

ARBITRATION (SCOTLAND) ACT 2010

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Final provisions

Schedule 1 – Scottish Arbitration Rules

Part 2 – Jurisdiction of tribunal

Rule 19 – Power of tribunal to rule on own jurisdiction *Mandatory*

132. Rule 19 provides for a clear power for the arbitrator to decide his or her own jurisdiction. The extent of an arbitrator's jurisdiction and his or her power to decide his or her own jurisdiction is important in arbitration since it determines exactly what issues the arbitrator is to decide.

Rule 20 – Objections to tribunal's jurisdiction *Mandatory*

133. Rule 20 is a mandatory rule. If a party considers that the tribunal does not have jurisdiction, the party may object to the tribunal. Paragraph (2) requires an objection to be raised as soon as reasonably practicable after the matter is first raised in the arbitration, or such later time as the tribunal allows if it considers the circumstances justify it (before the tribunal makes its last award). The only recourse at that point is a court challenge to the award on grounds of lack of jurisdiction.
134. Under paragraph (3), if a tribunal upholds an objection, it has the general power to terminate an arbitration insofar as it does not have jurisdiction and to set aside any interim or partial award insofar as there is no jurisdiction. If a final award has been made the party should appeal under rule 67.
135. Paragraph (4) gives the tribunal the option of ruling on an objection to its jurisdiction in an award as to jurisdiction, or to delay and rule in the award on the merits of the dispute, unless the parties agree which course it should take. Where the tribunal does delay, any appeal will have to be made as a jurisdictional appeal against an award (under rule 67) rather than as an appeal against the decision on the objection to jurisdiction (rule 21).

Rule 21 – Appeal against tribunal's ruling on jurisdictional objection *Mandatory*

136. Rule 21(1) provides that within 14 days after the tribunal's decision, an application can be made to the Outer House on a question of an arbitrator's jurisdiction. Paragraph (2) provides that the arbitral proceedings will be able to continue until the court comes to a decision on the objection to jurisdiction to avoid vexatious objections being taken to the court to delay the whole process. Rule 21(3) provides that the Outer House's decision on appeal is final.

Rule 22 – Referral of point of jurisdiction *Default*

137. Rule 22 is a default rule which, unless the parties agree otherwise, allows a party to ask the Outer House to determine a point of jurisdiction. This recognises that there may be difficult issues of jurisdiction where the tribunal's ruling is almost certain to be challenged where referral to the court would assist the parties and the tribunal.

Rule 23 – Jurisdiction referral: procedure etc. *Mandatory*

138. Where rule 22 applies between the parties, rule 23 restricts the right to apply to the Outer House to determine a point of jurisdiction under rule 22. An application may be made if all parties agree or the tribunal has consented and the court is satisfied that its determination is likely to produce substantial cost savings and there has been no delay by the party in making the application. In addition the court must be convinced that there are good reasons why it, and not the tribunal, should decide the matter.
139. Rule 23(3) provides that the arbitral proceedings will be able to continue until the court comes to a decision on the referral.
140. Rule 23(4) means that there is no appeal against the decision of the Outer House on the referral or whether an application is valid.