

ARBITRATION (SCOTLAND) ACT 2010

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Scottish Arbitration Rules

Section 9 – Default rules

33. Parties are free to make their own arrangements, by agreement, on matters covered by the default rules. Only where there is no such agreement will the default rules apply. Default rules do not lose their statutory nature because they apply only in certain circumstances, for instance in the absence of contrary agreement by the parties.
34. Subsections (2) to (4) make detailed provision making clear that the parties can agree to vary any or all of the default rules, insofar as they agree to modify or disapply them. This can be done in the arbitration agreement or elsewhere, and at any time before or after the arbitration begins. Subsection (4) makes clear that inconsistent provision in the arbitration agreement or other document takes precedence, and that the parties can choose to adopt, for example, the UNCITRAL Model Law, UNCITRAL Arbitration Rules, the Chartered Institute of Arbitrators' Scottish Arbitration Code, industry standard rules or the procedural rules of other legal systems (subject to the mandatory Scottish Arbitration Rules which cannot be contracted out of).
35. The default rules are identified in the Scottish Arbitration Rules in schedule 1 for the ease of the reader by a “**D**” at the end of the rule heading.