New Arbitration Act - key implications

The long-awaited Arbitration Act 2025 is set to come into force across England and Wales. What changes are on the horizon — and what stays the same?

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The Arbitration Act 2025 (the “Act”) will shortly come into force (on a date to be decided by the UK Secretary of State), and when it does, it will govern all arbitrations taking place in England and Wales. The Act is the culmination of the Law Commission’s review of the former Arbitration Act 1996, a process which commenced in 2021 and was designated to ensure that arbitration in England and Wales remains best-in-class and the leading destination for commercial arbitration.

The Law Commission’s view was that a radical change was not necessary, but it did make some suggestions which have now been adopted, set out below.

What is new?

Impartiality – arbitrator’s duty of disclosure

The Act does not introduce a new standard requiring an arbitrator’s independence, but it does require arbitrators to disclose any circumstances which may bring into doubt their impartiality. The duty is owed to the party appointing the arbitrator and the parties to the arbitration proceedings. This reflects a similar rule applicable in the International Chamber of Commerce Arbitration rules and codifies the Supreme Court’s 2020 decision in Halliburton v Chubb.

Interestingly, this addition was opposed by FOSFA, GAFTA and the LMAA, who pointed to small pools of arbitrators and appointing solicitors which made repeat appointments common. Whilst Halliburton v Chubb did acknowledge that the maritime industry does have an established custom and practice that overlapping appointments do not need to be disclosed, arbitrators will now be under a continuing duty to disclose any circumstances which may raise doubts over their impartiality. This includes both information which the arbitrator knows and ought to know, meaning that arbitrators will have to carry out some investigations regarding potential issues of impartiality.

The Act does not specify exactly what things will require disclosure, leaving it to become an area amplified by future case law. As the standard relates to "justifiable doubts as to ... impartiality" and repeat appointments are common in shipping disputes, it might be asked if shipping arbitrators really need to be concerned about this (there could be no justifiable doubt), but we would expect most to err on the side of caution and disclose details. This may have the practical effect of creating a new area for disputes between the parties or widening the pool of arbitrators that are used.

On a positive note for arbitrators, the Act has now amended the previous legal position so that arbitrators cannot be liable for their resignation unless their behaviour is shown to be unreasonable or containing bad faith. So in practice, if an arbitrator reasonably resigns his appointment, they will no longer be liable for any extra fees incurred in appointing a replacement. This will be welcome news to English arbitrators, even if it still falls short from the total arbitrator immunity afforded under Dubai arbitration (DIAC).

Summary Judgment

Under the Arbitration Act 1996, there are no rights for arbitrators to summarily

dispose of a case that has little prospects of success, even if arbitrators are obliged to avoid unnecessary delay and expense. In an update which now brings the Act in line with English court proceedings and arbitration powers in both Singapore (SIAC) and Hong Kong (HKIAC), arbitrators will now have the power for summary disposal. This will be available for Claims of Defences which the tribunal considers have 'no real prospect of success'[KF3] [OG4] , which has an established meaning under English law court proceedings.

This right to have a case summarily judged will only be on application of the parties and subject to any contrary agreement. That means where the parties have expressly contracted out of this right, it will not be available. This is a welcome addition which hopefully can make arbitration both quicker and cheaper.

Another confirmed power is the ability to collect and preserve evidence from third parties. Previously, this was only available in English court proceedings, but it can now be requested in arbitration by applying to the court.

New procedure for jurisdictional challenges

The Act also streamlines how parties can challenge a tribunal's jurisdiction. Under the 1996 Act, parties could object to the tribunal's jurisdiction, questioning for example whether it was properly constituted or whether there was an agreement to arbitrate. Even if the tribunal ruled on its own jurisdiction, the objecting party could apply to court for a full rehearing. The new Act changes this. Going forward, a jurisdiction challenge made under section 67 will not hear new evidence and will not entertain new grounds of objection, unless they could not have been put before the original tribunal.

The purpose here is to make things quicker and more efficient, preventing an objecting party from delaying, incurring costs and effectively having 'two bites of the cherry' – that is, objecting to the arbitration tribunal's jurisdiction, making various arguments (and hearing the tribunal's answer to those) and then repeating the full process again to a higher court.

If a court holds under section 67 that the tribunal has no jurisdiction, it can now declare that the award has no effect. The Act also allows tribunals to make awards on costs it they or the court find they have no jurisdiction. This means that parties who wrongfully choose arbitration could face cost penalties.

Governing law

The Act has introduced a new default rule regarding governing law of an arbitration agreement – where parties choose the seat of the arbitration to be England, English law will automatically apply to the arbitration agreement. This is a move designed to end complex cases regarding which law applies to the arbitration agreement. Where a contract says 'this contract is governed by law X', whilst that will be effective choice of law for the contract, it may not be treated as an express choice of law for the arbitration clause. There are circumstances in which the arbitration clause, if it is recorded in another clause or another agreement, is argued to be governed by another law entirely.

These types of complicated arguments as to which law is most closely connected to

the arbitration agreement will disappear under the Act, and hopefully this simplification will be welcomed by all parties. Parties who choose England and Wales as the seat of their foreign law contract should now face fewer surprise arguments.

What has not changed?

Section 69 of the 1996 Act, which allows appeals on points of law or where things are clearly wrong or of public importance, remains unchanged. Despite lobbying on both sides, the Act does not remove the right to appeal or make it easier. Parties wishing greater flexibility or finality with regard to appeals should consider alternative arbitration forums or address this directly in their arbitration agreements.

The Law Commission suggested several other reforms – such as requiring arbitrators to have certain qualifications and giving tribunals more powers over security for costs – but these were not adopted. As a result, the Act is more of an upgrade rather than a major overhaul, which may be reassuring for those familiar with the current process. It will be interesting to see how the arbitration associations navigate their new obligations.

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