

ARBITRATION (SCOTLAND) ACT 2010

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Final provisions

Schedule 1 – Scottish Arbitration Rules

Part 1 – Commencement and constitution of tribunal etc.

Rule 7 – Failure of appointment procedure *Mandatory*

111. Rule 7 is a mandatory rule. It only applies to allow an arbitrator to be appointed where the parties' preferred method of appointment or the default procedure in Scottish Arbitration Rule 6 fails. That is, where a party to an arbitration agreement refuses to do something which an agreement between the parties requires them to do to bring about the appointment of an arbitrator, or if they fail to do so within the requisite period, which may be the 28 day period required by rule 6. If one party appoints and the others do not then the referee steps in only in relation to the appointment of that individual arbitrator. Rule 7(2) provides that, unless the parties agree otherwise, either party may refer the appointment of the arbitrator to an arbitral appointments referee. The parties can agree to dispense with the notice procedure which leads to the arbitral appointments referee, as well as recourse to the referee, and instead can agree to go straight to court to have the arbitrator appointed. These provisions also apply if there are difficulties in appointing arbitrators in multi-party arbitrations.
112. Rules 7(3) to (5) provide a process for a party to object to the reference to an arbitral appointments referee. If no objection is made the arbitral appointments referee may appoint an arbitrator.
113. Rule 7(6) provides that if a party objects to the referee making an appointment, if the referee fails to make an appointment within 21 days of a referral or if the parties agree not to use a referee, any party can apply to the court to make the necessary appointment. There is no right of appeal against the decision of the court (paragraph (7)).
114. The arbitral appointments referee or the court will have to have regard to the matters set out in paragraph (8), the nature of the dispute, the arbitration agreement and the attributes of the appointee, when making the appointment.
115. Paragraph (9) means that an appointment made by the arbitral appointments referee will have the same effect as if made with the agreement of the parties, even if the composition of the tribunal appointed by the referee differs from the arbitration agreement.