

- (c) what matters have been submitted to arbitration in accordance with the arbitration agreement, and the court may determine such a question by making such declaration, or by granting such interdict or other remedy, as it thinks appropriate.
- 14(2) Such a person has the same right as a party who participates in the arbitration to appeal against any award made in the arbitration under rule 65 or 66 (jurisdictional and serious irregularity appeals) and rule 68(2) does not apply to such an appeal.

## 15 **Anonymity in legal proceedings**

- 15(1) A party to any civil proceedings relating to an arbitration (other than proceedings under section 12) may apply to the court for an order prohibiting the disclosure of the identity of a party to the arbitration in any report of the proceedings.
- 15(2) On such an application, the court must grant the order unless satisfied that disclosure
- (a) is required—
    - (i) for the proper performance of the discloser's public functions, or
    - (ii) in order to enable any public body or office-holder to perform public functions properly,
  - (b) can reasonably be considered as being needed to protect a party's lawful interests,
  - (c) would be in the public interest, or
  - (d) would be necessary in the interests of justice.
- 15(3) The court's determination of an application for an order is final.

### *Statutory arbitration*

## 16 **Statutory arbitration: special provisions**

- 16(1) "Statutory arbitration" is arbitration pursuant to an enactment which provides for a dispute to be submitted to arbitration.
- 16(2) References in the Scottish Arbitration Rules (or in any other provision of this Act) to an arbitration agreement are, in the case of a statutory arbitration, references to the enactment which provides for a dispute to be resolved by arbitration.
- 16(3) None of the Scottish Arbitration Rules (or other provisions of this Act) apply to a statutory arbitration if or to the extent that they are excluded by, or are inconsistent with, any provision made by virtue of any other enactment relating to the arbitration.
- 16(4) Every statutory arbitration is to be taken to be seated in Scotland.
- 16(5) The following rules do not apply in relation to statutory arbitration—
- rule 43 extension of time limits
  - rule 71(9) power to declare provision of arbitration agreement void
  - rule 80 death of party
- 16(6) Despite rule 40, parties to a statutory arbitration may not agree to—
- (a) consolidate the arbitration with another arbitration,
  - (b) hold concurrent hearings, or
  - (c) authorise the tribunal to order such consolidation or the holding of concurrent hearings, unless the arbitrations or hearings are to be conducted under the same enactment.

## 17 **Power to adapt enactments providing for statutory arbitration**

Ministers may by order—

- (a) modify any of the Scottish Arbitration Rules, or any other provisions of this Act, in so far as they apply to statutory arbitrations (or to particular statutory arbitrations),
- (b) make such modifications of enactments which provide for disputes to be submitted to arbitration as they consider appropriate in consequence of, or in order to give full effect to, any of the Scottish Arbitration Rules or any other provisions of this Act.

### *Recognition and enforcement of New York Convention awards*

## 18 **New York Convention awards**

- 18(1) A "Convention award" is an award made in pursuance of a written arbitration agreement in the territory of a state (other than the United Kingdom) which is a party to the New York Convention.
- 18(2) An award is to be treated for the purposes of this section as having been made at the seat of the arbitration.
- 18(3) A declaration by Her Majesty by Order in Council that a state is a party to the Convention (or is a party in respect of any territory) is conclusive evidence of that fact.

## 19 **Recognition and enforcement of New York Convention awards**

- 19(1) A Convention award is to be recognised as binding on the persons as between whom it was made (and may accordingly be relied on by those persons in any legal proceedings in Scotland).
- 19(2) The court may order that a Convention award may be enforced as if it were an extract registered decree bearing a warrant for execution granted by the court.

## 20 **Refusal of recognition or enforcement**

- 20(1) Recognition or enforcement of a Convention award may be refused only in accordance with this section.

- 20(2) Recognition or enforcement of a Convention award may be refused if the person against whom it is invoked proves—
- (a) that a party was under some incapacity under the law applicable to the party,
  - (b) that the arbitration agreement was invalid under the law which the parties agree should govern it (or, failing any indication of that law, under the law of the country where the award was made),
  - (c) that the person—
    - (i) was not given proper notice of the arbitral process or of the appointment of the tribunal, or
    - (ii) was otherwise unable to present the person's case,
  - (d) that the tribunal was constituted, or the arbitration was conducted, otherwise than in accordance with—
    - (i) the agreement of the parties, or
    - (ii) failing such agreement, the law of the country where the arbitration took place.
- 20(3) Recognition or enforcement of a Convention award may also be refused if the person against whom it is invoked proves that the award—
- (a) deals with a dispute not contemplated by or not falling within the submission to arbitration,
  - (b) contains decisions on matters beyond the scope of that submission,
  - (c) is not yet binding on the person, or
  - (d) has been set aside or suspended by a competent authority.
- 20(4) Recognition or enforcement of a Convention award may also be refused if—
- (a) the award relates to a matter which is not capable of being settled by arbitration, or
  - (b) to do so would be contrary to public policy.
- 20(5) A Convention award containing decisions on matters not submitted to arbitration may be recognised or enforced to the extent that it contains decisions on matters which were so submitted which are separable from decisions on matters not so submitted.
- 20(6) The court before which a Convention award is sought to be relied on may, if an application for the setting aside or suspension of the award is made to a competent authority—
- (a) assist the decision on recognition or enforcement of the award,
  - (b) on the application of the party claiming recognition or enforcement, order the other party to give suitable security.
- 20(7) In this section "competent authority" means a person who has authority to set aside or suspend the Convention award concerned in the country in which (or under the law of which) the Convention award concerned was made.

## 21 Evidence to be produced when seeking recognition or enforcement

- 21(1) A person seeking recognition or enforcement of a Convention award must produce—
- (a) the duly authenticated original award (or a duly certified copy of it), and
  - (b) the original arbitration agreement (or a duly certified copy of it).
- 21(2) Such a person must also produce a translation of any award or agreement which is in a language other than English (certified by an official or sworn translator or by a diplomatic or consular agent).

## 22 Saving for other bases of recognition or enforcement

Nothing in sections 19 to 21 affects any other right to rely on or enforce a Convention award in pursuance of any other enactment or rule of law.

### *Supplementary*

#### **23 Prescription and limitation**

- 23(1) The Prescription and Limitation (Scotland) Act 1973 (c.52) is amended as follows.
- 23(2) In section 4 (positive prescription: interruption)—
- (a) in subsection (2)(b), after "Scotland" insert "in respect of which an arbitrator (or panel of arbitrators) has been appointed",
  - (b) in subsection (3)(a), for the words from "and" to "served" substitute ", the date when the arbitration begins",
  - (c) for subsection (4) substitute—
 

"(4) An arbitration begins for the purposes of this section—

    - (a) when the parties to the arbitration agree that it begins, or
    - (b) in the absence of such agreement, in accordance with rule 1 of the Scottish Arbitration Rules (see section 7 of, and schedule 1 to, the Arbitration (Scotland) Act 2010 (asp 1))."
- 23(3) In section 9 (negative prescription: interruption)—
- (a) in subsection (3), for the words from "and" to "served" substitute "the date when the arbitration begins",
  - (b) in subsection (4), for "preliminary notice" substitute "the date when the arbitration begins".
- 23(4) After section 19C, insert—
- "19D Interruption of limitation period: arbitration**

- (1) Any period during which an arbitration is ongoing in relation to a matter is to be disregarded in any computation of the period specified in section 17(2), 18(2), 18A(1) or 18B(2) of this Act in relation to that matter.
- (2) In this section, “arbitration” means—
  - (a) any arbitration in Scotland,
  - (b) any arbitration in a country other than Scotland, being an arbitration an award in which would be enforceable in Scotland.”.

23(5) In section 22A(4), for the words from “and” to “served” substitute “the date when the arbitration begins (within the meaning of section 4(4) of this Act)”.

23(6) After section 22C, insert—

**“22CA Interruption of limitation period for 1987 Act actions: arbitration**

- (1) Any period during which an arbitration is ongoing in relation to a matter is to be disregarded in any computation of the period specified in section 22B(2) or 22C(2) of this Act in relation to that matter.
- (2) In this section, “arbitration” means—
  - (a) any arbitration in Scotland,
  - (b) any arbitration in a country other than Scotland, being an arbitration an award in which would be enforceable in Scotland.”.

**24 Arbitral appointments referee**

24(1) Ministers may, by order, authorise persons or types of person who may act as an arbitral appointments referee for the purposes of the Scottish Arbitration Rules.

24(2) Ministers must, when making such an order, have regard to the desirability of ensuring that arbitral appointments referees—

- (a) have experience relevant to making arbitral appointments, and
- (b) are able to provide training, and to operate disciplinary procedures, designed to ensure that arbitrators conduct themselves appropriately.

24(3) Despite subsection (2)(b), an arbitral appointments referee is not obliged to appoint arbitrators in respect of whom the referee provides training or operates disciplinary procedures.

**25. Power of judge to act as arbitrator or umpire**

25(1) A judge may act as an arbitrator or umpire only where—

- (a) the dispute being arbitrated appears to the judge to be of commercial character, and
- (b) the Lord President, having considered the state of Court of Session business, has authorised the judge to so act.

25(2) A fee of such amount as Ministers may by order prescribe is payable in the Court of Session for the services of a judge acting as an arbitrator or umpire.

25(3) Any jurisdiction exercisable by the Outer House under the Scottish Arbitration Rules (or any other provision of this Act) in relation to—

- (a) a judge acting as a sole arbitrator or umpire, or
- (b) a tribunal which the judge forms part of,

is to be exercisable instead by the Inner House (and the Inner House’s decision on any matter is final).

25(4) In this section—

- “judge” means a judge of the Court of Session, and
- “Lord President” means the Lord President of the Court of Session.

**26 Amendments to UNCITRAL Model Law or Rules or New York Convention**

26(1) Ministers may by order modify—

- (a) the Scottish Arbitration Rules,
- (b) any other provision of this Act, or
- (c) any enactment which provides for disputes to be resolved by arbitration,

in such manner as they consider appropriate in consequence of any amendment made to the UNCITRAL Model Law, the UNCITRAL Arbitration Rules or the New York Convention.

26(2) Before making such an order, Ministers must consult such persons appearing to them to have an interest in the law of arbitration as they think fit.

**27 Amendment of Conveyancing (Scotland) Act 1924 (c.27)**

In section 46 of the Conveyancing (Scotland) Act 1924—

(a) in subsection (2), for “This section” substitute “Subsection (1)”, and

(b) after subsection (2) insert—

“(3) Where—

- (a) an arbitral award orders the reduction of a deed or other document recorded in the Register of Sasines (or forming a midcouple or link of title in a title recorded in that Register), and (b) the court orders that the award may be enforced in accordance with section 12 of the Arbitration (Scotland) Act 2010 (asp 1),