

Status: Point in time view as at 20/02/2019.

Changes to legislation: There are currently no known outstanding effects for the Arbitration Act 1996, SCHEDULE 2. (See end of Document for details)

SCHEDULES

SCHEDULE 2

Section 93(6).

MODIFICATIONS OF PART I IN RELATION TO JUDGE-ARBITRATORS

Introductory

- 1 In this Schedule “judge-arbitrator” means [^{F1}an eligible High Court judge] or official referee appointed as arbitrator or umpire under section 93.

Textual Amendments

- F1** Words in Sch. 2 para. 1 substituted (20.2.2019) by Courts and Tribunals (Judiciary and Functions of Staff) Act 2018 (c. 33), ss. 1(7), 4(2)

General

- 2 (1) Subject to the following provisions of this Schedule, references in Part I to the court shall be construed in relation to a judge-arbitrator, or in relation to the appointment of a judge-arbitrator, as references to the Court of Appeal.
- (2) The references in sections 32(6), 45(6) and 69(8) to the Court of Appeal shall in such a case be construed as references to the [^{F2}Supreme Court]^{F2}.

Textual Amendments

- F2** Words in Sch. 2 para. 2(2) substituted (1.10.2009) by Constitutional Reform Act 2005 (c. 4), ss. 40(4), 148, Sch. 9 para. 60; S.I. 2009/1604, art. 2(d)

Arbitrator’s fees

- 3 (1) The power of the court in section 28(2) to order consideration and adjustment of the liability of a party for the fees of an arbitrator may be exercised by a judge-arbitrator.
- (2) Any such exercise of the power is subject to the powers of the Court of Appeal under sections 24(4) and 25(3)(b) (directions as to entitlement to fees or expenses in case of removal or resignation).

Exercise of court powers in support of arbitration

- 4 (1) Where the arbitral tribunal consists of or includes a judge-arbitrator the powers of the court under sections 42 to 44 (enforcement of peremptory orders, summoning witnesses, and other court powers) are exercisable by the High Court and also by the judge-arbitrator himself.

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- (2) Anything done by a judge-arbitrator in the exercise of those powers shall be regarded as done by him in his capacity as judge of the High Court and have effect as if done by that court.

Nothing in this sub-paragraph prejudices any power vested in him as arbitrator or umpire.

Extension of time for making award

- 5 (1) The power conferred by section 50 (extension of time for making award) is exercisable by the judge-arbitrator himself.
- (2) Any appeal from a decision of a judge-arbitrator under that section lies to the Court of Appeal with the leave of that court.

Withholding award in case of non-payment

- 6 (1) The provisions of paragraph 7 apply in place of the provisions of section 56 (power to withhold award in the case of non-payment) in relation to the withholding of an award for non-payment of the fees and expenses of a judge-arbitrator.
- (2) This does not affect the application of section 56 in relation to the delivery of such an award by an arbitral or other institution or person vested by the parties with powers in relation to the delivery of the award.
- 7 (1) A judge-arbitrator may refuse to deliver an award except upon payment of the fees and expenses mentioned in section 56(1).
- (2) The judge-arbitrator may, on an application by a party to the arbitral proceedings, order that if he pays into the High Court the fees and expenses demanded, or such lesser amount as the judge-arbitrator may specify—
- (a) the award shall be delivered,
 - (b) the amount of the fees and expenses properly payable shall be determined by such means and upon such terms as he may direct, and
 - (c) out of the money paid into court there shall be paid out such fees and expenses as may be found to be properly payable and the balance of the money (if any) shall be paid out to the applicant.
- (3) For this purpose the amount of fees and expenses properly payable is the amount the applicant is liable to pay under section 28 or any agreement relating to the payment of the arbitrator.
- (4) No application to the judge-arbitrator under this paragraph may be made where there is any available arbitral process for appeal or review of the amount of the fees or expenses demanded.
- (5) Any appeal from a decision of a judge-arbitrator under this paragraph lies to the Court of Appeal with the leave of that court.
- (6) Where a party to arbitral proceedings appeals under sub-paragraph (5), an arbitrator is entitled to appear and be heard.

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Correction of award or additional award

- 8 Subsections (4) to (6) of section 57 (correction of award or additional award: time limit for application or exercise of power) do not apply to a judge-arbitrator.

Costs

- 9 Where the arbitral tribunal consists of or includes a judge-arbitrator the powers of the court under section 63(4) (determination of recoverable costs) shall be exercised by the High Court.
- 10 (1) The power of the court under section 64 to determine an arbitrator's reasonable fees and expenses may be exercised by a judge-arbitrator.
- (2) Any such exercise of the power is subject to the powers of the Court of Appeal under sections 24(4) and 25(3)(b) (directions as to entitlement to fees or expenses in case of removal or resignation).

Enforcement of award

- 11 The leave of the court required by section 66 (enforcement of award) may in the case of an award of a judge-arbitrator be given by the judge-arbitrator himself.

Solicitors' costs

- 12 The powers of the court to make declarations and orders under the provisions applied by section 75 (power to charge property recovered in arbitral proceedings with the payment of solicitors' costs) may be exercised by the judge-arbitrator.

Powers of court in relation to service of documents

- 13 (1) The power of the court under section 77(2) (powers of court in relation to service of documents) is exercisable by the judge-arbitrator.
- (2) Any appeal from a decision of a judge-arbitrator under that section lies to the Court of Appeal with the leave of that court.

Powers of court to extend time limits relating to arbitral proceedings

- 14 (1) The power conferred by section 79 (power of court to extend time limits relating to arbitral proceedings) is exercisable by the judge-arbitrator himself.
- (2) Any appeal from a decision of a judge-arbitrator under that section lies to the Court of Appeal with the leave of that court.

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