

ARBITRATION (SCOTLAND) ACT 2010

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Enforcing and challenging arbitral awards etc.

Section 12 – Enforcement of arbitral awards

45. [Section 12](#) deals with the options available to a successful party in the event that the unsuccessful party fails to comply with the terms of the arbitral award.
46. [Section 12\(1\)](#) provides that an application may be made to the sheriff or the Court of Session for an order enforcing an arbitral award with the same effect as a court order bearing a warrant for execution. The effect is that where a court grants an order under this rule, the tribunal's award may be enforced by executing diligence in the same way as a court decree may be enforced (without a further warrant).
47. [Section 12\(2\)](#) provides that the court cannot enforce an award, while it is being appealed, reviewed (e.g. as provided for in the arbitration agreement) or corrected.
48. The court will not make such an order, or may restrict its extent to part of the award, if satisfied that the tribunal lacked jurisdiction ([section 12\(3\)](#)). Under [section 12\(4\)](#), the party against whom an arbitral award is made can object on the basis that the arbitrator had no jurisdiction only where the person has not lost the right to object under the Scottish Arbitration Rules (in particular rule 76).
49. Arbitral awards will continue to be registrable for execution in the Books of Council and Session or sheriff court books where the parties have so agreed in the arbitration agreement. (This is separate to the procedure in subsections (1) to (4)). In those circumstances, awards continue to be enforceable by summary diligence in accordance with the law of diligence (see the [Debtors \(Scotland\) Act 1987 \(c.18\)](#) and the [Debt Arrangement and Attachment \(Scotland\) Act 2002 \(asp 17\)](#), and the [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#)). The arbitration agreement will continue to require consent to registration for execution, and to be registered. [Section 10\(5\)](#) makes limited provision to that end, providing that, where the other requirements for enforcement are met, arbitral awards are so registrable despite not being self-proving in accordance with the Requirements of Writing (Scotland) Act 1995, unless the parties agree otherwise.
50. [Section 12\(6\)](#) means enforcement is available in the Scottish courts for those with arbitrations seated elsewhere. This will include arbitrations seated under the other jurisdictions of the United Kingdom ([section 18](#) of and [Schedule 7](#) to the [Civil Jurisdiction and Judgments Act 1982 \(c.27\)](#)) also allows mutual enforcement of arbitral awards from other parts of the UK).
51. [Sections 12](#) and [13](#) do not affect any other right to enforce an award under [sections 19](#) to [22](#) (New York Convention awards) or under any other enactment or rule of law.