

# ARBITRATION (SCOTLAND) ACT 2010

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### *Final provisions*

#### *Section 36 – Transitional provisions*

97. Subsection (1) provides that the Act will not apply to arbitrations which have already begun when the Act comes into force.
98. Subsections (2) and (3) provide that while the Act will apply to existing arbitration agreements, irrespective of when they were made, there is an opt out so that parties who have an arbitration agreement at the time of commencement of the Act and who wish to use the old law may agree to opt out of the new regime in the Act. All parties must agree to the opt out. The old law is therefore saved for those agreements where the parties choose to opt out of the Act.
99. Subsection (4) gives the Scottish Ministers the power by affirmative resolution procedure to remove this opt out after a suitable period. This power is not capable of being exercised for at least 5 years. Following due consultation (subsection (5)), after that period the ability to opt out and the old law can be repealed.
100. Subsection (6) provides, for the avoidance of doubt, that for the purposes of the Act, references to “arbiters” in existing arbitration agreements are to be taken to be references to “arbitrators”.
101. Subsection (7) makes clear that any reference in statute to a decree arbitral is to be taken to be a reference to a tribunal’s award for the purpose of applying section 10 (enforcement).
102. Subsection (8) makes transitional provision so that agreement to contract out of stated case procedure under section 3 of the Administration of Justice (Scotland) Act 1972 in an existing arbitration agreement will result in the exclusion of rule 41 (referral of point of law) and rule 69 (challenging an award for legal error).