

ARBITRATION (SCOTLAND) ACT 2010

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Enforcing and challenging arbitral awards etc.

Section 11 – Arbitral award to be final and binding on parties

44. [Section 11](#) provides that an arbitral award is to be final and binding on the parties and persons claiming through or under them (for example an assignee or successor to rights under an arbitration agreement). It protects the interest of third parties, in particular where the award seeks to rectify or reduce a deed or other document (see rule 49(c) of the Scottish Arbitration Rules). Parties can also still challenge the award by any available arbitral process of appeal or review or under Part 8 of those rules. Subsection (4) means that section 11 does not apply to provisional awards under rule 53. Provisional awards are not final and binding only to the extent specified in the award or until superseded by a subsequent award.

Section 12 – Enforcement of arbitral awards

45. [Section 12](#) deals with the options available to a successful party in the event that the unsuccessful party fails to comply with the terms of the arbitral award.
46. [Section 12\(1\)](#) provides that an application may be made to the sheriff or the Court of Session for an order enforcing an arbitral award with the same effect as a court order bearing a warrant for execution. The effect is that where a court grants an order under this rule, the tribunal's award may be enforced by executing diligence in the same way as a court decree may be enforced (without a further warrant).
47. [Section 12\(2\)](#) provides that the court cannot enforce an award, while it is being appealed, reviewed (e.g. as provided for in the arbitration agreement) or corrected.
48. The court will not make such an order, or may restrict its extent to part of the award, if satisfied that the tribunal lacked jurisdiction ([section 12\(3\)](#)). Under [section 12\(4\)](#), the party against whom an arbitral award is made can object on the basis that the arbitrator had no jurisdiction only where the person has not lost the right to object under the Scottish Arbitration Rules (in particular rule 76).
49. Arbitral awards will continue to be registrable for execution in the Books of Council and Session or sheriff court books where the parties have so agreed in the arbitration agreement. (This is separate to the procedure in subsections (1) to (4)). In those circumstances, awards continue to be enforceable by summary diligence in accordance with the law of diligence (see the [Debtors \(Scotland\) Act 1987 \(c.18\)](#) and the [Debt Arrangement and Attachment \(Scotland\) Act 2002 \(asp 17\)](#), and the [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#)). The arbitration agreement will continue to require consent to registration for execution, and to be registered. [Section 10\(5\)](#) makes limited provision to that end, providing that, where the other requirements for enforcement are met, arbitral awards are so registrable despite not being self-proving in

accordance with the Requirements of Writing (Scotland) Act 1995, unless the parties agree otherwise.

50. [Section 12\(6\)](#) means enforcement is available in the Scottish courts for those with arbitrations seated elsewhere. This will include arbitrations seated under the other jurisdictions of the United Kingdom (section 18 of and Schedule 7 to the [Civil Jurisdiction and Judgments Act 1982 \(c.27\)](#) also allows mutual enforcement of arbitral awards from other parts of the UK).
51. [Sections 12](#) and [13](#) do not affect any other right to enforce an award under sections 19 to 22 (New York Convention awards) or under any other enactment or rule of law.

Section 13 – Court intervention in arbitrations

52. [Section 13](#) prohibits legal proceedings in respect of the tribunal’s award or any other act or omission of the tribunal other than in accordance with the Act. Other recourse to the courts under their existing powers in relation to arbitration are not however undermined by section 13.
53. It particularly excludes judicial review or other types of review or appeal of arbitral awards—any recourse to the court under the Act which is “final” is not subject to further appeal. So, for instance, the Outer House’s decision under rule 42(4) is stated to be final. There is accordingly no further appeal or review in light of sections 1(c) and 13 of the Act.
54. To ensure that the courts have jurisdiction where necessary under the Act, and that the Scottish Arbitration Rules are not only a matter of private right between individuals, it is also made clear that while court interference with a tribunal’s award or any other act or omission by a tribunal in conducting the arbitration is prohibited, the courts do have jurisdiction on those matters where the Scottish Arbitration Rules or the Act so permit.
55. [Section 13\(3\)](#) limits, to certain specific procedures under the Act, the occasions when jurisdictional questions may be raised with the courts.
56. [Section 13\(4\)](#) provides that recourse to the Court of Session and the sheriff court is available to appoint an arbitrator where parties have agreed that, subject to the mandatory rules in the Act, the UNCITRAL Model Law is to apply (there is no power at common law to appoint), in accordance with Articles 6 and 11(2) to (5) of the Model Law.

Section 14 – Persons who take no part in arbitral proceedings

57. [Section 14](#) protects the rights of those who are alleged to be a party to the arbitral proceedings, but who do not participate in the arbitration. Subsection (1) allows such a party to challenge the jurisdiction of the tribunal on the same grounds as a party, by court proceedings.
58. Subsection (2) gives an alleged party the same rights as an actual party to the proceedings to challenge an award under rules 67 or 68 but relieves the alleged party of any duty to exhaust available arbitral procedures for appeal or review of the award.

Section 15 – Anonymity in legal proceedings

59. [Section 15](#) protects the identity of parties to arbitration in civil legal proceedings relating to an arbitration. This protection only covers the parties’ identities and not the other contents of any court judgement. Enforcement proceedings under section 12 are excluded, since a party not complying with an arbitral award should not be able to hide behind confidentiality. See also default rule 26 which provides that the arbitrator(s) and the parties must not disclose confidential information relating to the arbitration.

*These notes relate to the Arbitration (Scotland) Act 2010
(asp 1) which received Royal Assent on 5 January 2010*

60. [Section 15\(1\)](#) provides that this anonymity may be available on an application to the court which has discretion as to whether to grant an order providing this protection. [Section 15\(2\)](#) however provides that the court must grant an application for anonymity unless satisfied that one of the exceptions in that subsection which would permit disclosure apply. The court's decision on whether to grant anonymity is not subject to appeal ([section 15\(3\)](#)) although the court can revisit its order to grant anonymity if the exceptions would apply.