UK Arbitration Reform: Amendments Receive Royal Assent

28 February 2025

Introduction. The Arbitration Act 2025 has completed its parliamentary passage and received Royal Assent on 24 February 2025. The 2025 Act amends the Arbitration Act 1996 applicable to England, Wales and Northern Ireland.

The review of the 1996 Act started shortly after its 25th anniversary, in 2022, with the Law Commission wanting to ensure that the arbitration legislation "*remains state of the art, both for domestic arbitrations, and in support of London as the world's first choice for international commercial arbitration*".[1] The Law Commission embarked on an extensive process, consisting of pre-consultation discussions with stakeholders (including Debevoise) and publication of two consultation papers in September 2022 and March 2023. The Law Commission published its final report in September 2023.[2]

The 2025 Act will come into force "*as soon as practicable*" on a date yet to be announced.[3] The 2025 Act shall not apply to:

- Arbitral or court proceedings that commenced before the 2025 Act comes into force;
- Court proceedings related to arbitral proceedings commenced before the 2025 Act comes into force; and
- Court proceedings in connection with arbitral awards issued before the 2025 Act comes into force.

We summarise the key amendments introduced by the 2025 Act below.

New Rule on the Governing Law of an Arbitration Agreement. Under the 2025 Act, when parties do not expressly agree on the law applicable to the arbitration agreement,

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1 Law Commission, "Review of the Arbitration Act 1996: A consultation paper", dated 22 September 2022, *available* here.

2 Debevoise published an update on the Law Commission's final report, *available* here.

3 https://www.gov.uk/government/news/boost-for-uk-economy-as-arbitration-act-receives-royal-assent.

the law of the seat of the arbitration shall govern. This applies even if the arbitration is seated outside England, Wales and Northern Ireland.

This settles the uncertainty generated by the Supreme Court's jurisprudence in *Enka v Chubb* and *Unicredit v RusChem* which required an examination of the parties' intentions to determine the law governing the arbitration agreement.[4] Under the 2025 Act, courts will no longer need to determine parties' intent and will merely default to the law of the seat. It remains prudent for parties to include an express choice of law in their arbitration agreements to avoid any ambiguity or, at the very least, a clear choice of seat.

Arbitration agreements derived from treaties (including investment treaties) and legislations of countries outside the UK are expressly carved out from this default rule.

Clarity on the Procedure to Challenge Jurisdiction. Back in 2010, the UK Supreme Court in *Dallah* held that jurisdictional challenges require a full re-hearing.[5] This raised concerns of delays, increased costs and procedural unfairness, especially as it allows defeated parties to argue that this permitted them to develop new evidence.[6]

The 2025 Act now clarifies that challenges on substantive jurisdiction grounds are by way of review—not a *de novo* re-hearing—through a newly introduced, non-exhaustive set of procedural rules to be adopted by the relevant courts.

The new rules would apply where: (i) the jurisdictional challenge concerns objections on which the tribunal has ruled; and (ii) the applicant participated in the arbitral proceedings. In those circumstances, new grounds for objection and evidence which were not raised before the tribunal cannot generally be considered by the court. An applicant could only raise new objections or evidence if it is in the interests of justice or if these could not have been put before the tribunal despite exercising reasonable diligence. Evidence already heard by the tribunal also must not be re-considered by the court unless doing so is in the interests of justice.

Provision for Summary Awards. The 2025 Act expressly codifies an arbitral tribunal's power to make a summary award on a particular claim, issue or defence. This power can be exercised on the application of a party to the proceedings and after giving the parties a reasonable opportunity to make submissions. The power to make an award on a summary basis can only be exercised where a party has "*no real prospect of succeeding*".

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4 Debevoise reported on these cases, *available* here and here,

5 *Dallah Real Estate & Tourism Holding Co v Ministry of Religious Affairs of the Government of Pakistan* [2010] UKSC 46, [2011] 1 AC 763 at [26] (Lord Mance), [96] (Lord Collins), [159] to [160] (Lord Saville).

6 Law Commission, *Review of the Arbitration Act 1996: Final report and Bill*, paras. 9.14–9.17, *available* here.

This threshold, adopted from the Civil Procedure Rules on summary judgment, has a well-established underlying jurisprudence in English courts. This is not a mandatory provision and parties can choose to opt out.

While such power generally already existed, this codification could now embolden arbitrators who might have previously been reluctant to exercise it.

Arbitrators' Duty of Disclosure. In its 2020 decision in *Halliburton v Chubb*, the UK Supreme Court set out the general principle requiring arbitrators to disclose circumstances that might reasonably give rise to doubts as to their impartiality.[7] This common law principle has now been codified in the 2025 Act.

The 2025 Act also makes it clear that an arbitrator will be deemed aware of circumstances of which they ought to be aware, and not just those of which they are actually aware.

Empowered Emergency Arbitrators. The 2025 Act gives emergency arbitrators the power to make peremptory orders, i.e., orders that require a party that has failed to comply with a previous order to do so within a specified time. An emergency arbitrator can also grant parties permission to apply to the court for orders in support of arbitral proceedings.

An emergency arbitrator's peremptory order can be enforced by a court in the same manner as that of a normal arbitral tribunal.

These provisions should bolster the enforceability of emergency arbitrators' decisions and support the existing framework on emergency arbitrators in leading institutional rules.[8]

Other Amendments. The 2025 Act also amends the 1996 Act in the following further respects:

- It resolves conflicting case law and clarifies that the court can grant interim and other relief in relation to arbitral proceedings against third parties under Section 44 of the 1996 Act.

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[7] Debevoise published an in-depth review of the Supreme Court's decision, *available* here.

[8] LCIA Arbitration Rules 2020, Article 9B; ICC, 2021 Arbitration Rules, Article 29; SIAC Rules 2025, Article 12 and Schedule 1; SCC Arbitration Rules 2023, Appendix II; International Centre for Dispute Resolution, International Arbitration Rules, Article 6; HKIAC 2024 Administered Arbitration Rules, Schedule 4.

- Successful jurisdictional challenges under Section 67 of the 1996 Act can now be remitted back to the arbitral tribunal for consideration. Earlier remedies in this respect were limited to confirmation, variation or setting aside of the award in question.

- The 28-day period for challenging an award pursuant to Sections 67 to 69 of the 1996 Act now runs from after completion of any correction or review process in respect of that award.

- It extends arbitrators' immunity to resignations (unless unreasonable) and liability for costs regarding applications for their removal (unless they acted in bad faith).

- It confirms that arbitral tribunals can make an award on costs, even without substantive jurisdiction.

- It changes the position for parties to approach the courts on preliminary points of jurisdiction or law and only requires permission of the arbitral tribunal for this purpose.

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