes—
    - (a) any refusal to accept a claim, and
    - (b) any other difference (whether contractual or not),
  - “party” means a party to an arbitration,
  - “rules” means the Scottish Arbitration Rules (see section 7), and
  - “tribunal” means a sole arbitrator or panel of arbitrators.
- (2) References in this Act to “an arbitration”, “the arbitration” or “arbitrations” are references to a particular arbitration process or, as the case may be, to particular arbitration processes.
- (3) References in this Act to a tribunal conducting an arbitration are references to the tribunal doing anything in relation to the arbitration, including—
  - (a) making a decision about procedure or evidence, and
  - (b) making an award.

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VALID FROM 07/06/2010

### 3 Seat of arbitration

- (1) An arbitration is “seated in Scotland” if—
  - (a) Scotland is designated as the juridical seat of the arbitration—
    - (i) by the parties,
    - (ii) by any third party to whom the parties give power to so designate, or
    - (iii) where the parties fail to designate or so authorise a third party, by the tribunal, or
  - (b) in the absence of any such designation, the court determines that Scotland is to be the juridical seat of the arbitration.
- (2) The fact that an arbitration is seated in Scotland does not affect the substantive law to be used to decide the dispute.

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VALID FROM 07/06/2010

### *Arbitration agreements*

#### **4 Arbitration agreement**

An “arbitration agreement” is an agreement to submit a present or future dispute to arbitration (including any agreement which provides for arbitration in accordance with arbitration provisions contained in a separate document).

#### **Modifications etc. (not altering text)**

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## 5 Separability

- (1) An arbitration agreement which forms (or was intended to form) part only of an agreement is to be treated as a distinct agreement.
- (2) An arbitration agreement is not void, voidable or otherwise unenforceable only because the agreement of which it forms part is void, voidable or otherwise unenforceable.
- (3) A dispute about the validity of an agreement which includes an arbitration agreement may be arbitrated in accordance with that arbitration agreement.

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## 6 Law governing arbitration agreement

Where—

- (a) the parties to an arbitration agreement agree that an arbitration under that agreement is to be seated in Scotland, but
- (b) the arbitration agreement does not specify the law which is to govern it, then, unless the parties otherwise agree, the arbitration agreement is to be governed by Scots law.

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VALID FROM 07/06/2010

## *Scottish Arbitration Rules*

### 7 **Scottish Arbitration Rules**

The Scottish Arbitration Rules set out in schedule 1 are to govern every arbitration seated in Scotland (unless, in the case of a default rule, the parties otherwise agree).

#### **Modifications etc. (not altering text)**

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## 8 Mandatory rules

The following rules, called “mandatory rules”, cannot be modified or disapplied (by an arbitration agreement, by any other agreement between the parties or by any other means) in relation to any arbitration seated in Scotland—

- rule 3 (arbitrator to be an individual)
- rule 4 (eligibility to act as an arbitrator)
- rule 7 (failure of appointment procedure)
- rule 8 (duty to disclose any conflict of interests)
- rules 12 to 16 (removal or resignation of arbitrator or dismissal of tribunal)
- rules 19 to 21 and 23 (jurisdiction of tribunal)
- rules 24 and 25 (general duties of tribunal and parties)
- rule 42 (point of law referral: procedure etc.)
- rule 44 (time limit variation: procedure etc.)
- rule 45 (securing attendance of witnesses and disclosure of evidence)
- rule 48 (power to award payment and damages)
- rule 50 (interest)
- rule 54 (part awards)
- rule 56 (power to withhold award if fees or expenses not paid)
- rule 60 (arbitrators' fees and expenses)
- rule 63 (ban on pre-dispute agreements about liability for arbitration expenses)
- rules 67, 68, 70, 71 and 72 (challenging awards)
- rules 73 to 75 (immunity)
- rule 76 (loss of right to object)
- rule 77 (independence of arbitrator)
- rule 79 (death of arbitrator)
- rule 82 (rules applicable to umpires)

### Modifications etc. (not altering text)

- C1** Ss. 1-15 excluded by 1962 c. 46, s. 74(6)(f) (as amended (5.6.2010) by [The Arbitration \(Scotland\) Act 2010 \(Consequential Amendments\) Order 2010 \(S.S.I. 2010/220\)](#), art. 1, **sch. para. 4(2)**)
- C2** Ss. 1-15 excluded by 1949 c. 87, s. 67(4) (as amended (5.6.2010) by [The Arbitration \(Scotland\) Act 2010 \(Consequential Amendments\) Order 2010 \(S.S.I. 2010/220\)](#), art. 1, **sch. para. 2**)
- C3** Ss. 1-15 excluded by 1977 c. 37, s. 130(8) (as amended (5.6.2010) by [The Arbitration \(Scotland\) Act 2010 \(Consequential Amendments\) Order 2010 \(S.S.I. 2010/220\)](#), art. 1, **sch. para. 5**)

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- C4 Ss. 1-15 excluded by 1992 c. 52, s. 263(6) (as amended (5.6.2010) by [The Arbitration \(Scotland\) Act 2010 \(Consequential Amendments\) Order 2010 \(S.S.I. 2010/220\)](#), art. 1, **sch. para. 6(3)**)
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- C6 Ss. 1-15 excluded by 1962 c. 46, s. 81(7) (as amended (5.6.2010) by [The Arbitration \(Scotland\) Act 2010 \(Consequential Amendments\) Order 2010 \(S.S.I. 2010/220\)](#), art. 1, **sch. para. 4(3)**)
- C7 Ss. 1-15 excluded by 1961 c. 34, s. 171 (as amended (5.6.2010) by [The Arbitration \(Scotland\) Act 2010 \(Consequential Amendments\) Order 2010 \(S.S.I. 2010/220\)](#), art. 1, **sch. para. 3**)
- C8 Ss. 1-15: power to exclude or restrict conferred by 2007 c. 15, Sch. 5 para. 14 (as amended (5.6.2010) by [The Arbitration \(Scotland\) Act 2010 \(Consequential Amendments\) Order 2010 \(S.S.I. 2010/220\)](#), art. 1, **sch. para. 8**)
- C9 Ss. 1-15 excluded by 1949 c. 39, s. 8(2) (as amended (5.6.2010) by [The Arbitration \(Scotland\) Act 2010 \(Consequential Amendments\) Order 2010 \(S.S.I. 2010/220\)](#), art. 1, **sch. para. 1**)
- C10 Ss. 1-15 excluded by 1992 c. 52, s. 212(5) (as amended (5.6.2010) by [The Arbitration \(Scotland\) Act 2010 \(Consequential Amendments\) Order 2010 \(S.S.I. 2010/220\)](#), art. 1, **sch. para. 6(2)**)
- C11 Ss. 1-15 excluded by 1962 c. 46, Sch. 7 para. 17(5) (as amended (5.6.2010) by [The Arbitration \(Scotland\) Act 2010 \(Consequential Amendments\) Order 2010 \(S.S.I. 2010/220\)](#), art. 1, **sch. para. 4(4)**)

## 9 Default rules

- (1) The non-mandatory rules are called the “default rules”.
- (2) A default rule applies in relation to an arbitration seated in Scotland only in so far as the parties have not agreed to modify or disapply that rule (or any part of it) in relation to that arbitration.
- (3) Parties may so agree—
  - (a) in the arbitration agreement, or
  - (b) by any other means at any time before or after the arbitration begins.
- (4) Parties are to be treated as having agreed to modify or disapply a default rule—
  - (a) if or to the extent that the rule is inconsistent with or disapplied by—
    - (i) the arbitration agreement,
    - (ii) any arbitration rules or other document (for example, the UNCITRAL Model Law, the UNCITRAL Arbitration Rules or other institutional rules) which the parties agree are to govern the arbitration, or
    - (iii) anything done with the agreement of the parties, or
  - (b) if they choose a law other than Scots law as the applicable law in respect of the rule's subject matter.

This subsection does not affect the generality of subsections (2) and (3).

### Modifications etc. (not altering text)

- C1 Ss. 1-15 excluded by 1962 c. 46, s. 74(6)(f) (as amended (5.6.2010) by [The Arbitration \(Scotland\) Act 2010 \(Consequential Amendments\) Order 2010 \(S.S.I. 2010/220\)](#), art. 1, **sch. para. 4(2)**)
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VALID FROM 07/06/2010

### *Suspension of legal proceedings*

#### **10 Suspension of legal proceedings**

- (1) The court must, on an application by a party to legal proceedings concerning any matter under dispute, sist those proceedings in so far as they concern that matter if—
  - (a) an arbitration agreement provides that a dispute on the matter is to be resolved by arbitration (immediately or after the exhaustion of other dispute resolution procedures),
  - (b) the applicant is a party to the arbitration agreement (or is claiming through or under such a party),
  - (c) notice of the application has been given to the other parties to the legal proceedings,
  - (d) the applicant has not—
    - (i) taken any step in the legal proceedings to answer any substantive claim against the applicant, or
    - (ii) otherwise acted since bringing the legal proceedings in a manner indicating a desire to have the dispute resolved by the legal proceedings rather than by arbitration, and
  - (e) nothing has caused the court to be satisfied that the arbitration agreement concerned is void, inoperative or incapable of being performed.
- (2) Any provision in an arbitration agreement which prevents the bringing of the legal proceedings is void in relation to any proceedings which the court refuses to sist.

This subsection does not apply to statutory arbitrations.

- (3) This section applies regardless of whether the arbitration concerned is to be seated in Scotland.

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VALID FROM 07/06/2010

### *Enforcing and challenging arbitral awards etc.*

#### **11 Arbitral award to be final and binding on parties**

- (1) A tribunal's award is final and binding on the parties and any person claiming through or under them (but does not of itself bind any third party).
- (2) In particular, an award ordering the rectification or reduction of a deed or other document is of no effect in so far as it would adversely affect the interests of any third party acting in good faith.
- (3) This section does not affect the right of any person to challenge the award—
  - (a) under Part 8 of the Scottish Arbitration Rules, or
  - (b) by any available arbitral process of appeal or review.
- (4) This section does not apply in relation to a provisional award (see rule 53), such an award not being final and being binding only—
  - (a) to the extent specified in the award, or
  - (b) until it is superseded by a subsequent award.

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- C2 Ss. 1-15 excluded by 1949 c. 87, s. 67(4) (as amended (5.6.2010) by [The Arbitration \(Scotland\) Act 2010 \(Consequential Amendments\) Order 2010 \(S.S.I. 2010/220\)](#), art. 1, [sch. para. 2](#))
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- C11 Ss. 1-15 excluded by 1962 c. 46, Sch. 7 para. 17(5) (as amended (5.6.2010) by [The Arbitration \(Scotland\) Act 2010 \(Consequential Amendments\) Order 2010 \(S.S.I. 2010/220\)](#), art. 1, [sch. para. 4\(4\)](#))

## 12 Enforcement of arbitral awards

- (1) The court may, on an application by any party, order that a tribunal's award may be enforced as if it were an extract registered decree bearing a warrant for execution granted by the court.
- (2) No such order may be made if the court is satisfied that the award is the subject of—
  - (a) an appeal under Part 8 of the Scottish Arbitration Rules,
  - (b) an arbitral process of appeal or review, or
  - (c) a process of correction under rule 58 of the Scottish Arbitration Rules,which has not been finally determined.
- (3) No such order may be made if the court is satisfied that the tribunal which made the award did not have jurisdiction to do so (and the court may restrict the extent of its order if satisfied that the tribunal did not have jurisdiction to make a part of the award).
- (4) But a party may not object on the ground that the tribunal did not have jurisdiction if the party has lost the right to raise that objection by virtue of the Scottish Arbitration Rules (see rule 76).
- (5) Unless the parties otherwise agree, a tribunal's award may be registered for execution in the Books of Council and Session or in the sheriff court books (provided that the arbitration agreement is itself so registered).

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- (6) This section applies regardless of whether the arbitration concerned was seated in Scotland.
- (7) Nothing in this section or in section 13 affects any other right to rely on or enforce an award in pursuance of—
- (a) sections 19 to 21, or
  - (b) any other enactment or rule of law.
- (8) In this section, “court” means the sheriff or the Court of Session.

#### Modifications etc. (not altering text)

- C1** Ss. 1-15 excluded by 1962 c. 46, s. 74(6)(f) (as amended (5.6.2010) by [The Arbitration \(Scotland\) Act 2010 \(Consequential Amendments\) Order 2010 \(S.S.I. 2010/220\)](#), art. 1, [sch. para. 4\(2\)](#))
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- C4** Ss. 1-15 excluded by 1992 c. 52, s. 263(6) (as amended (5.6.2010) by [The Arbitration \(Scotland\) Act 2010 \(Consequential Amendments\) Order 2010 \(S.S.I. 2010/220\)](#), art. 1, [sch. para. 6\(3\)](#))
- C5** Ss. 1-15 excluded by 1996 c. 17, s. 6(2) (as amended (5.6.2010) by [The Arbitration \(Scotland\) Act 2010 \(Consequential Amendments\) Order 2010 \(S.S.I. 2010/220\)](#), art. 1, [sch. para. 7](#))
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### 13 Court intervention in arbitrations

- (1) Legal proceedings are competent in respect of—
- (a) a tribunal's award, or
  - (b) any other act or omission by a tribunal when conducting an arbitration, only as provided for in the Scottish Arbitration Rules (in so far as they apply to that arbitration) or in any other provision of this Act.
- (2) In particular, a tribunal's award is not subject to review or appeal in any legal proceedings except as provided for in Part 8 of the Scottish Arbitration Rules.
- (3) It is not competent for a party to raise the question of a tribunal's jurisdiction with the court except—
- (a) where objecting to an order being made under section 12, or

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(b) as provided for in the Scottish Arbitration Rules (see rules 21, 22 and 67).

(4) Where the parties agree that the UNCITRAL Model Law is to apply to an arbitration, articles 6 and 11(2) to (5) of that Law are to have the force of law in Scotland in relation to that arbitration (as if article 6 specified the Court of Session and any sheriff court having jurisdiction).

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## 14 Persons who take no part in arbitral proceedings

(1) A person alleged to be a party to an arbitration but who takes no part in the arbitration may, by court proceedings, question—

- (a) whether there is a valid arbitration agreement (or, in the case of a statutory arbitration, whether the enactment providing for arbitration applies to the dispute),
- (b) whether the tribunal is properly constituted, or
- (c) what matters have been submitted to arbitration in accordance with the arbitration agreement,

and the court may determine such a question by making such declaration, or by granting such interdict or other remedy, as it thinks appropriate.

(2) Such a person has the same right as a party who participates in the arbitration to appeal against any award made in the arbitration under rule 67 or 68 (jurisdictional and serious irregularity appeals) and rule 71(2) does not apply to such an appeal.



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- C2** Ss. 1-15 excluded by 1949 c. 87, s. 67(4) (as amended (5.6.2010) by [The Arbitration \(Scotland\) Act 2010 \(Consequential Amendments\) Order 2010 \(S.S.I. 2010/220\)](#), art. 1, **sch. para. 2**)
- C3** Ss. 1-15 excluded by 1977 c. 37, s. 130(8) (as amended (5.6.2010) by [The Arbitration \(Scotland\) Act 2010 \(Consequential Amendments\) Order 2010 \(S.S.I. 2010/220\)](#), art. 1, **sch. para. 5**)
- C4** Ss. 1-15 excluded by 1992 c. 52, s. 263(6) (as amended (5.6.2010) by [The Arbitration \(Scotland\) Act 2010 \(Consequential Amendments\) Order 2010 \(S.S.I. 2010/220\)](#), art. 1, **sch. para. 6(3)**)
- C5** Ss. 1-15 excluded by 1996 c. 17, s. 6(2) (as amended (5.6.2010) by [The Arbitration \(Scotland\) Act 2010 \(Consequential Amendments\) Order 2010 \(S.S.I. 2010/220\)](#), art. 1, **sch. para. 7**)
- C6** Ss. 1-15 excluded by 1962 c. 46, s. 81(7) (as amended (5.6.2010) by [The Arbitration \(Scotland\) Act 2010 \(Consequential Amendments\) Order 2010 \(S.S.I. 2010/220\)](#), art. 1, **sch. para. 4(3)**)
- C7** Ss. 1-15 excluded by 1961 c. 34, s. 171 (as amended (5.6.2010) by [The Arbitration \(Scotland\) Act 2010 \(Consequential Amendments\) Order 2010 \(S.S.I. 2010/220\)](#), art. 1, **sch. para. 3**)
- C8** Ss. 1-15: power to exclude or restrict conferred by 2007 c. 15, Sch. 5 para. 14 (as amended (5.6.2010) by [The Arbitration \(Scotland\) Act 2010 \(Consequential Amendments\) Order 2010 \(S.S.I. 2010/220\)](#), art. 1, **sch. para. 8**)
- C9** Ss. 1-15 excluded by 1949 c. 39, s. 8(2) (as amended (5.6.2010) by [The Arbitration \(Scotland\) Act 2010 \(Consequential Amendments\) Order 2010 \(S.S.I. 2010/220\)](#), art. 1, **sch. para. 1**)
- C10** Ss. 1-15 excluded by 1992 c. 52, s. 212(5) (as amended (5.6.2010) by [The Arbitration \(Scotland\) Act 2010 \(Consequential Amendments\) Order 2010 \(S.S.I. 2010/220\)](#), art. 1, **sch. para. 6(2)**)
- C11** Ss. 1-15 excluded by 1962 c. 46, Sch. 7 para. 17(5) (as amended (5.6.2010) by [The Arbitration \(Scotland\) Act 2010 \(Consequential Amendments\) Order 2010 \(S.S.I. 2010/220\)](#), art. 1, **sch. para. 4(4)**)

## 15 Anonymity in legal proceedings

- (1) A party to any civil proceedings relating to an arbitration (other than proceedings under section 12) may apply to the court for an order prohibiting the disclosure of the identity of a party to the arbitration in any report of the proceedings.
- (2) On such an application, the court must grant the order unless satisfied that disclosure—
  - (a) is required—
    - (i) for the proper performance of the discloser's public functions, or
    - (ii) in order to enable any public body or office-holder to perform public functions properly,
  - (b) can reasonably be considered as being needed to protect a party's lawful interests,
  - (c) would be in the public interest, or
  - (d) would be necessary in the interests of justice.
- (3) The court's determination of an application for an order is final.

#### Modifications etc. (not altering text)

- C1** Ss. 1-15 excluded by 1962 c. 46, s. 74(6)(f) (as amended (5.6.2010) by [The Arbitration \(Scotland\) Act 2010 \(Consequential Amendments\) Order 2010 \(S.S.I. 2010/220\)](#), art. 1, **sch. para. 4(2)**)

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- C2 Ss. 1-15 excluded by 1949 c. 87, s. 67(4) (as amended (5.6.2010) by The Arbitration (Scotland) Act 2010 (Consequential Amendments) Order 2010 (S.S.I. 2010/220), art. 1, **sch. para. 2**)
- C3 Ss. 1-15 excluded by 1977 c. 37, s. 130(8) (as amended (5.6.2010) by The Arbitration (Scotland) Act 2010 (Consequential Amendments) Order 2010 (S.S.I. 2010/220), art. 1, **sch. para. 5**)
- C4 Ss. 1-15 excluded by 1992 c. 52, s. 263(6) (as amended (5.6.2010) by The Arbitration (Scotland) Act 2010 (Consequential Amendments) Order 2010 (S.S.I. 2010/220), art. 1, **sch. para. 6(3)**)
- C5 Ss. 1-15 excluded by 1996 c. 17, s. 6(2) (as amended (5.6.2010) by The Arbitration (Scotland) Act 2010 (Consequential Amendments) Order 2010 (S.S.I. 2010/220), art. 1, **sch. para. 7**)
- C6 Ss. 1-15 excluded by 1962 c. 46, s. 81(7) (as amended (5.6.2010) by The Arbitration (Scotland) Act 2010 (Consequential Amendments) Order 2010 (S.S.I. 2010/220), art. 1, **sch. para. 4(3)**)
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- C9 Ss. 1-15 excluded by 1949 c. 39, s. 8(2) (as amended (5.6.2010) by The Arbitration (Scotland) Act 2010 (Consequential Amendments) Order 2010 (S.S.I. 2010/220), art. 1, **sch. para. 1**)
- C10 Ss. 1-15 excluded by 1992 c. 52, s. 212(5) (as amended (5.6.2010) by The Arbitration (Scotland) Act 2010 (Consequential Amendments) Order 2010 (S.S.I. 2010/220), art. 1, **sch. para. 6(2)**)
- C11 Ss. 1-15 excluded by 1962 c. 46, Sch. 7 para. 17(5) (as amended (5.6.2010) by The Arbitration (Scotland) Act 2010 (Consequential Amendments) Order 2010 (S.S.I. 2010/220), art. 1, **sch. para. 4(4)**)

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### *Statutory arbitration*

#### **16 Statutory arbitration: special provisions**

- (1) “Statutory arbitration” is arbitration pursuant to an enactment which provides for a dispute to be submitted to arbitration.
- (2) References in the Scottish Arbitration Rules (or in any other provision of this Act) to an arbitration agreement are, in the case of a statutory arbitration, references to the enactment which provides for a dispute to be resolved by arbitration.
- (3) None of the Scottish Arbitration Rules (or other provisions of this Act) apply to a statutory arbitration if or to the extent that they are excluded by, or are inconsistent with, any provision made by virtue of any other enactment relating to the arbitration.
- (4) Every statutory arbitration is to be taken to be seated in Scotland.
- (5) The following rules do not apply in relation to statutory arbitration—
  - rule 43 (extension of time limits)
  - rule 71(9) (power to declare provision of arbitration agreement void)
  - rule 80 (death of party)
- (6) Despite rule 40, parties to a statutory arbitration may not agree to—
  - (a) consolidate the arbitration with another arbitration,
  - (b) hold concurrent hearings, or

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- (c) authorise the tribunal to order such consolidation or the holding of concurrent hearings,  
unless the arbitrations or hearings are to be conducted under the same enactment.

## **17 Power to adapt enactments providing for statutory arbitration**

Ministers may by order—

- (a) modify any of the Scottish Arbitration Rules, or any other provisions of this Act, in so far as they apply to statutory arbitrations (or to particular statutory arbitrations),
- (b) make such modifications of enactments which provide for disputes to be submitted to arbitration as they consider appropriate in consequence of, or in order to give full effect to, any of the Scottish Arbitration Rules or any other provisions of this Act.

VALID FROM 07/06/2010

### *Recognition and enforcement of New York Convention awards*

## **18 New York Convention awards**

- (1) A “Convention award” is an award made in pursuance of a written arbitration agreement in the territory of a state (other than the United Kingdom) which is a party to the New York Convention.
- (2) An award is to be treated for the purposes of this section as having been made at the seat of the arbitration.
- (3) A declaration by Her Majesty by Order in Council that a state is a party to the Convention (or is a party in respect of any territory) is conclusive evidence of that fact.

## **19 Recognition and enforcement of New York Convention awards**

- (1) A Convention award is to be recognised as binding on the persons as between whom it was made (and may accordingly be relied on by those persons in any legal proceedings in Scotland).
- (2) The court may order that a Convention award may be enforced as if it were an extract registered decree bearing a warrant for execution granted by the court.

## **20 Refusal of recognition or enforcement**

- (1) Recognition or enforcement of a Convention award may be refused only in accordance with this section.
- (2) Recognition or enforcement of a Convention award may be refused if the person against whom it is invoked proves—
  - (a) that a party was under some incapacity under the law applicable to the party,

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- (b) that the arbitration agreement was invalid under the law which the parties agree should govern it (or, failing any indication of that law, under the law of the country where the award was made),
  - (c) that the person—
    - (i) was not given proper notice of the arbitral process or of the appointment of the tribunal, or
    - (ii) was otherwise unable to present the person's case,
  - (d) that the tribunal was constituted, or the arbitration was conducted, otherwise than in accordance with—
    - (i) the agreement of the parties, or
    - (ii) failing such agreement, the law of the country where the arbitration took place.
- (3) Recognition or enforcement of a Convention award may also be refused if the person against whom it is invoked proves that the award—
- (a) deals with a dispute not contemplated by or not falling within the submission to arbitration,
  - (b) contains decisions on matters beyond the scope of that submission,
  - (c) is not yet binding on the person, or
  - (d) has been set aside or suspended by a competent authority.
- (4) Recognition or enforcement of a Convention award may also be refused if—
- (a) the award relates to a matter which is not capable of being settled by arbitration, or
  - (b) to do so would be contrary to public policy.
- (5) A Convention award containing decisions on matters not submitted to arbitration may be recognised or enforced to the extent that it contains decisions on matters which were so submitted which are separable from decisions on matters not so submitted.
- (6) The court before which a Convention award is sought to be relied on may, if an application for the setting aside or suspension of the award is made to a competent authority—
- (a) sist the decision on recognition or enforcement of the award,
  - (b) on the application of the party claiming recognition or enforcement, order the other party to give suitable security.
- (7) In this section “competent authority” means a person who has authority to set aside or suspend the Convention award concerned in the country in which (or under the law of which) the Convention award concerned was made.

## **21 Evidence to be produced when seeking recognition or enforcement**

- (1) A person seeking recognition or enforcement of a Convention award must produce—
- (a) the duly authenticated original award (or a duly certified copy of it), and
  - (b) the original arbitration agreement (or a duly certified copy of it).
- (2) Such a person must also produce a translation of any award or agreement which is in a language other than English (certified by an official or sworn translator or by a diplomatic or consular agent).

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## 22 Saving for other bases of recognition or enforcement

Nothing in sections 19 to 21 affects any other right to rely on or enforce a Convention award in pursuance of any other enactment or rule of law.

VALID FROM 07/06/2010

### *Supplementary*

## 23 Prescription and limitation

(1) The Prescription and Limitation (Scotland) Act 1973 (c. 52) is amended as follows.

(2) In section 4 (positive prescription: interruption)—

- (a) in subsection (2)(b), after “Scotland” insert “ in respect of which an arbitrator (or panel of arbitrators) has been appointed ”,
- (b) in subsection (3)(a), for the words from “and” to “served” substitute “ , the date when the arbitration begins ”,
- (c) for subsection (4) substitute—

“(4) An arbitration begins for the purposes of this section—

- (a) when the parties to the arbitration agree that it begins, or
- (b) in the absence of such agreement, in accordance with rule 1 of the Scottish Arbitration Rules (see section 7 of, and schedule 1 to, the Arbitration (Scotland) Act 2010 (asp 1)).”.

(3) In section 9 (negative prescription: interruption)—

- (a) in subsection (3), for the words from “and” to “served” substitute “ the date when the arbitration begins ”,
- (b) in subsection (4), for “preliminary notice” substitute “ the date when the arbitration begins ”.

(4) After section 19C, insert—

### **“19CA Interruption of limitation period: arbitration**

(1) Any period during which an arbitration is ongoing in relation to a matter is to be disregarded in any computation of the period specified in section 17(2), 18(2), 18A(1) or 18B(2) of this Act in relation to that matter.

(2) In this section, “arbitration” means—

- (a) any arbitration in Scotland,
- (b) any arbitration in a country other than Scotland, being an arbitration an award in which would be enforceable in Scotland.”.

(5) In section 22A(4), for the words from “and” to “served” substitute “ the date when the arbitration begins (within the meaning of section 4(4) of this Act) ”.

(6) After section 22C, insert—



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**“22CA Interruption of limitation period for 1987 Act actions:  
arbitration**

- (1) Any period during which an arbitration is ongoing in relation to a matter is to be disregarded in any computation of the period specified in section 22B(2) or 22C(2) of this Act in relation to that matter.
- (2) In this section, “arbitration” means—
  - (a) any arbitration in Scotland,
  - (b) any arbitration in a country other than Scotland, being an arbitration an award in which would be enforceable in Scotland.”.

**24 Arbitral appointments referee**

- (1) Ministers may, by order, authorise persons or types of person who may act as an arbitral appointments referee for the purposes of the Scottish Arbitration Rules.
- (2) Ministers must, when making such an order, have regard to the desirability of ensuring that arbitral appointments referees—
  - (a) have experience relevant to making arbitral appointments, and
  - (b) are able to provide training, and to operate disciplinary procedures, designed to ensure that arbitrators conduct themselves appropriately.
- (3) Despite subsection (2)(b), an arbitral appointments referee is not obliged to appoint arbitrators in respect of whom the referee provides training or operates disciplinary procedures.

**25 Power of judge to act as arbitrator or umpire**

- (1) A judge may act as an arbitrator or umpire only where—
  - (a) the dispute being arbitrated appears to the judge to be of commercial character, and
  - (b) the Lord President, having considered the state of Court of Session business, has authorised the judge to so act.
- (2) A fee of such amount as Ministers may by order prescribe is payable in the Court of Session for the services of a judge acting as an arbitrator or umpire.
- (3) Any jurisdiction exercisable by the Outer House under the Scottish Arbitration Rules (or any other provision of this Act) in relation to—
  - (a) a judge acting as a sole arbitrator or umpire, or
  - (b) a tribunal which the judge forms part of,is to be exercisable instead by the Inner House (and the Inner House's decision on any matter is final).
- (4) In this section—

“judge” means a judge of the Court of Session, and  
“Lord President” means the Lord President of the Court of Session.

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## **26 Amendments to UNCITRAL Model Law or Rules or New York Convention**

- (1) Ministers may by order modify—
- (a) the Scottish Arbitration Rules,
  - (b) any other provision of this Act, or
  - (c) any enactment which provides for disputes to be resolved by arbitration,
- in such manner as they consider appropriate in consequence of any amendment made to the UNCITRAL Model Law, the UNCITRAL Arbitration Rules or the New York Convention.
- (2) Before making such an order, Ministers must consult such persons appearing to them to have an interest in the law of arbitration as they think fit.

## **27 Amendment of Conveyancing (Scotland) Act 1924 (c. 27)**

In section 46 of the Conveyancing (Scotland) Act 1924—

- (a) in subsection (2), for “This section” substitute “ Subsection (1) ”, and
- (b) after subsection (2) insert—
  - “(3) Where—
    - (a) an arbitral award orders the reduction of a deed or other document recorded in the Register of Sasines (or forming a midcouple or link of title in a title recorded in that Register), and
    - (b) the court orders that the award may be enforced in accordance with section 12 of the Arbitration (Scotland) Act 2010 (asp 1),
 subsection (1) applies to the arbitral award as it applies to a decree of reduction of a deed recorded in the Register of Sasines.”.

## **28 Articles of Regulation 1695**

The 25th Act of the Articles of Regulation 1695 does not apply in relation to arbitration.

## **29 Repeals**

The repeals of the enactments specified in column 1 of schedule 2 have effect to the extent specified in column 2.

## **30 Arbitrability of disputes**

Nothing in this Act makes any dispute capable of being arbitrated if, because of its subject-matter, it would not otherwise be capable of being arbitrated.

### *Final provisions*

## **31 Interpretation**

- (1) In this Act, unless the contrary intention appears—

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“arbitral appointments referee” means a person authorised under section 24,  
“arbitration” has the meaning given by section 2,  
“arbitration agreement” has the meaning given by section 4,  
“arbitrator” has the meaning given by section 2,  
“claim” includes counterclaim,  
“Convention award” has the meaning given by section 18,  
“court” means the Outer House or the sheriff (except in sections 1, 3, 10, 13 and 15, where it means any court),  
“default rule” has the meaning given by section 9(1),  
“dispute” has the meaning given by section 2,  
“Inner House” means the Inner House of the Court of Session,  
“mandatory rule” has the meaning given by section 8,  
“Ministers” means the Scottish Ministers,  
“New York Convention” means the Convention on the Recognition and Enforcement of Foreign Arbitral Awards adopted by the United Nations Conference on International Commercial Arbitration on 10 June 1958,  
“Outer House” means the Outer House of the Court of Session,  
“party” is to be construed in accordance with section 2 and subsection (2) below,  
“rule” means one of the Scottish Arbitration Rules,  
“Scottish Arbitration Rules” means the rules set out in schedule 1,  
“seated in Scotland” has the meaning given by section 3,  
“statutory arbitration” has the meaning given by section 16(1),  
“tribunal” has the meaning given by section 2,  
“UNCITRAL Arbitration Rules” means the arbitration rules adopted by UNCITRAL on 28 April 1976, and  
“UNCITRAL Model Law” means the UNCITRAL Model Law on International Commercial Arbitration as adopted by the United Nations Commission on International Trade Law on 21 June 1985 (as amended in 2006).

- (2) This Act applies in relation to arbitrations and disputes between three or more parties as it applies in relation to arbitrations and disputes between two parties (with references to both parties being read in such cases as references to all the parties).

## 32 Ancillary provision

- (1) Ministers may by order make any supplementary, incidental, consequential, transitional, transitory or saving provision which they consider appropriate for the purposes of, or in connection with, or for the purposes of giving full effect to, any provision of this Act.
- (2) Such an order may modify any enactment, instrument or document.

## 33 Orders

- (1) Any power of Ministers to make orders under this Act—
- (a) is exercisable by statutory instrument, and
  - (b) includes power to make—
    - (i) any supplementary, incidental, consequential, transitional, transitory or saving provision which Ministers consider appropriate,

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(ii) different provision for different purposes.

(2) A statutory instrument containing such an order (or an Order in Council made under section 18) is subject to annulment in pursuance of a resolution of the Scottish Parliament.

This subsection does not apply—

- (a) to orders made under section 35(2) (commencement orders), or
- (b) where subsection (3) makes contrary provision.

(3) An order—

- (a) under section 17 or 32 which adds to, replaces or omits any text in this or any other Act,
- (b) under section 26, or
- (c) under section 36(4),

may be made only if a draft of the statutory instrument containing the order has been laid before, and approved by resolution of, the Scottish Parliament.

### 34 Crown application

- (1) This Act binds the Crown.
- (2) Her Majesty may be represented in any arbitration to which she is a party otherwise than in right of the Crown by such person as she may appoint in writing under the Royal Sign Manual.
- (3) The Prince and Steward of Scotland may be represented in any arbitration to which he is a party by such person as he may appoint.
- (4) References in this Act to a party to an arbitration are, where subsection (2) or (3) applies, to be read as references to the appointed representative.

### 35 Commencement

- (1) The following provisions come into force on Royal Assent—
  - section 2
  - sections 31 to 34
  - this section
  - section 37
- (2) Other provisions come into force on the day Ministers by order appoint.

VALID FROM 07/06/2010

### 36 Transitional provisions

- (1) This Act does not apply to an arbitration begun before commencement.
- (2) This Act otherwise applies to an arbitration agreement whether made on, before or after commencement.

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- (3) Despite subsection (2), this Act does not apply to an arbitration arising under an arbitration agreement (other than an enactment) made before commencement if the parties agree that this Act is not to apply to that arbitration.
- (4) Ministers may by order specify any day falling at least 5 years after commencement as the day on which subsection (3) is to cease to have effect.
- (5) Before making such an order, Ministers must consult such persons appearing to them to have an interest in the law of arbitration as they think fit.
- (6) Any reference to an arbiter in an arbitration agreement made before commencement is to be treated as being a reference to an arbitrator.
- (7) Any reference in an enactment to a decree arbitral is to be treated for the purposes of section 12 as being a reference to a tribunal's award.
- (8) An express provision in an arbitration agreement made before commencement which disapplies section 3 of the Administration of Justice (Scotland) Act 1972 (c. 59) in relation to an arbitration arising under that agreement is, unless the parties otherwise agree, to be treated as being an agreement to disapply rules 41 and 69 in relation to such an arbitration.
- (9) In this section, “commencement” means the day on which this section comes into force.

### 37 Short title

This Act is called the Arbitration (Scotland) Act 2010.



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## SCHEDULE 1

*(introduced by section 7)*

### SCOTTISH ARBITRATION RULES

#### Modifications etc. (not altering text)

- C12** Sch. 1 excluded by 1962 c. 46, s. 74(6)(f) (as amended (5.6.2010) by [The Arbitration \(Scotland\) Act 2010 \(Consequential Amendments\) Order 2010 \(S.S.I. 2010/220\)](#), art. 1, **sch. para. 4(2)**)
- C13** Sch. 1 excluded by 1962 c. 46, Sch. 7 para. 17(5) (as amended (5.6.2010) by [The Arbitration \(Scotland\) Act 2010 \(Consequential Amendments\) Order 2010 \(S.S.I. 2010/220\)](#), art. 1, **sch. para. 4(4)**)
- C14** Sch. 1 excluded by 1961 c. 34, s. 171 (as amended (5.6.2010) by [The Arbitration \(Scotland\) Act 2010 \(Consequential Amendments\) Order 2010 \(S.S.I. 2010/220\)](#), art. 1, **sch. para. 3**)
- C15** Sch. 1 excluded by 1962 c. 46, s. 81(7) (as amended (5.6.2010) by [The Arbitration \(Scotland\) Act 2010 \(Consequential Amendments\) Order 2010 \(S.S.I. 2010/220\)](#), art. 1, **sch. para. 4(3)**)
- C16** Sch. 1 excluded by 1992 c. 52, s. 212(5) (as amended (5.6.2010) by [The Arbitration \(Scotland\) Act 2010 \(Consequential Amendments\) Order 2010 \(S.S.I. 2010/220\)](#), art. 1, **sch. para. 6(2)**)
- C17** Sch. 1 excluded by 1992 c. 52, s. 263(6) (as amended (5.6.2010) by [The Arbitration \(Scotland\) Act 2010 \(Consequential Amendments\) Order 2010 \(S.S.I. 2010/220\)](#), art. 1, **sch. para. 6(3)**)
- C18** Sch. 1 excluded by 1977 c. 37, s. 130(8) (as amended (5.6.2010) by [The Arbitration \(Scotland\) Act 2010 \(Consequential Amendments\) Order 2010 \(S.S.I. 2010/220\)](#), art. 1, **sch. para. 5**)
- C19** Sch. 1: power to exclude or restrict conferred by 2007 c. 15, Sch. 5 para. 14 (as amended (5.6.2010) by [The Arbitration \(Scotland\) Act 2010 \(Consequential Amendments\) Order 2010 \(S.S.I. 2010/220\)](#), art. 1, **sch. para. 8**)
- C20** Sch. 1 excluded by 1949 c. 39, s. 8(2) (as amended (5.6.2010) by [The Arbitration \(Scotland\) Act 2010 \(Consequential Amendments\) Order 2010 \(S.S.I. 2010/220\)](#), art. 1, **sch. para. 1**)
- C21** Sch. 1 excluded by 1949 c. 87, s. 67(4) (as amended (5.6.2010) by [The Arbitration \(Scotland\) Act 2010 \(Consequential Amendments\) Order 2010 \(S.S.I. 2010/220\)](#), art. 1, **sch. para. 2**)
- C22** Sch. 1 excluded by 1996 c. 17, s. 6(2) (as amended (5.6.2010) by [The Arbitration \(Scotland\) Act 2010 \(Consequential Amendments\) Order 2010 \(S.S.I. 2010/220\)](#), art. 1, **sch. para. 7**)

## SCHEDULE 2

*(introduced by section 29)*

### REPEALS

**Status:**

Point in time view as at 05/06/2010. This version of this Act contains provisions that are not valid for this point in time.

**Changes to legislation:**

Arbitration (Scotland) Act 2010 is up to date with all changes known to be in force on or before 16 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.