



# Arbitration Act 1996

## 1996 CHAPTER 23

### PART II

#### OTHER PROVISIONS RELATING TO ARBITRATION

##### *Domestic arbitration agreements*

#### **85 Modification of Part I in relation to domestic arbitration agreement**

- (1) In the case of a domestic arbitration agreement the provisions of Part I are modified in accordance with the following sections.
- (2) For this purpose a “domestic arbitration agreement” means an arbitration agreement to which none of the parties is—
  - (a) an individual who is a national of, or habitually resident in, a state other than the United Kingdom, or
  - (b) a body corporate which is incorporated in, or whose central control and management is exercised in, a state other than the United Kingdom,and under which the seat of the arbitration (if the seat has been designated or determined) is in the United Kingdom.
- (3) In subsection (2) “arbitration agreement” and “seat of the arbitration” have the same meaning as in Part I (see sections 3, 5(1) and 6).

#### **86 Staying of legal proceedings**

- (1) In section 9 (stay of legal proceedings), subsection (4) (stay unless the arbitration agreement is null and void, inoperative, or incapable of being performed) does not apply to a domestic arbitration agreement.
- (2) On an application under that section in relation to a domestic arbitration agreement the court shall grant a stay unless satisfied—
  - (a) that the arbitration agreement is null and void, inoperative, or incapable of being performed, or

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- (b) that there are other sufficient grounds for not requiring the parties to abide by the arbitration agreement.
- (3) The court may treat as a sufficient ground under subsection (2)(b) the fact that the applicant is or was at any material time not ready and willing to do all things necessary for the proper conduct of the arbitration or of any other dispute resolution procedures required to be exhausted before resorting to arbitration.
- (4) For the purposes of this section the question whether an arbitration agreement is a domestic arbitration agreement shall be determined by reference to the facts at the time the legal proceedings are commenced.

### **87 Effectiveness of agreement to exclude court’s jurisdiction**

- (1) In the case of a domestic arbitration agreement any agreement to exclude the jurisdiction of the court under—
  - (a) section 45 (determination of preliminary point of law), or
  - (b) section 69 (challenging the award: appeal on point of law),
 is not effective unless entered into after the commencement of the arbitral proceedings in which the question arises or the award is made.
- (2) For this purpose the commencement of the arbitral proceedings has the same meaning as in Part I (see section 14).
- (3) For the purposes of this section the question whether an arbitration agreement is a domestic arbitration agreement shall be determined by reference to the facts at the time the agreement is entered into.

### **88 Power to repeal or amend sections 85 to 87**

- (1) The Secretary of State may by order repeal or amend the provisions of sections 85 to 87.
- (2) An order under this section may contain such supplementary, incidental and transitional provisions as appear to the Secretary of State to be appropriate.
- (3) An order under this section shall be made by statutory instrument and no such order shall be made unless a draft of it has been laid before and approved by a resolution of each House of Parliament.

### *Consumer arbitration agreements*

### **89 Application of unfair terms regulations to consumer arbitration agreements**

- (1) The following sections extend the application of the Unfair Terms in Consumer Contracts Regulations 1994 in relation to a term which constitutes an arbitration agreement.
 

For this purpose “arbitration agreement” means an agreement to submit to arbitration present or future disputes or differences (whether or not contractual).
- (2) In those sections “the Regulations” means those regulations and includes any regulations amending or replacing those regulations.

(3) Those sections apply whatever the law applicable to the arbitration agreement.

**90 Regulations apply where consumer is a legal person**

The Regulations apply where the consumer is a legal person as they apply where the consumer is a natural person.

**91 Arbitration agreement unfair where modest amount sought**

- (1) A term which constitutes an arbitration agreement is unfair for the purposes of the Regulations so far as it relates to a claim for a pecuniary remedy which does not exceed the amount specified by order for the purposes of this section.
- (2) Orders under this section may make different provision for different cases and for different purposes.
- (3) The power to make orders under this section is exercisable—
  - (a) for England and Wales, by the Secretary of State with the concurrence of the Lord Chancellor,
  - (b) for Scotland, by the Secretary of State with the concurrence of the Lord Advocate, and
  - (c) for Northern Ireland, by the Department of Economic Development for Northern Ireland with the concurrence of the Lord Chancellor.
- (4) Any such order for England and Wales or Scotland shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (5) Any such order for Northern Ireland shall be a statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 and shall be subject to negative resolution, within the meaning of section 41(6) of the Interpretation Act (Northern Ireland) 1954.

*Small claims arbitration in the county court*

**92 Exclusion of Part I in relation to small claims arbitration in the county court**

Nothing in Part I of this Act applies to arbitration under section 64 of the County Courts Act 1984.

*Appointment of judges as arbitrators*

**93 Appointment of judges as arbitrators**

- (1) A judge of the Commercial Court or an official referee may, if in all the circumstances he thinks fit, accept appointment as a sole arbitrator or as umpire by or by virtue of an arbitration agreement.
- (2) A judge of the Commercial Court shall not do so unless the Lord Chief Justice has informed him that, having regard to the state of business in the High Court and the Crown Court, he can be made available.

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- (3) An official referee shall not do so unless the Lord Chief Justice has informed him that, having regard to the state of official referees' business, he can be made available.
- (4) The fees payable for the services of a judge of the Commercial Court or official referee as arbitrator or umpire shall be taken in the High Court.
- (5) In this section—
  - “arbitration agreement” has the same meaning as in Part I; and
  - “official referee” means a person nominated under section 68(1)(a) of the Supreme Court Act 1981 to deal with official referees' business.
- (6) The provisions of Part I of this Act apply to arbitration before a person appointed under this section with the modifications specified in Schedule 2.

### *Statutory arbitrations*

#### **94 Application of Part I to statutory arbitrations**

- (1) The provisions of Part I apply to every arbitration under an enactment (a “statutory arbitration”), whether the enactment was passed or made before or after the commencement of this Act, subject to the adaptations and exclusions specified in sections 95 to 98.
- (2) The provisions of Part I do not apply to a statutory arbitration if or to the extent that their application—
  - (a) is inconsistent with the provisions of the enactment concerned, with any rules or procedure authorised or recognised by it, or
  - (b) is excluded by any other enactment.
- (3) In this section and the following provisions of this Part “enactment”—
  - (a) in England and Wales, includes an enactment contained in subordinate legislation within the meaning of the Interpretation Act 1978;
  - (b) in Northern Ireland, means a statutory provision within the meaning of section 1(f) of the Interpretation Act (Northern Ireland) 1954.

#### **95 General adaptation of provisions in relation to statutory arbitrations**

- (1) The provisions of Part I apply to a statutory arbitration—
  - (a) as if the arbitration were pursuant to an arbitration agreement and as if the enactment were that agreement, and
  - (b) as if the persons by and against whom a claim subject to arbitration in pursuance of the enactment may be or has been made were parties to that agreement.
- (2) Every statutory arbitration shall be taken to have its seat in England and Wales or, as the case may be, in Northern Ireland.

#### **96 Specific adaptations of provisions in relation to statutory arbitrations**

- (1) The following provisions of Part I apply to a statutory arbitration with the following adaptations.

- (2) In section 30(1) (competence of tribunal to rule on its own jurisdiction), the reference in paragraph (a) to whether there is a valid arbitration agreement shall be construed as a reference to whether the enactment applies to the dispute or difference in question.
- (3) Section 35 (consolidation of proceedings and concurrent hearings) applies only so as to authorise the consolidation of proceedings, or concurrent hearings in proceedings, under the same enactment.
- (4) Section 46 (rules applicable to substance of dispute) applies with the omission of subsection (1)(b) (determination in accordance with considerations agreed by parties).

#### **97 Provisions excluded from applying to statutory arbitrations**

The following provisions of Part I do not apply in relation to a statutory arbitration—

- (a) section 8 (whether agreement discharged by death of a party);
- (b) section 12 (power of court to extend agreed time limits);
- (c) sections 9(5), 10(2) and 71(4) (restrictions on effect of provision that award condition precedent to right to bring legal proceedings).

#### **98 Power to make further provision by regulations**

- (1) The Secretary of State may make provision by regulations for adapting or excluding any provision of Part I in relation to statutory arbitrations in general or statutory arbitrations of any particular description.
- (2) The power is exercisable whether the enactment concerned is passed or made before or after the commencement of this Act.
- (3) Regulations under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.