

ARBITRATION (SCOTLAND) ACT 2010

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Final provisions

Schedule 1 – Scottish Arbitration Rules

Part 9 – Miscellaneous

Rule 74 – Immunity of appointing arbitral institution etc.*Mandatory*

242. The principal difference between nominating and appointing bodies is that nominating bodies put forward the name of an arbitrator who is then appointed by the parties while appointing bodies themselves appoint the arbitrator.
243. In most cases the parties will agree on the identity of the arbitrator but there will be situations when this does not happen. Rule 7 provides for failure of the appointment procedure.
244. Rule 74 is a mandatory rule. Rule 74(1) provides that nominating or appointing bodies or individuals who appoint or nominate arbitrators are not to be liable for damages for anything done or omitted in the exercise or discharge of that function unless under rule 74(1)(a) that act or omission is shown to have been in bad faith.
245. Rule 74(1)(b) provides that nominating and appointing bodies will also not be liable for the acts or omissions of the arbitrator whom it nominates or appoints nor for the tribunal the arbitrator forms part of or any clerk agent or employee of the tribunal.
246. Rule 74(2) extends immunity to employees or agents of nominating or appointing bodies.