

## **ARBITRATION (SCOTLAND) ACT 2010**

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### **EXPLANATORY NOTES**

#### **COMMENTARY ON SECTIONS**

##### ***Recognition and enforcement of New York Convention awards***

##### ***Section 18 – New York Convention awards***

66. Subsection (1) explains a “Convention award”. The awards recognised or enforced are arbitral awards made in the territory of a state which is a signatory to the New York Convention. The UK ratified the Convention on 24 September 1975. The [Arbitration Act 1975 \(c.50\)](#) provides for the enforcement of New York Convention awards in Scotland. Sections 18 to 22 are a consolidation of the relevant provisions of the 1975 Act.
67. Such agreements must be in writing (unlike arbitration agreements domestically which can be oral). The reference to “written” arbitration agreements will cover for instance telegrams or an exchange of letters as mentioned in the text of the New York Convention which this provision implements (according to the general interpretation rules which apply to Acts of the Scottish Parliament and subordinate legislation made under them – see the definition of “writing” in Schedule 2 to [S.S.I. 1999/1379](#)). By comparison, section 7(1) of the [Arbitration Act 1975 \(c.3\)](#) which this provision consolidates reflects the age of that Act.
68. There have in the past been difficulties where the seat of an arbitration has been held to be where the award was signed. Therefore, subsection (2) provides that such an award is treated as made at the seat of the arbitration regardless of where it was signed, despatched or delivered to any of the parties.
69. Under subsection (3), if the Queen by Order in Council which will be subject to negative resolution procedure in the Scottish Parliament declares a particular state is party to the New York Convention, so long as the relevant order is in force, this is to be conclusive evidence that the state in question is a party in respect of any territory for which it is responsible.

##### ***Section 19 – Recognition and enforcement of New York Convention awards***

70. [Section 19](#) provides that New York Convention awards are recognised as binding on the parties between which they are made. Such an award is therefore capable of being relied upon by those parties as a defence, set-off or in any other way in any legal proceedings in Scotland. The court can order that such an award is enforceable in the same manner as a judgment or order of the court to the same effect.
71. A New York Convention award will also continue to be enforceable in accordance with the general law by summary diligence (as with enforcement under section 12 of the Act - see paragraph 49 above) provided the usual requirements are met. For instance, the arbitration agreement must contain consent to registration of the award in the Books of Council and Session for execution and the agreement and award must be so registered.

***Section 20 – Refusal of recognition or enforcement***

72. **Section 20(1)** allows the court to refuse to recognise or enforce under this procedure a New York Convention award only if the person against whom enforcement is sought can prove certain matters in accordance with this section. Subsections (2) to (4) prescribe the detailed circumstances in which recognition or enforcement of an award may be refused. If an award purports to decide matters which were not submitted to arbitration as well as those which were properly so submitted, the court is able to recognise or enforce those parts which were properly submitted so long as these can be separated from those which exceeded the jurisdiction of the arbitrator (subsection (5)).
73. Subsection (6) provides that where an award is challenged before the component authority of the country where the award was made or under whose law it was made, a court decision here as to its recognition and enforcement may be sisted (i.e. suspended) and the party against whom recognition or enforcement is claimed ordered to provide suitable security. Subsection (7) defines the “competent authority” for these purposes.

***Section 21 – Evidence to be produced when seeking recognition or enforcement***

74. Under subsection (1) a party is obliged to provide a duly authenticated original award and the original arbitration agreement, or duly certified copies.
75. Where the award or agreement is in a language other than English, subsection (2) provides that the party is also obliged to produce a translation of it which has been certified by an official or sworn translator or by a diplomatic or consular agent.

***Section 22 – Saving for other bases of recognition or enforcement***

76. **Section 22** preserves the rights of a party to rely upon or enforce an award other than under this procedure, for instance at common law.