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# Arbitration Act 1979

## CHAPTER 42

### ARRANGEMENT OF SECTIONS

#### Section

1. Judicial review of arbitration awards.
2. Determination of preliminary point of law by court.
3. Exclusion agreements affecting rights under sections 1 and 2.
4. Exclusion agreements not to apply in certain cases.
5. Interlocutory orders.
6. Minor amendments relating to awards and appointment of arbitrators and umpires.
7. Application and interpretation of certain provisions of Part I of principal Act.
8. Short title, commencement, repeals and extent.

## ELIZABETH II



## Arbitration Act 1979

## 1979 CHAPTER 42

An Act to amend the law relating to arbitrations and for purposes connected therewith. [4th April 1979]

**B**E IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1.—(1) In the Arbitration Act 1950 (in this Act referred to as “the principal Act”) section 21 (statement of case for a decision of the High Court) shall cease to have effect and, without prejudice to the right of appeal conferred by subsection (2) below, the High Court shall not have jurisdiction to set aside or remit an award on an arbitration agreement on the ground of errors of fact or law on the face of the award. Judicial review of arbitration awards. 1950 c. 27.

(2) Subject to subsection (3) below, an appeal shall lie to the High Court on any question of law arising out of an award made on an arbitration agreement; and on the determination of such an appeal the High Court may by order—

(a) confirm, vary or set aside the award; or

(b) remit the award to the reconsideration of the arbitrator or umpire together with the court's opinion on the question of law which was the subject of the appeal;

and where the award is remitted under paragraph (b) above the arbitrator or umpire shall, unless the order otherwise directs, make his award within three months after the date of the order.

(3) An appeal under this section may be brought by any of the parties to the reference—

(a) with the consent of all the other parties to the reference ;  
or

(b) subject to section 3 below, with the leave of the court.

(4) The High Court shall not grant leave under subsection (3)(b) above unless it considers that, having regard to all the circumstances, the determination of the question of law concerned could substantially affect the rights of one or more of the parties to the arbitration agreement ; and the court may make any leave which it gives conditional upon the applicant complying with such conditions as it considers appropriate.

(5) Subject to subsection (6) below, if an award is made and, on an application made by any of the parties to the reference,—

(a) with the consent of all the other parties to the reference,  
or

(b) subject to section 3 below, with the leave of the court, it appears to the High Court that the award does not or does not sufficiently set out the reasons for the award, the court may order the arbitrator or umpire concerned to state the reasons for his award in sufficient detail to enable the court, should an appeal be brought under this section, to consider any question of law arising out of the award.

(6) In any case where an award is made without any reason being given, the High Court shall not make an order under subsection (5) above unless it is satisfied—

(a) that before the award was made one of the parties to the reference gave notice to the arbitrator or umpire concerned that a reasoned award would be required ;  
or

(b) that there is some special reason why such a notice was not given.

(7) No appeal shall lie to the Court of Appeal from a decision of the High Court on an appeal under this section unless—

(a) the High Court or the Court of Appeal gives leave ; and

(b) it is certified by the High Court that the question of law to which its decision relates either is one of general public importance or is one which for some other special reason should be considered by the Court of Appeal.

(8) Where the award of an arbitrator or umpire is varied on appeal, the award as varied shall have effect (except for the purposes of this section) as if it were the award of the arbitrator or umpire.

2.—(1) Subject to subsection (2) and section 3 below, on an application to the High Court made by any of the parties to a reference—

Determination of preliminary point of law by court.

(a) with the consent of an arbitrator who has entered on the reference or, if an umpire has entered on the reference, with his consent, or

(b) with the consent of all the other parties,

the High Court shall have jurisdiction to determine any question of law arising in the course of the reference.

(2) The High Court shall not entertain an application under subsection (1)(a) above with respect to any question of law unless it is satisfied that—

(a) the determination of the application might produce substantial savings in costs to the parties; and

(b) the question of law is one in respect of which leave to appeal would be likely to be given under section 1(3)(b) above.

(3) A decision of the High Court under this section shall be deemed to be a judgment of the court within the meaning of section 27 of the Supreme Court of Judicature (Consolidation) Act 1925 (appeals to the Court of Appeal), but no appeal shall lie from such a decision unless—

1925 c. 49.

(a) the High Court or the Court of Appeal gives leave; and

(b) it is certified by the High Court that the question of law to which its decision relates either is one of general public importance or is one which for some other special reason should be considered by the Court of Appeal.

3.—(1) Subject to the following provisions of this section and section 4 below—

Exclusion agreements affecting rights under sections 1 and 2.

(a) the High Court shall not, under section 1(3)(b) above, grant leave to appeal with respect to a question of law arising out of an award, and

(b) the High Court shall not, under section 1(5)(b) above, grant leave to make an application with respect to an award, and

(c) no application may be made under section 2(1)(a) above with respect to a question of law,

if the parties to the reference in question have entered into an agreement in writing (in this section referred to as an “exclusion agreement”) which excludes the right of appeal under section 1 above in relation to that award or, in a case falling within paragraph (c) above, in relation to an award to which the determination of the question of law is material.

(2) An exclusion agreement may be expressed so as to relate to a particular award, to awards under a particular reference or to any other description of awards, whether arising out of the same reference or not; and an agreement may be an exclusion agreement for the purposes of this section whether it is entered into before or after the passing of this Act and whether or not it forms part of an arbitration agreement.

(3) In any case where—

- (a) an arbitration agreement, other than a domestic arbitration agreement, provides for disputes between the parties to be referred to arbitration, and
- (b) a dispute to which the agreement relates involves the question whether a party has been guilty of fraud, and
- (c) the parties have entered into an exclusion agreement which is applicable to any award made on the reference of that dispute,

then, except in so far as the exclusion agreement otherwise provides, the High Court shall not exercise its powers under section 24(2) of the principal Act (to take steps necessary to enable the question to be determined by the High Court) in relation to that dispute.

(4) Except as provided by subsection (1) above, sections 1 and 2 above shall have effect notwithstanding anything in any agreement purporting—

- (a) to prohibit or restrict access to the High Court; or
- (b) to restrict the jurisdiction of that court; or
- (c) to prohibit or restrict the making of a reasoned award.

(5) An exclusion agreement shall be of no effect in relation to an award made on, or a question of law arising in the course of a reference under, a statutory arbitration, that is to say, such an arbitration as is referred to in subsection (1) of section 31 of the principal Act.

(6) An exclusion agreement shall be of no effect in relation to an award made on, or a question of law arising in the course of a reference under, an arbitration agreement which is a domestic arbitration agreement unless the exclusion agreement is entered into after the commencement of the arbitration in which the award is made or, as the case may be, in which the question of law arises.

(7) In this section “domestic arbitration agreement” means an arbitration agreement which does not provide, expressly or by implication, for arbitration in a State other than the United Kingdom and to which neither—

- (a) an individual who is a national of, or habitually resident in, any State other than the United Kingdom, nor

(b) a body corporate which is incorporated in, or whose central management and control is exercised in, any State other than the United Kingdom,  
 is a party at the time the arbitration agreement is entered into.

4.—(1) Subject to subsection (3) below, if an arbitration award or a question of law arising in the course of a reference relates, in whole or in part, to—

Exclusion agreements not to apply in certain cases.

- (a) a question or claim falling within the Admiralty jurisdiction of the High Court, or
- (b) a dispute arising out of a contract of insurance, or
- (c) a dispute arising out of a commodity contract,

an exclusion agreement shall have no effect in relation to the award or question unless either—

- (i) the exclusion agreement is entered into after the commencement of the arbitration in which the award is made or, as the case may be, in which the question of law arises, or
- (ii) the award or question relates to a contract which is expressed to be governed by a law other than the law of England and Wales.

(2) In subsection (1)(c) above “commodity contract” means a contract—

- (a) for the sale of goods regularly dealt with on a commodity market or exchange in England or Wales which is specified for the purposes of this section by an order made by the Secretary of State ; and
- (b) of a description so specified.

(3) The Secretary of State may by order provide that subsection (1) above—

- (a) shall cease to have effect ; or
- (b) subject to such conditions as may be specified in the order, shall not apply to any exclusion agreement made in relation to an arbitration award of a description so specified ;

and an order under this subsection may contain such supplementary, incidental and transitional provisions as appear to the Secretary of State to be necessary or expedient.

(4) The power to make an order under subsection (2) or subsection (3) above shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(5) In this section “exclusion agreement” has the same meaning as in section 3 above.

Interlocutory orders.

5.—(1) If any party to a reference under an arbitration agreement fails within the time specified in the order or, if no time is so specified, within a reasonable time to comply with an order made by the arbitrator or umpire in the course of the reference, then, on the application of the arbitrator or umpire or of any party to the reference, the High Court may make an order extending the powers of the arbitrator or umpire as mentioned in subsection (2) below.

(2) If an order is made by the High Court under this section, the arbitrator or umpire shall have power, to the extent and subject to any conditions specified in that order, to continue with the reference in default of appearance or of any other act by one of the parties in like manner as a judge of the High Court might continue with proceedings in that court where a party fails to comply with an order of that court or a requirement of rules of court.

1970 c. 31.

(3) Section 4(5) of the Administration of Justice Act 1970 (jurisdiction of the High Court to be exercisable by the Court of Appeal in relation to judge-arbitrators and judge-umpires) shall not apply in relation to the power of the High Court to make an order under this section, but in the case of a reference to a judge-arbitrator or judge-umpire that power shall be exercisable as in the case of any other reference to arbitration and also by the judge-arbitrator or judge-umpire himself.

(4) Anything done by a judge-arbitrator or judge-umpire in the exercise of the power conferred by subsection (3) above shall be done by him in his capacity as judge of the High Court and have effect as if done by that court.

(5) The preceding provisions of this section have effect notwithstanding anything in any agreement but do not derogate from any powers conferred on an arbitrator or umpire, whether by an arbitration agreement or otherwise.

(6) In this section “judge-arbitrator” and “judge-umpire” have the same meaning as in Schedule 3 to the Administration of Justice Act 1970.

Minor amendments relating to awards and appointment of arbitrators and umpires.

6.—(1) In subsection (1) of section 8 of the principal Act (agreements where reference is to two arbitrators deemed to include provision that the arbitrators shall appoint an umpire immediately after their own appointment)—

(a) for the words “shall appoint an umpire immediately” there shall be substituted the words “may appoint an umpire at any time”; and

(b) at the end there shall be added the words “and shall do so forthwith if they cannot agree”.

(2) For section 9 of the principal Act (agreements for reference to three arbitrators) there shall be substituted the following section:—

“Majority award of three arbitrators. 9. Unless the contrary intention is expressed in the arbitration agreement, in any case where there is a reference to three arbitrators, the award of any two of the arbitrators shall be binding.”

(3) In section 10 of the principal Act (power of court in certain cases to appoint an arbitrator or umpire) in paragraph (c) after the word “are”, in the first place where it occurs, there shall be inserted the words “required or are” and the words from “or where” to the end of the paragraph shall be omitted.

(4) At the end of section 10 of the principal Act there shall be added the following subsection:—

“ (2) In any case where—

- (a) an arbitration agreement provides for the appointment of an arbitrator or umpire by a person who is neither one of the parties nor an existing arbitrator (whether the provision applies directly or in default of agreement by the parties or otherwise), and
- (b) that person refuses to make the appointment or does not make it within the time specified in the agreement or, if no time is so specified, within a reasonable time,

any party to the agreement may serve the person in question with a written notice to appoint an arbitrator or umpire and, if the appointment is not made within seven clear days after the service of the notice, the High Court or a judge thereof may, on the application of the party who gave the notice, appoint an arbitrator or umpire who shall have the like powers to act in the reference and make an award as if he had been appointed in accordance with the terms of the agreement.”

7.—(1) References in the following provisions of Part I of the principal Act to that Part of that Act shall have effect as if the preceding provisions of this Act were included in that Part, namely,—

- (a) section 14 (interim awards) ;
- (b) section 28 (terms as to costs of orders) ;
- (c) section 30 (Crown to be bound) ;
- (d) section 31 (application to statutory arbitrations) ; and
- (e) section 32 (meaning of “ arbitration agreement ”).

Application and interpretation of certain provisions of Part I of principal Act.



(2) Subsections (2) and (3) of section 29 of the principal Act shall apply to determine when an arbitration is deemed to be commenced for the purposes of this Act.

(3) For the avoidance of doubt, it is hereby declared that the reference in subsection (1) of section 31 of the principal Act (statutory arbitrations) to arbitration under any other Act does not extend to arbitration under section 92 of the County Courts Act 1959 (cases in which proceedings are to be or may be referred to arbitration) and accordingly nothing in this Act or in Part I of the principal Act applies to arbitration under the said section 92.

1959 c. 22.

Short title,  
commence-  
ment,  
repeals and  
extent.

8.—(1) This Act may be cited as the Arbitration Act 1979.

(2) This Act shall come into operation on such day as the Secretary of State may appoint by order made by statutory instrument; and such an order—

(a) may appoint different days for different provisions of this Act and for the purposes of the operation of the same provision in relation to different descriptions of arbitration agreement; and

(b) may contain such supplementary, incidental and transitional provisions as appear to the Secretary of State to be necessary or expedient.

(3) In consequence of the preceding provisions of this Act, the following provisions are hereby repealed, namely—

(a) in paragraph (c) of section 10 of the principal Act the words from “or where” to the end of the paragraph;

(b) section 21 of the principal Act;

(c) in paragraph 9 of Schedule 3 to the Administration of Justice Act 1970, in sub-paragraph (1) the words “21(1) and (2)” and sub-paragraph (2).

1970 c. 31.

(4) This Act forms part of the law of England and Wales only.

Printed in the United Kingdom for HMSO

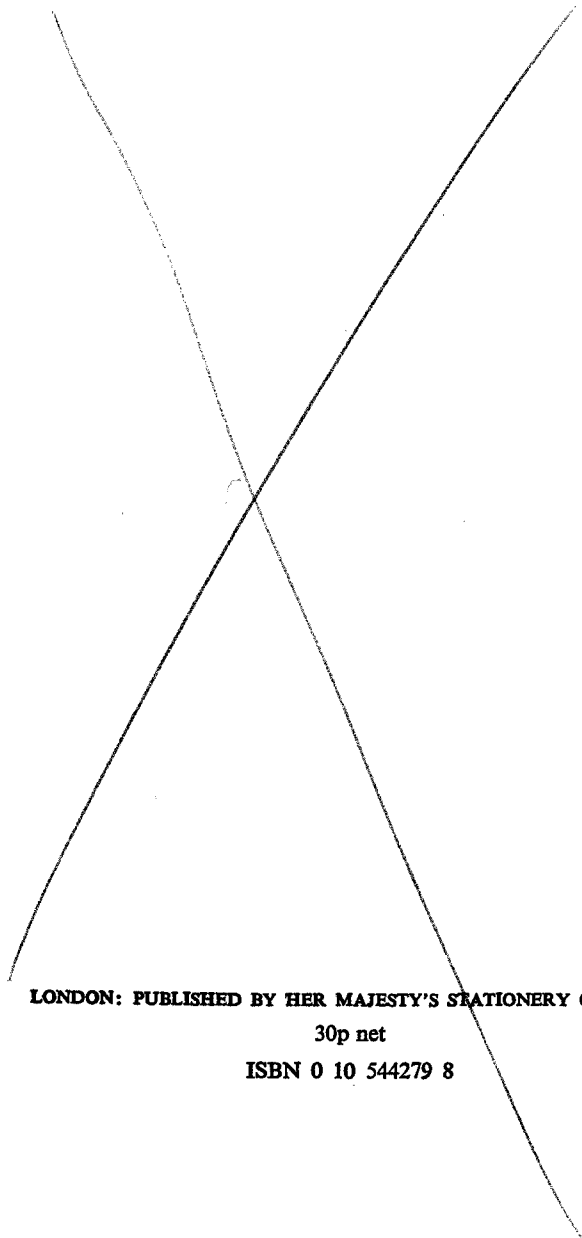
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DD No

0508687

PRINTED IN ENGLAND BY PAUL FREEMAN  
Controller and Chief Executive of Her Majesty's Stationery Office and  
Queen's Printer of Acts of Parliament.

1ST IMPRESSION APRIL 1979  
6TH IMPRESSION FEBRUARY 1993



**LONDON: PUBLISHED BY HER MAJESTY'S STATIONERY OFFICE**

**30p net**

**ISBN 0 10 544279 8**

**(38710)**