



# Arbitration Act 1996

## 1996 CHAPTER 23

### PART I

#### ARBITRATION PURSUANT TO AN ARBITRATION AGREEMENT

##### *Powers of court in relation to arbitral proceedings*

#### **42 Enforcement of peremptory orders of tribunal.**

- (1) Unless otherwise agreed by the parties, the court may make an order requiring a party to comply with a peremptory order made by the tribunal.
- (2) An application for an order under this section may be made—
  - (a) by the tribunal (upon notice to the parties),
  - (b) by a party to the arbitral proceedings with the permission of the tribunal (and upon notice to the other parties), or
  - (c) where the parties have agreed that the powers of the court under this section shall be available.
- (3) The court shall not act unless it is satisfied that the applicant has exhausted any available arbitral process in respect of failure to comply with the tribunal's order.
- (4) No order shall be made under this section unless the court is satisfied that the person to whom the tribunal's order was directed has failed to comply with it within the time prescribed in the order or, if no time was prescribed, within a reasonable time.
- (5) The leave of the court is required for any appeal from a decision of the court under this section.

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

- C1** Power to apply conferred (31.1.1997) by 1966 c. 41, s. 3 (as substituted by 1996 c. 23, s. 107(1), Sch. 3 para. 24) (with s. 81(2)); S.I. 1996/3146, art. 3 (with art. 4, Sch. 2)
- C2** S. 42 applied (with modifications)(E.W.)(1.5.1998) by S.I. 1998/649, art. 2, Sch. Pt. 1 para.24

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**C3** Power to apply conferred (31.1.1997) by 1988 c. 8, s. 6(1)(as substituted by 1996 c. 23, s. 107(1), **Sch. 3 para. 49**) (with s. 81(2)); S.I. 1996/3146, **art. 3** (with art. 4, Sch. 2)

#### **43 Securing the attendance of witnesses.**

- (1) A party to arbitral proceedings may use the same court procedures as are available in relation to legal proceedings to secure the attendance before the tribunal of a witness in order to give oral testimony or to produce documents or other material evidence.
- (2) This may only be done with the permission of the tribunal or the agreement of the other parties.
- (3) The court procedures may only be used if—
  - (a) the witness is in the United Kingdom, and
  - (b) the arbitral proceedings are being conducted in England and Wales or, as the case may be, Northern Ireland.
- (4) A person shall not be compelled by virtue of this section to produce any document or other material evidence which he could not be compelled to produce in legal proceedings.

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

- C4** Power to apply conferred (31.1.1997) by 1966 c. 41, s. 3 (as substituted by 1996 c. 23, s. 107(1), **Sch. 3, para. 24**) (with s. 81(2)); S.I. 1996/3146 art. 3 (with art. 4, Sch. 2)
- C5** Power to apply conferred (31.1.1997) by 1988 c. 8, s. 6(1) (as substituted by 1996 c. 23, s. 107(1), **Sch. 3 para. 49**) (with s. 81(2)); S.I. 1996/3146, **art. 3** (with art. 4, Sch. 2)

#### **44 Court powers exercisable in support of arbitral proceedings.**

- (1) Unless otherwise agreed by the parties, the court has for the purposes of and in relation to arbitral proceedings the same power of making orders about the matters listed below as it has for the purposes of and in relation to legal proceedings.
- (2) Those matters are—
  - (a) the taking of the evidence of witnesses;
  - (b) the preservation of evidence;
  - (c) making orders relating to property which is the subject of the proceedings or as to which any question arises in the proceedings—
    - (i) for the inspection, photographing, preservation, custody or detention of the property, or
    - (ii) ordering that samples be taken from, or any observation be made of or experiment conducted upon, the property;
 and for that purpose authorising any person to enter any premises in the possession or control of a party to the arbitration;
  - (d) the sale of any goods the subject of the proceedings;
  - (e) the granting of an interim injunction or the appointment of a receiver.
- (3) If the case is one of urgency, the court may, on the application of a party or proposed party to the arbitral proceedings, make such orders as it thinks necessary for the purpose of preserving evidence or assets.

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- (4) If the case is not one of urgency, the court shall act only on the application of a party to the arbitral proceedings (upon notice to the other parties and to the tribunal) made with the permission of the tribunal or the agreement in writing of the other parties.
- (5) In any case the court shall act only if or to the extent that the arbitral tribunal, and any arbitral or other institution or person vested by the parties with power in that regard, has no power or is unable for the time being to act effectively.
- (6) If the court so orders, an order made by it under this section shall cease to have effect in whole or in part on the order of the tribunal or of any such arbitral or other institution or person having power to act in relation to the subject-matter of the order.
- (7) The leave of the court is required for any appeal from a decision of the court under this section.

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

- C6 Power to apply conferred (31.1.1997) by 1966 c. 41, s. 3 (as substituted by 1996 c. 23, s. 107(1), Sch. 3 para. 24) (with s. 81(2)); S.I. 1996/3146, art. 3 (with art. 4, Sch. 2)
- C7 Power to apply conferred (31.1.1997) by 1988 c. 8, s. 6(1) (as substituted by 1996 c. 23, Sch. 3 para. 49) (with s. 81(2)); S.I. 1996/3146, art. 3

#### 45 Determination of preliminary point of law.

- (1) Unless otherwise agreed by the parties, the court may on the application of a party to arbitral proceedings (upon notice to the other parties) determine any question of law arising in the course of the proceedings which the court is satisfied substantially affects the rights of one or more of the parties.

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 application under this section shall not be considered unless—
  - (a) it is made with the agreement of all the other parties to the proceedings, or
  - (b) it is made with the permission of the tribunal and the court is satisfied—
    - (i) that the determination of the question is likely to produce substantial savings in costs, and
    - (ii) that the application was made without delay.
- (3) The application shall identify the question of law to be determined and, unless made with the agreement of all the other parties to the proceedings, shall state the grounds on which it is said that the question should be decided by the court.
- (4) Unless otherwise agreed by the parties, the arbitral tribunal may continue the arbitral proceedings and make an award while an application to the court under this section is pending.
- (5) Unless the court gives leave, no appeal lies from a decision of the court whether the conditions specified in subsection (2) are met.
- (6) The decision of the court on the question of law shall be treated as a judgment of the court for the purposes of an appeal.

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But no 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.

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

- C8** S. 45 applied (with modifications) (E.W.) (21.5.2001) by [S.I. 2001/1185](#), arts. 2, 3, **Sch. para. 94(1)** (which amending S.I. was revoked (6.4.2004) by [S.I. 2004/753](#), **art. 3** (subject to art. 8))
- C9** S. 45 applied (with modifications) (E.W.) (6.4.2003) by [The ACAS \(Flexible Working\) Arbitration Scheme \(England and Wales\) Order 2003 \(S.I. 2003/694\)](#), art. 2, **Sch. para. 93** (which amending S.I. was revoked (1.10.2004) by [S.I. 2004/2333](#), **art. 3** (subject to art. 6))
- C10** S. 45 applied (with modifications) (E.W.) (6.4.2004) by [The ACAS Arbitration Scheme \(Great Britain\) Order 2004 \(S.I. 2004/753\)](#), art. 1, **Sch. para. 110EW**
- C11** S. 45 applied (with modifications) (E.W.) (1.10.2004) by [The ACAS \(Flexible Working\) Arbitration Scheme \(Great Britain\) Order 2004 \(S.I. 2004/2333\)](#), art. 4, **Sch. para. 108EW** (with art. 6)
- C12** S. 45 applied (with modifications) (N.I.) (21.5.2006) by [The Labour Relations Agency \(Flexible Working\) Arbitration Scheme Order \(Northern Ireland\) 2006 \(S.R. 2006/206\)](#), arts. 2, 3, **Sch. para. 93**
- C13** S. 45 applied (with modifications) (N.I.) (27.9.2012) by [The Labour Relations Agency Arbitration Scheme Order \(Northern Ireland\) 2012 \(S.R. 2012/301\)](#), art. 1, **Sch. para. 89**

**Changes to legislation:**

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