

ARBITRATION (SCOTLAND) ACT 2010

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Supplementary

Section 23 – Prescription and limitation

77. Both positive and negative prescriptive periods whereby rights are created or expire are interrupted by arbitration. Section 23(2)(a) provides that interruption of the prescriptive period does not arise if an arbitrator is not appointed. If the appointment is made, the interruption is backdated to the notice to submit the claim to arbitration. This is to avoid the possibility that the running of the prescriptive period could be interrupted by arbitration but the arbitration does not proceed because no party to the arbitration moves to appoint an arbitrator.
78. By amending the Prescription and Limitation (Scotland) Act 1973, subsections (2) and (3) align the date deemed to be the date of judicial interruption with the “commencement” date when the arbitration begins (see Scottish Arbitration Rule 1 for the default position). The Act substitutes the definition of “preliminary notice” in the 1973 Act to that effect.
79. Subsections (4) and (6) alter rules on the limitation of court actions so that the periods that apply for the limitation of actions are interrupted by recourse to arbitration. Subsection (5) provides that the date of the interruption of the running of the limitation period is the “commencement” date of the arbitration. Limitation will continue as at present not to prevent recourse to arbitration.

Section 24 – Arbitral appointments referee

80. The Scottish Ministers are given the power to authorise by order who is to be an arbitral appointments referee who can appoint an arbitrator in default of the parties making provision for this (see rule 7 of the Scottish Arbitration Rules). The Scottish Ministers must have regard to the criteria for appointment laid out in subsection (2). Subsection (3) provides for the avoidance of doubt that an arbitrator appointed by an arbitral appointments referee need not be subject to the training and disciplinary procedures of the referee.
81. Where an equivalent body has been specified in the arbitration agreement this will prevail over a statutory referee under this section (see section 9(3) and (4) and rule 7(1)(a)).
82. Arbitral appointments referees were duly authorised by the [Arbitral Appointments Referee \(Scotland\) Order 2010 \(S.S.I. 2010/196\)](#). Those authorised by that order to appoint are Agricultural Industries Confederation Ltd., the Chartered Institute of Arbitrators, the Dean of the Faculty of Advocates, the Institution of Civil Engineers, the Law Society of Scotland, the Royal Incorporation of Architects in Scotland, the Royal Institution of Chartered Surveyors and the Scottish Agricultural Arbiters and Valuers Association.

Section 25 – Power of judge to act as arbitrator or umpire

83. **Section 25(1)** provides that a judge of the Court of Session is able to accept appointment as an arbitrator in a commercial dispute with the consent of the Lord President of the Court of Session. Subsection (2) gives Scottish Ministers the power by order, subject to negative resolution procedure in the Scottish Parliament, to set a fee for the judge's services to be paid to the administration office in the Court of Session. Subsection (3) provides that any jurisdiction exercisable by the Court of Session in a matter in which a judge is acting as arbitrator is to be exercisable by the Inner House. The decision of the Inner House is final. Section 25 consolidates section 17 of the [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1980 \(c.55\)](#).

Section 26 – Amendments to UNCITRAL Model Law or Rules or New York Convention

84. Scottish Ministers are given the power, subject to affirmative resolution procedure in the Scottish Parliament, to amend and update the Act, provision made under it, or other enactments in relation to arbitration in consequence of any future amendment to the UNCITRAL Model Law, the UNCITRAL Arbitration Rules or New York Convention.
85. Subsection (2) provides that the Scottish Ministers must consult those whom they consider to be interested in arbitration law before making those changes.

Section 27 – Amendment of Conveyancing (Scotland) Act 1924 (c.27)

86. The consequential amendment to section 46 of the Conveyancing (Scotland) Act 1924 means that if the court grants an enforcement order in respect of an arbitral award reducing a document registered in the Register of Sasines (see rule 49(c)), the arbitral award is to be registered in the Sasine Register. Third parties relying on the Register before the award is registered are protected by section 46 of the 1924 Act.

Section 28 – Articles of Regulation 1695

87. The 25th Act of the Articles of Regulation 1695 is disapplied from arbitration – it is replaced by the provisions of the Scottish Arbitration Rules permitting court challenges, in particular Part 8 and rule 68 (serious irregularity appeals).

Section 29 – Repeals

88. The repeals of enactments specified in column 1 of schedule 2 have effect to the extent specified in column 2.

Section 30 – Arbitrability of disputes

89. **Section 30** makes it clear that the Act does not make any dispute arbitrable where the subject-matter of the dispute means it would not otherwise be capable of arbitration under Scots law. For instance, matters which affect public rights or the status of parties in law may not be referred to arbitration.