

Arbitration in Scotland will be transformed: are you ready?

The Arbitration (Scotland) Act comes into force on 7 June 2010. It rewrites the law of arbitration in Scotland. Arbitration in England is not affected. The law of arbitration has been modernised and consolidated into a statutory framework and well regulated procedure designed to meet the needs of the business community.

What is arbitration?

- Arbitration is an alternative to litigation as a means of resolving disputes. Rather than being heard in open court in front of a judge, parties present their argument in private to an arbitrator, qualified in the appropriate discipline, whose decision is final and legally binding.
- The Arbitration Act 1996 already applies to arbitrations in England. Before this new Arbitration (Scotland) Act was passed there was no single source of arbitration law in Scotland - it was a mixture of old statutes and case law.

What is changing from 7 June 2010?

- The new law will come in to force for arbitrations under contract (not statutory arbitrations just yet).
- Schedule 1 of the Act contains the new "Scottish Arbitration Rules" - a mix of 84 mandatory and default rules. Beware: if the default rules are not varied by parties in their contract, they will apply.
- The arbitrator will have power to award damages and interest - powers missing from the current law except when expressly given.
- Any rights of appeal will be limited to matters of jurisdiction and "serious irregularity" (and under a default rule, legal error).
- Who is liable for the costs of the arbitration is completely at the discretion of the arbitrator UNLESS parties agree otherwise after the arbitration has begun AND these costs can be capped by the arbitrator.

Warning

- The new law will apply to **all** arbitrations commenced after 7 June 2010 - so it covers existing contracts with arbitration provisions.
- There is an opportunity for parties to an existing contract to opt out of this new regime for a period of 5 years.

What should you do?

- Check whether your existing contracts contain arbitration provisions.
- If so, are you happy with the consequences of the new Act e.g. on rights of appeal or costs? If not, can you agree with the other contracting party to opt out?
- Are you so taken with the new rules you want to include an arbitration clause in any new contracts?

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This Alert is correct to the best of our knowledge and belief at the time of going to press. It is however written as a general guide, so it is recommended that specific professional advice is sought before any action is taken. We are required by law to protect personal data.

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