

# ARBITRATION (SCOTLAND) ACT 2010

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### *Final provisions*

#### *Schedule 1 – Scottish Arbitration Rules*

#### **Part 7 – Arbitration expenses**

#### **Rule 60 – Arbitrators’ fees and expenses *Mandatory***

207. Rule 60 is a mandatory rule for the payment of such reasonable fees and expenses of the arbitrator as are appropriate in the circumstances. These provisions apply to arbitrators who have ceased to act and cover the tribunal, arbitral appointments referee and other third parties. Contractual rights to payment of fees or expenses remain relevant. Rule 60 applies in the same way to the fees and expenses of any umpire as it does to those of an arbitrator (rule 82).
208. Rule 60(1) provides that the parties to the arbitration are to be severally liable to the arbitrator(s) for payment of the arbitrators’ own fees and expenses as well as those of the tribunal. The fees and expenses are treated as a whole, so there is no question of the award being delivered to only one party on payment by that party of his or her “share” of the fees and expenses. “Several liability” means that arbitrators can recover the full amount of fees and expenses from either party. The party’s liability between themselves is not necessarily joint – it will depend on how they agree, or on how the tribunal decides, recoverable expenses are to be split (rule 62). The parties are not made "jointly" liable between themselves as rule 60 is mandatory and liability between the parties may not be joint at all times but rather as agreed by the parties or determined by the tribunal under rule 62.
209. Rule 60(2) extends the several liability of the parties to the fees and expenses of the arbitral appointments referee and other third parties.
210. Rule 60(3) provides a right for any party, arbitrator, arbitral appointments referee or other third party to apply for the fees and expenses to be fixed by the Auditor of Court. This will cover the situation where there has been no agreement as to the basis for payment of fees and expenses. Rule 60(4) provides that, unless the Auditor decides otherwise, the amount of any fee will be determined by the Auditor to reflect a reasonable commercial rate of charge and to allow a reasonable amount for all reasonably incurred expenses. The tribunal also has the power to apply to the Auditor to cover the situation in which, for example, there has been simply no agreement on fees and expenses and parties refuse to pay what the tribunal demands.
211. Where the application to the Auditor of Court is made after payment has been made, under rule 60(5), the Auditor may order repayment of any amount as is shown to be excessive. The purpose of this is to cover the situation where a party who has not agreed the level of fees with the tribunal (because it is claimed the tribunal’s demands are excessive) is unable to obtain delivery of the award without paying those fees in full

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

because the tribunal refuses to deliver the award pending full payment. An order by the Auditor has effect as if it was made by the sheriff.

212. Rule 60(6) provides that the rule does not affect the Outer House's power to make an order under rule 16.