

ARBITRATION (SCOTLAND) ACT 2010

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Final provisions

Schedule 1 – Scottish Arbitration Rules

Part 6 – Awards

Rule 56 – Power to withhold award on non-payment of fees or expenses

Mandatory

198. Rule 56 is a mandatory rule. Rule 56(1) provides that the tribunal may refuse to deliver or send an award to the parties unless all the fees and expenses of the tribunal have been paid in full.
199. Rule 56(2) provides that where the tribunal refuses to deliver its award on this basis, a party can apply to the court for an order on delivery on payment into court by the applicant of the fees demanded. The applicant will have to provide the full amount of fees and expenses (or a lesser amount specified by the court). The applicant may have to seek payment of the other party's share separately from the other party or parties to the arbitration. The court then directs how the fees and expenses "properly payable" are to be determined and these are met from the funds in court. Any balance will be paid back to the applicant. This provides a remedy for a party who wants to take up the award but considers the tribunal's fees are excessive and wants them reviewed - although it will not assist a party who considers the fees to be excessive where the other party has already paid the tribunal's fees (in which case the remedy would be an application under rule 62). Rule 56(3) provides that the procedure is not available if the arbitration agreement provides for any process for appeal or review of the fees and expenses demanded which has not been exhausted. Rule 56(4) provides that the decision of the court is final.