

**Changes to legislation:** Arbitration (Scotland) Act 2010, Part 4 is up to date with all changes known to be in force on or before 30 April 2021. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

## SCHEDULE 1 SCOTTISH ARBITRATION RULES

### Modifications etc. (not altering text)

- C1 Sch. 1 excluded by 1949 c. 39, s. 8(2) (as amended (5.6.2010) by [The Arbitration \(Scotland\) Act 2010 \(Consequential Amendments\) Order 2010 \(S.S.I. 2010/220\)](#), art. 1, [sch. para. 1](#))
- C1 Sch. 1 excluded by 1949 c. 87, s. 67(4) (as amended (5.6.2010) by [The Arbitration \(Scotland\) Act 2010 \(Consequential Amendments\) Order 2010 \(S.S.I. 2010/220\)](#), art. 1, [sch. para. 2](#))
- C1 Sch. 1 excluded by 1961 c. 34, s. 171 (as amended (5.6.2010) by [The Arbitration \(Scotland\) Act 2010 \(Consequential Amendments\) Order 2010 \(S.S.I. 2010/220\)](#), art. 1, [sch. para. 3](#))
- C1 Sch. 1 excluded by 1962 c. 46, s. 74(6)(f) (as amended (5.6.2010) by [The Arbitration \(Scotland\) Act 2010 \(Consequential Amendments\) Order 2010 \(S.S.I. 2010/220\)](#), art. 1, [sch. para. 4\(2\)](#))
- C1 Sch. 1 excluded by 1962 c. 46, s. 81(7) (as amended (5.6.2010) by [The Arbitration \(Scotland\) Act 2010 \(Consequential Amendments\) Order 2010 \(S.S.I. 2010/220\)](#), art. 1, [sch. para. 4\(3\)](#))
- C1 Sch. 1 excluded by 1962 c. 46, Sch. 7 para. 17(5) (as amended (5.6.2010) by [The Arbitration \(Scotland\) Act 2010 \(Consequential Amendments\) Order 2010 \(S.S.I. 2010/220\)](#), art. 1, [sch. para. 4\(4\)](#))
- C1 Sch. 1 excluded by 1977 c. 37, s. 130(8) (as amended (5.6.2010) by [The Arbitration \(Scotland\) Act 2010 \(Consequential Amendments\) Order 2010 \(S.S.I. 2010/220\)](#), art. 1, [sch. para. 5](#))
- C1 Sch. 1 excluded by 1992 c. 52, s. 212(5) (as amended (5.6.2010) by [The Arbitration \(Scotland\) Act 2010 \(Consequential Amendments\) Order 2010 \(S.S.I. 2010/220\)](#), art. 1, [sch. para. 6\(2\)](#))
- C1 Sch. 1 excluded by 1992 c. 52, s. 263(6) (as amended (5.6.2010) by [The Arbitration \(Scotland\) Act 2010 \(Consequential Amendments\) Order 2010 \(S.S.I. 2010/220\)](#), art. 1, [sch. para. 6\(3\)](#))
- C1 Sch. 1 excluded by 1996 c. 17, s. 6(2) (as amended (5.6.2010) by [The Arbitration \(Scotland\) Act 2010 \(Consequential Amendments\) Order 2010 \(S.S.I. 2010/220\)](#), art. 1, [sch. para. 7](#))
- C1 Sch. 1: power to exclude or restrict conferred by 2007 c. 15, Sch. 5 para. 14 (as amended (5.6.2010) by [The Arbitration \(Scotland\) Act 2010 \(Consequential Amendments\) Order 2010 \(S.S.I. 2010/220\)](#), art. 1, [sch. para. 8](#))

## PART 4

### ARBITRAL PROCEEDINGS

#### *Rule 28 Procedure and evidence D*

- 28 (1) It is for the tribunal to determine—
- (a) the procedure to be followed in the arbitration, and
  - (b) the admissibility, relevance, materiality and weight of any evidence.
- (2) In particular, the tribunal may determine—
- (a) when and where the arbitration is to be conducted,
  - (b) whether parties are to submit claims or defences and, if so, when they should do so and the extent to which claims or defences may be amended,
  - (c) whether any documents or other evidence should be disclosed by or to any party and, if so, when such disclosures are to be made and to whom copies of disclosed documents and information are to be given,
  - (d) whether any and, if so, what questions are to be put to and answered by the parties,
  - (e) whether and, if so, to what extent the tribunal should take the initiative in ascertaining the facts and the law,

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- (f) the extent to which the arbitration is to proceed by way of—
  - (i) hearings for the questioning of parties,
  - (ii) written or oral argument,
  - (iii) presentation or inspection of documents or other evidence, or
  - (iv) submission of documents or other evidence,
- (g) the language to be used in the arbitration (and whether a party is to supply translations of any document or other evidence),
- (h) whether to apply rules of evidence used in legal proceedings or any other rules of evidence.

**Commencement Information**

**I1** Sch. 1 rule 28 in force at 7.6.2010 for specified purposes by [S.S.I. 2010/195](#), art. 2 (with arts. 3, 4)

*Rule 29 Place of arbitration D*

- 29 The tribunal may meet, and otherwise conduct the arbitration, anywhere it chooses (in or outwith Scotland).

**Commencement Information**

**I2** Sch. 1 rule 29 in force at 7.6.2010 for specified purposes by [S.S.I. 2010/195](#), art. 2 (with arts. 3, 4)

*Rule 30 Tribunal decisions D*

- 30 (1) Where the tribunal is unable to make a decision unanimously (including any decision on an award), a decision made by the majority of the arbitrators is sufficient.
- (2) Where there is neither unanimity nor a majority in favour of or opposed to making any decision—
- (a) the decision is to be made by the arbitrator nominated to chair the tribunal, or
  - (b) where no person has been so nominated, the decision is to be made—
    - (i) where the tribunal consists of 3 or more arbitrators, by the last arbitrator to be appointed, or
    - (ii) where the tribunal consists of 2 arbitrators, by an umpire appointed by the tribunal or, where the tribunal fails to make an appointment within 14 days of being requested to do so by either party or any arbitrator, by an arbitral appointments referee (at the request of a party or an arbitrator).

**Commencement Information**

**I3** Sch. 1 rule 30 in force at 7.6.2010 for specified purposes by [S.S.I. 2010/195](#), art. 2 (with arts. 3, 4)

*Rule 31 Tribunal directions D*

- 31 (1) The tribunal may give such directions to the parties as it considers appropriate for the purposes of conducting the arbitration.

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(2) A party must comply with such a direction by such time as the tribunal specifies.

**Commencement Information**

**I4** Sch. 1 rule 31 in force at 7.6.2010 for specified purposes by [S.S.I. 2010/195](#), art. 2 (with arts. 3, 4)

*Rule 32 Power to appoint clerk, agents or employees etc. D*

- 32 (1) The tribunal may appoint a clerk (and such other agents, employees or other persons as it thinks fit) to assist it in conducting the arbitration.
- (2) But the parties' consent is required for any appointment in respect of which significant expenses are likely to arise.

**Commencement Information**

**I5** Sch. 1 rule 32 in force at 7.6.2010 for specified purposes by [S.S.I. 2010/195](#), art. 2 (with arts. 3, 4)

*Rule 33 Party representatives D*

- 33 (1) A party may be represented in the arbitration by a lawyer or any other person.
- (2) But the party must, before representation begins, give notice of the representative—
- (a) to the tribunal, and
  - (b) to the other party.

**Commencement Information**

**I6** Sch. 1 rule 33 in force at 7.6.2010 for specified purposes by [S.S.I. 2010/195](#), art. 2 (with arts. 3, 4)

*Rule 34 Experts D*

- 34 (1) The tribunal may obtain an expert opinion on any matter arising in the arbitration.
- (2) The parties must be given a reasonable opportunity—
- (a) to make representations about any written expert opinion, and
  - (b) to hear any oral expert opinion and to ask questions of the expert giving it.

**Commencement Information**

**I7** Sch. 1 rule 34 in force at 7.6.2010 for specified purposes by [S.S.I. 2010/195](#), art. 2 (with arts. 3, 4)

*Rule 35 Powers relating to property D*

- 35 The tribunal may direct a party—
- (a) to allow the tribunal, an expert or another party—
    - (i) to inspect, photograph, preserve or take custody of any property which that party owns or possesses which is the subject of the arbitration (or as to which any question arises in the arbitration), or

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- (ii) to take samples from, or conduct an experiment on, any such property, or
- (b) to preserve any document or other evidence which the party possesses or controls.

**Commencement Information**

**I8** Sch. 1 rule 35 in force at 7.6.2010 for specified purposes by [S.S.I. 2010/195](#), art. 2 (with arts. 3, 4)

*Rule 36 Oaths or affirmations D*

- 36 The tribunal may—
- (a) direct that a party or witness is to be examined on oath or affirmation, and
  - (b) administer an oath or affirmation for that purpose.

**Commencement Information**

**I9** Sch. 1 rule 36 in force at 7.6.2010 for specified purposes by [S.S.I. 2010/195](#), art. 2 (with arts. 3, 4)

*Rule 37 Failure to submit claim or defence timeously D*

- 37 (1) Where—
- (a) a party unnecessarily delays in submitting or in otherwise pursuing a claim,
  - (b) the tribunal considers that there is no good reason for the delay, and
  - (c) the tribunal is satisfied that the delay—
    - (i) gives, or is likely to give, rise to a substantial risk that it will not be possible to resolve the issues in that claim fairly, or
    - (ii) has caused, or is likely to cause, serious prejudice to the other party,
 the tribunal must end the arbitration in so far as it relates to the subject-matter of the claim and may make such award (including an award on expenses) as it considers appropriate in consequence of the claim.
- (2) Where—
- (a) a party unnecessarily delays in submitting a defence to the tribunal, and
  - (b) the tribunal considers that there is no good reason for the delay,
- the tribunal must proceed with the arbitration (but the delay is not, in itself, to be treated as an admission of anything).

**Commencement Information**

**I10** Sch. 1 rule 37 in force at 7.6.2010 for specified purposes by [S.S.I. 2010/195](#), art. 2 (with arts. 3, 4)

*Rule 38 Failure to attend hearing or provide evidence D*

- 38 Where—
- (a) a party fails—
    - (i) to attend a hearing which the tribunal requested the party to attend a reasonable period in advance of the hearing, or

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- (ii) to produce any document or other evidence requested by the tribunal, and
- (b) the tribunal considers that there is no good reason for the failure, the tribunal may proceed with the arbitration, and make its award, on the basis of the evidence (if any) before it.

**Commencement Information**

**I11** Sch. 1 rule 38 in force at 7.6.2010 for specified purposes by [S.S.I. 2010/195](#), art. 2 (with arts. 3, 4)

*Rule 39 Failure to comply with tribunal direction or arbitration agreement D*

- 39 (1) Where a party fails to comply with—
- (a) any direction made by the tribunal, or
  - (b) any obligation imposed by—
    - (i) the arbitration agreement,
    - (ii) these rules (in so far as they apply), or
    - (iii) any other agreement by the parties relating to conduct of the arbitration,
- the tribunal may order the party to so comply.
- (2) Where a party fails to comply with an order made under this rule, the tribunal may do any of the following—
- (a) direct that the party is not entitled to rely on any allegation or material which was the subject-matter of the order,
  - (b) draw adverse inferences from the non-compliance,
  - (c) proceed with the arbitration and make its award,
  - (d) make such provisional award (including an award on expenses) as it considers appropriate in consequence of the non-compliance.

**Commencement Information**

**I12** Sch. 1 rule 39 in force at 7.6.2010 for specified purposes by [S.S.I. 2010/195](#), art. 2 (with arts. 3, 4)

*Rule 40 Consolidation of proceedings D*

- 40 (1) Parties may agree—
- (a) to consolidate the arbitration with another arbitration, or
  - (b) to hold concurrent hearings.
- (2) But the tribunal may not order such consolidation, or the holding of concurrent hearings, on its own initiative.

**Commencement Information**

**I13** Sch. 1 rule 40 in force at 7.6.2010 for specified purposes by [S.S.I. 2010/195](#), art. 2 (with arts. 3, 4)

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

- Act applied (with modifications) (temp.) by [2014 c. 1 s. 16\(4\)](#)
- Act power to amend conferred by [2014 c. 1 s. 16\(5\)](#)