EXPLANATORY NOTES

Arbitration Act 2025

Chapter 4

£8.14

ARBITRATION ACT 2025

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Arbitration Act 2025 which received Royal Assent on 24 February 2025 (c. 4).

- These Explanatory Notes have been prepared by the Ministry of Justice in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Act will mean in practice; provide background information on the development of policy; and provide additional information on how the Act will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Act. They are not, and are not intended to be, a comprehensive description of the Act.

Table of Contents

Overview of the Act

1 The Arbitration Act 2025 ("**this Act**") is concerned with arbitration, which is typically when disputes are resolved by an arbitrator who is privately appointed rather than by a judge sitting in court. Arbitration in England, Wales, and Northern Ireland is regulated by the Arbitration Act 1996 ("**the 1996 Act**"). This Act gives effect to the recommendations of the Law Commission of England and Wales to amend the 1996 Act.[1]

Policy background

2 Arbitration happens in a wide range of settings, both domestic and international, from family law and rent reviews, through commodity trades and shipping, to international commercial contracts and investor claims against states. The Law Commission estimates that there are at least 5000 arbitrations annually in England and Wales, worth at least £2.5 billion to the economy in arbitrator and legal fees alone. Arbitration is also an important node in a mutually supporting network of business that includes legal services, banking, insurance, and trade. In a 2021 survey by Queen Mary University of London and White & Case LLP, London was ranked equal first with Singapore as the world's most preferred seat for international arbitration.[2]

3 The 1996 Act, which governs arbitration in England, Wales, and Northern Ireland, is now over 25 years old. Other countries competing for a greater share of international arbitration have enacted or revised their arbitration legislation more recently. In March 2021, the Ministry of Justice asked the Law Commission to review the 1996 Act. The Law Commission began its review in January 2022. It published its first consultation paper in September 2022, and its second consultation paper in March 2023. It published its final report, along with a draft bill, in September 2023. The final report of the Law Commission concluded that the 1996 Act generally works well, and that root and branch reform is not needed nor wanted. Nevertheless, the Law Commission made a number of recommendations for targeted reform. This Act enacts the Law Commission's recommendations.

4 This Act contains the following substantial initiatives:

- clarification of the law applicable to arbitration agreements;
- codification of an arbitrator's duty of disclosure;
- strengthening of arbitrator immunity around resignation and applications for removal;
- introduction of a power for arbitrators to dispose summarily of issues which have no real prospect of success;
- clarification of court powers in support of arbitral proceedings, and in support of emergency arbitrators; and
- a revised framework for challenges under section 67 of the 1996 Act (where the challenge alleges that the arbitral tribunal lacked jurisdiction).

[1] https://lawcom.gov.uk/project/review-of-the-arbitration-act-1996/

[2] https://arbitration.qmul.ac.uk/research/2021-international-arbitration-survey/

5 This Act contains the following minor changes to the 1996 Act:

- clarifying the availability of appeals under Part I of the 1996 Act;
- simplifying preliminary applications to court on questions of jurisdiction and points of law;
- clarifying time limits for challenging awards; and
- repealing unused provisions on domestic arbitration agreements.

6 The intent of this Act is to further the principle found in section 1 of the 1996 Act: to obtain the fair resolution of disputes by an impartial tribunal without unnecessary delay or expense. Thereby, the aim is to fulfil the policy objective of ensuring that the 1996 Act is fit for purpose and that it continues to promote the UK as a leading destination for arbitration. Further policy and background to the Law Commission's recommendations is provided in its final report and the two consultation papers which preceded it.[3]

7 An Arbitration Bill that sought to enact the Law Commission's recommended reforms was introduced in November 2023. However, that Bill fell upon prorogation while awaiting its Report Stage in the first House after passing through a Special Public Bill Committee. This Act replicates the provisions of that previous Bill as amended at Lords Special Public Bill Committee Stage with one change to ensure Section 1 (*Law applicable to arbitration agreement*) does not apply to arbitration agreements made between investors and states, where those agreements are derived from treaties or non-UK legislation (see para. 17 below). This Act was amended in the House of Lords at Committee Stage, so the wording of Section 13 (*Appeals to Court of Appeal from High Court decisions*) gives better effect to the underlying policy intention (see para. 45 below).

Legal background

8 The current legislation governing arbitration in England, Wales, and Northern Ireland, is primarily the 1996 Act. By section 99 of the 1996 Act, Part II of the Arbitration Act 1950 continues to apply to the enforcement of foreign arbitral awards under the Geneva Convention 1923. However, for the enforcement of foreign arbitral awards, almost all countries have signed up instead to the later New York Convention 1958. Part III of the 1996 Act gives effect to the New York Convention. Investor-state arbitrations which fall under the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the ICSID Convention) are separately governed by the Arbitration (International Investment Disputes) Act 1966. The Arbitration (Scotland) Act 2010 governs arbitration in Scotland.

[3] https://lawcom.gov.uk/project/review-of-the-arbitration-act-1996/

Territorial extent and application

9 Section 16 sets out the territorial extent of this Act.

10 The provisions of this Act extend and apply to England, Wales, and Northern Ireland. This mirrors the territorial extent and application of the 1996 Act.

11 This Act does not extend to the Channel Islands, the Isle of Man or the British Overseas Territories.

Commentary on provisions of Act

Applicable law

Section 1: Law applicable to arbitration agreement

12 Section 1 replaces the common law in *Enka v Chubb* (2020)[4] with a statutory rule. By inserting section 6A(1) into the 1996 Act, the law governing the arbitration agreement is the law expressly chosen by the parties, otherwise it is the law of the seat, except in the cases where the arbitration agreement arises from a treaty (see below). This is regardless of where the arbitration is seated. For example, where the arbitration is seated in England and Wales, then the agreement to arbitrate will usually be governed by the law of England and Wales. By inserted section 6A(2), any law chosen to govern the main contract does not count as an express choice of law to govern the agreement to arbitrate.

13 The reason for section 1 is as follows. The 1996 Act applies when the parties have agreed in writing to arbitrate their dispute. Often the agreement to arbitrate is a section in a main contract. For example, there might be a main contract to build a factory, and one of the clauses provides that any dispute will be resolved through arbitration. Although the agreement to arbitrate is a clause in a main contract, the law sometimes treats the agreement to arbitrate as a free-standing or separable agreement.

14 There may be an international dimension to a main contract and its agreement to arbitrate. For example, one party might be German, and the other party Chinese, with both agreeing to resolve their dispute by way of arbitration in London (as a neutral venue). In such circumstances, it is necessary to determine which country's laws govern the agreement to arbitrate. In the present example, the agreement to arbitrate could be governed by the law of Germany, or China, or England and Wales, or another law entirely. Determining the governing law is important, as different governing laws may give different answers to important questions like who is party to the agreement (for example, whether the agreement extends to a subsidiary company), and whether this type of dispute is even capable of resolution by arbitration (as a matter of public policy, some types of dispute must be resolved by the courts rather than through arbitration).

15 In its decision in *Enka v Chubb*, the Supreme Court said, broadly, as follows. The agreement to arbitrate is governed by the law chosen by the parties. This can mean that the agreement to arbitrate is governed by the law chosen to govern the main contract – unless, for example, that law would invalidate the agreement to arbitrate. Otherwise the agreement to arbitrate will be governed by the law with which it is most closely connected, which is usually the law of the seat. The seat is the place where the arbitration is deemed legally to occur (even if hearings take place elsewhere or online). In the above example, the seat of the arbitration is England and Wales (London).

16 It is common for there to be an express choice of law to govern the main contract, and an express choice of seat for an arbitration, but no express choice of law to govern the agreement to arbitrate. It is therefore common for an arbitration to be seated in England and Wales but, as a result of the decision in *Enka v Chubb*, for the arbitration agreement to be governed by a foreign law (the law governing the main contract). Section 1 provides a new default rule that aligns the seat of the arbitration with the law governing the arbitration agreement. For example, where an arbitration is seated in England and Wales, then by default the agreement to arbitrate will now

[4] https://www.supremecourt.uk/cases/uksc-2020-0091.html

be governed by the law of England and Wales. This is unless the parties expressly agree a different law to govern the arbitration agreement. Where no seat has yet been agreed or designated, the courts could if necessary resolve the matter.

17 However, inserted section 6A(3) and (4) provide that the section does not apply to arbitration agreements derived from standing offers to arbitrate contained in treaties or non-UK legislation. This means, for example, that non-ICSID investor-state arbitration agreements will tend not to be covered by the default rule in section 6A(1). However, investor-state agreements which arise under commercial contracts (rather than treaties or foreign legislation) will remain to be captured by the default rule in inserted section 6A(1).

The arbitral tribunal

Section 2: Impartiality: duty of disclosure

18 The 1996 Act (section 33) imposes a duty of impartiality on arbitrators. Additionally, a duty of disclosure was recognised by the Supreme Court in its decision in *Halliburton v Chubb* (2020).[5] Section 2 of this Act codifies the general duty of disclosure as articulated in that case.

19 Section 2 of this Act requires an arbitrator to disclose circumstances that might reasonably give rise to justifiable doubts as to their impartiality. It applies prior to the arbitrator's appointment, when they are being approached with a view to appointment. It is a continuing duty which also applies after their appointment. Where an arbitrator is appointed by someone other than the parties, the arbitrator may need to repeat their disclosure to the parties upon appointment. The duty extends to circumstances of which the arbitrator is aware, and of which they ought reasonably to be aware. Inserted section 23A is a mandatory provision (like the duty of impartiality in section 33 of the 1996 Act); the parties cannot agree to dispense with the duty of disclosure.

Section 3: (Immunity of arbitrator: application for removal) and Section 4: (Immunity of arbitrator: resignation)

20 The 1996 Act (section 29) provides that an arbitrator is not liable for anything done in the discharge of their functions unless they acted in bad faith. Such immunity supports an arbitrator to make robust and impartial decisions without fear that a party will express their disappointment by suing the arbitrator. It also supports the finality of the dispute resolution process by preventing a party who is disappointed with losing the arbitration from bringing further proceedings against the arbitrator. Judges enjoy a similar immunity for similar reasons.

21 There are still ways of dealing with a recalcitrant arbitrator. For example, the parties can revoke an arbitrator's authority (by section 23 of the 1996 Act) or apply to court to remove an arbitrator (by section 24 of the 1996 Act). In both cases, the arbitrator may lose their entitlement to fees and expenses.

22 Sections 3 and 4 of this Act extend the scope of arbitrator immunity, up to a limit, as follows.

23 Section 3 of this Act provides that an arbitrator will not be liable for the costs of an application to court under section 24 of the 1996 Act for their removal unless the arbitrator has acted in bad faith. This aligns with the general immunity already provided by section 29 of the 1996 Act. This reverses case law which held that an arbitrator could be liable for those costs.

24 Section 4 of this Act provides that an arbitrator will no longer be liable for resignation unless the resignation is shown by a complainant to be unreasonable.

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[5] https://www.supremecourt.uk/cases/uksc-2018-0100.html

Jurisdiction of tribunal

Section 5: Court determination of jurisdiction of tribunal

25 The 1996 Act (sections 82 and 30) provide that an arbitral tribunal has jurisdiction if there is a valid arbitration agreement, the tribunal is properly constituted, and the matters which have been submitted to arbitration are in accordance with the arbitration agreement.

26 A party who participates in the arbitration proceedings might object that the arbitral tribunal lacks jurisdiction. The tribunal itself is usually empowered to decide, in the first instance, whether it has jurisdiction (by section 30 of the 1996 Act). The court can be asked to rule on whether the tribunal has jurisdiction, including as follows. One way is to wait until the tribunal has issued a ruling, and then challenge that ruling under section 67 of the 1996 Act, which allows a challenge to an arbitral award on the basis that the tribunal lacked jurisdiction. Another way is by invoking section 32 of the 1996 Act, which allows the court to decide whether the tribunal has jurisdiction as a preliminary point. Sections 32 and 67 of the 1996 Act have different requirements.

27 Section 5 of this Act amends section 32 of the 1996 Act to make clear that it can only be invoked instead of the tribunal ruling on its jurisdiction. If the tribunal has already ruled, then any challenge must be brought through section 67 of the 1996 Act.

Section 6: Power to award costs despite no substantive jurisdiction

28 The arbitral tribunal or the court might rule that the tribunal has no jurisdiction to resolve a particular dispute. In this case, the arbitration proceedings must come to an end. Section 6 of this Act provides that, in those circumstances, the tribunal can nevertheless award the costs of the arbitration proceedings up until that point.

Arbitral proceedings and powers of the court

Section 7: Power to make award on summary basis

29 Section 7 of this Act confers express power on arbitrators to make an award on a summary basis to dispose of an issue where an arbitrating party has no real prospect of succeeding on that issue. "Summary basis" means that the tribunal has adopted an expedited procedure to consider whether a party has a real prospect of succeeding on that issue. Inserted section 39A is not mandatory; the parties can agree to disapply it (they can "opt out"). Arbitrators can exercise the power to make an award on a summary basis only upon an application by one of the arbitrating parties. The "no real prospect of success" threshold is the same as that applied in court proceedings in England and Wales. As for the expedited procedure, this is not prescribed by section 7 of this Act but is a matter for the arbitrator to decide on a case-by-case basis; inserted section 39A(3) requires the tribunal to give the parties a reasonable opportunity to make representations about the procedure to adopt.

Section 8: Emergency arbitrators

30 Arbitral rules sometimes provide a regime for the appointment of emergency arbitrators. An emergency arbitrator is appointed on an interim basis, pending the constitution of the full arbitral tribunal, to make orders on urgent matters, for example for the preservation of evidence. Once constituted, the full tribunal can usually review the orders of the emergency arbitrator.

31 Under the 1996 Act, when a normal arbitrator makes an order during arbitration proceedings, and an arbitrating party fails to comply with that order, possible consequences include the following. The arbitrator can issue a peremptory order (by section 41 of the 1996 Act), and if there is still no compliance, an application can be made to court for the court to order

compliance with the arbitrator's order (by section 42 of the 1996 Act). Alternatively, an application can be made directly to court, for the court to make its own order (by section 44 of the 1996 Act). Section 8 of this Act amends the 1996 Act to extend that scheme to emergency arbitrators.

Section 9: Court powers exercisable in support of arbitral proceedings in respect of third parties

32 The 1996 Act (section 44) provides that the court can make orders in support of arbitration proceedings on the following matters: taking of witness evidence, preservation of evidence, orders relating to relevant property, sale of goods, interim injunctions, and the appointment of a receiver. Arbitrating parties require the leave (permission) of the court to appeal decisions made under section 44.

33 Section 9 of this Act amends section 44 of the 1996 Act to make it clear that court orders under that section are available against third parties (people who are not party to the arbitration proceedings). For example, orders might be made against third parties who hold relevant evidence, or against banks which hold relevant funds. This aligns the position in arbitration proceedings with the position in court proceedings. Also, section 9 of this Act provides that third parties do not require the leave of the court to bring an appeal, thereby giving third parties the full rights of appeal usually available in court proceedings.

Powers of the court in relation to award

Section 10: Challenging the award: remedies available to the court

34 An arbitral tribunal can issue an award on whether it has jurisdiction, and it can issue an award on the merits of the dispute. Either type of award can be challenged under section 67 of the 1996 Act on the basis that the arbitral tribunal did not have jurisdiction.

35 Awards can also be challenged for serious irregularity (by section 68 of the 1996 Act), where the remedies are: remit the award to the tribunal for reconsideration, set aside the award, or declare the award to be of no effect. And awards can be appealed on a point of law (by section 69 of the 1996 Act), where the remedies are: confirm, vary, remit for reconsideration, or set aside the award. In both sections there is a proviso that an award will not be set aside unless it is inappropriate to remit the award to the tribunal.

36 Section 10 of this Act amends section 67 of the 1996 Act to provide the remedies of remittance for reconsideration and declaring the award to be of no effect. This renders section 67 of the 1996 Act consistent with the scheme of remedies in sections 68 and 69 of the 1996 Act, and consistent with the assumptions in the case law that these remedies were intended to be available.

Section 11: Procedure on challenge under section 67 of the Arbitration Act 1996

37 The 1996 Act (sections 82 and 30) provides that an arbitral tribunal has jurisdiction if there is a valid arbitration agreement, the tribunal is properly constituted, and the matters which have been submitted to arbitration are in accordance with the arbitration agreement.

38 A party who participates in the arbitration proceedings might object that the arbitral tribunal lacks jurisdiction. The tribunal itself is usually empowered to decide, in the first instance, whether it has jurisdiction (by section 30 of the 1996 Act). Once the tribunal has issued an award, either on its jurisdiction or also on the merits of the dispute, a party can challenge that award before the court under section 67 of the 1996 Act on the basis that the tribunal had no jurisdiction after all.

39 In its decision in *Dallah v Pakistan* (2010),[6] the Supreme Court said that, even where the question of the tribunal's jurisdiction has been fully debated before the tribunal, a challenge under section 67 of the 1996 Act is a full rehearing before the court.

40 Section 11 of this Act amends section 67 of the 1996 Act to confer power for rules of court to provide as follows. Where an application is made under section 67 of the 1996 Act, by a party who took part in the arbitration proceedings, that relates to an objection on which the tribunal has already ruled, then there will generally be no full rehearing before the court. This is a departure from *Dallah v Pakistan*. Specifically, rules of court will be able to provide that, unless necessary in the interests of justice, there should be no new grounds of objection and no new evidence before the court, unless it was not reasonably possible to put these before the tribunal; and evidence should not be reheard by the court.

Section 12: Challenging the award: time limit

41 The 1996 Act provides that an arbitral award can be challenged before the courts on the basis that the tribunal lacked jurisdiction (section 67), or on the basis of serious irregularity (section 68), or the award can be appealed on a point of law (section 69). In all cases, the challenge must comply with the further requirements of section 70 of the 1996 Act.

42 By section 70 of the 1996 Act, an applicant must first exhaust any available arbitral process of appeal or review (section 70(2)(a)) and any available recourse under section 57 to correct the award or issue an additional award (section 70(2)(b)). The application to court must be made within 28 days.

43 Section 12 of this Act amends section 70 of the 1996 Act to clarify that the time limit of 28 days begins to run after any arbitral appeal or any application under section 57 of the 1996 Act. (In any other case, it begins to run from the date of the award.)

Appeals from High Court decisions

Section 13: Appeals to Court of Appeal from High Court decisions

44 Various applications can be made to the High Court under Part I of the 1996 Act. For example, under section 9 of the 1996 Act a party can apply to court to stay legal proceedings in favour of arbitration proceedings. Some sections in Part I say expressly that a decision of the High Court can be appealed to the Court of Appeal only with the permission of the High Court. Other sections in Part I, including section 9, are silent.

45 Rights of appeal to the Court of Appeal are governed by the Senior Courts Act 1981 (for England and Wales) and by the Judicature (Northern Ireland) Act 1978 (for Northern Ireland). The 1996 Act, Schedule 3, paragraphs 34(2) and 37(2), amended those Acts, in effect to say that no appeal was possible under Part I except for those sections which expressly required the permission of the High Court. This was a drafting error. The House of Lords in *Inco Europe v First Choice Distribution* (2000),[7] a case involving section 9 of the 1996 Act, identified the drafting error, and said that the Senior Courts Act 1981 should be read as follows: the usual full rights to appeal to the Court of Appeal are available under all sections of Part I of the 1996 Act, except that an appeal requires the permission of the High Court only for those sections which say so expressly. Section 13 of this Act corrects the drafting error in line with the House of Lords decision.

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[6] https://www.supremecourt.uk/cases/uksc-2009-0165

[7] https://www.bailii.org/uk/cases/UKHL/2000/15.html

Miscellaneous minor amendments

Section 14: Requirements to be met for court to consider applications

46 The 1996 Act (section 32) provides that an arbitrating party can apply to the court for the court to make a preliminary ruling on whether the arbitral tribunal has jurisdiction. Under section 45 of the 1996 Act, a party can apply to the court for the court to rule on a preliminary point of law arising in the arbitration.

47 Section 14 of this Act amends sections 32 and 45 of the 1996 Act so that an application will require either the agreement of the parties or the permission of the tribunal. It removes the further requirement to satisfy the court on a list of matters. Nevertheless, the court still retains general discretion on whether to accede to the application.

Section 15: Repeal of provisions relating to domestic arbitration agreements

48 Sections 85 to 88 of the 1996 Act concern domestic arbitration agreements, which is when all the parties are from the United Kingdom and the arbitration is seated in the United Kingdom. The seat of an arbitration is where the arbitration is deemed legally to occur, even if hearings are held elsewhere or online. Sections 85 to 87 of the 1996 Act have never been brought into force. Section 88 was brought into force, but only grants the Secretary of State the power to repeal sections 85 to 87. Section 15 of this Act repeals all these unused sections of the 1996 Act.

Final provisions

Section 16: Extent

49 This section establishes that any amendment or repeal made by this Act to the 1996 Act has the same extent as the provision in the 1996 Act which is amended or repealed.

Section 17: Commencement and transitional provision

50 Sections 16 (Extent), 17 (Commencement and transitional provision) and 18 (Short title) of this Act come into force on the day on which this Act is passed into law. The rest of this Act comes into force on such day as the Secretary of State may by regulations appoint. Those regulations may contain transitional and saving provisions. In the absence of such provisions, the amendments apply to arbitration agreements whenever made, but not to arbitration proceedings commenced before the date on which the rest of this Act comes into force, nor to legal proceedings in respect of such arbitration proceedings. An example of the latter might be legal proceedings to enforce an arbitral award, where the award was issued before this Act came into force.

Section 18: Short title

51 This section establishes that this Act may be referenced as the Arbitration Act 2025 once in force.

Commencement

52 Section 17 makes provision regarding when measures in this Act will come into force.

Related documents

53 The following documents are relevant to this Act and can be read at the stated location:

- Consultation papers and final report of the Law Commission of England and Wales: https://www.lawcom.gov.uk/project/review-of-the-arbitration-act-1996/

Annex A – Hansard References

54 The following table sets out the dates and Hansard references for each stage of this Act's passage through Parliament.

Stage	Date	Hansard Reference
House of Lords		
Introduction	18 July 2024	Vol. 839 Col. 30
Second Reading	30 July 2024	Vol. 839 Col. 949
Public Bill Committee	11 September 2024	Vol. 839 Col. 1575
Report	30 October 2024	Vol. 840 Col. 1122
Third Reading	06 November 2024	Vol. 840 Col. 1497
House of Commons		
Introduction	06 November 2024	Votes and Proceedings – Lords Message
Second Reading	29 January 2025	Vol. 761 Col. 331
Committee of the Whole House	11 February 2025	Vol. 762 Col. 208
Third Reading	11 February 2025	Vol. 762 Col. 214
Royal Assent	24 February 2025	House of Lords Vol. 843 Col. 1445
		House of Commons Vol. 762 Col. 485

Annex B – Progress of Bill Table

55 This Annex shows how each section of this Act was numbered during the passage of the Bill through Parliament.

Section of the Act	Bill as introduced in the Lords	Bill as amended in Committee in the Lords	Bill as introduced in the Commons
Section 1	Clause 1	Clause 1	Clause 1
Section 2	Clause 2	Clause 2	Clause 2
Section 3	Clause 3	Clause 3	Clause 3
Section 4	Clause 4	Clause 4	Clause 4
Section 5	Clause 5	Clause 5	Clause 5
Section 6	Clause 6	Clause 6	Clause 6
Section 7	Clause 7	Clause 7	Clause 7
Section 8	Clause 8	Clause 8	Clause 8
Section 9	Clause 9	Clause 9	Clause 9
Section 10	Clause 10	Clause 10	Clause 10
Section 11	Clause 11	Clause 11	Clause 11
Section 12	Clause 12	Clause 12	Clause 12
Section 13	Clause 13	Clause 13	Clause 13
Section 14	Clause 14	Clause 14	Clause 14
Section 15	Clause 15	Clause 15	Clause 15
Section 16	Clause 16	Clause 16	Clause 16
Section 17	Clause 17	Clause 17	Clause 17
Section 18	Clause 18	Clause 18	Clause 18

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