

ARBITRATION (SCOTLAND) ACT 2010

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Final provisions

Schedule 1 – Scottish Arbitration Rules

Part 5 – Powers of court in relation to arbitral proceedings

Rule 41 – Referral of point of law *Default*

172. Rule 41 allows a party to ask the Outer House to determine any point of Scots law arising in the arbitration. The rule is a default rule and so the parties can exclude the jurisdiction of the court.

Rule 42 – Point of law referral: procedure etc. *Mandatory*

173. Where rule 41 applies, rule 42 restricts the right to apply to the Outer House to determine any point of Scots law arising in the arbitration under that rule. An application may be made if all parties agree or the tribunal has consented and the court is satisfied that its determination is likely to produce substantial cost savings and there has been no delay by the party in making the application. In addition the court must be convinced that there is a good reason why it and not the tribunal should decide the matter.
174. Rule 42(3) provides that the arbitral proceedings will be able to continue until the court comes to a decision on the referral.
175. Rule 42(4) means that there is no appeal of the decision of the Outer House.

Rule 43 – Variation of time limits set by parties *Default*

176. Rule 43 is a default rule which allows the court on the application of the tribunal or any party to vary time limits agreed by the parties.

Rule 44 – Time limit variation: procedure etc. *Mandatory*

177. Where rule 43 applies between the parties, the court may vary time limits under that rule only if the court is satisfied that someone would suffer a substantial injustice and any available arbitral process for varying time limits has been exhausted.
178. There is no appeal against or review of the decision of the court.

Rule 45 – Court’s power to order attendance of witnesses and disclosure of evidence *Mandatory*

179. Rule 45 makes mandatory provision that the court has the same power in arbitration proceedings as it would have in ordinary civil proceedings to order the attendance of a witness or the taking of evidence on commission.

180. There is no appeal against or review of the decision of the court.

Rule 46 – Court’s other powers in relation to arbitration *Default*

181. Rule 46 is a default rule so, if the parties agree, the court powers specified do not apply to a particular arbitration. Otherwise, the court has the same power in arbitration proceedings as it would have in ordinary civil proceedings. The rule retains the existing law and sets out a range of powers including making an order under section 1 of the Administration of Justice (Scotland) Act 1972 to order the inspection, photographing, preservation, custody and detention of documents and other property (including land) which appear to the court may be relevant to the arbitration proceedings.
182. Rule 46(2) provides that the court has these powers only on application by a party and if an application for an order is made after the arbitration has commenced, then the consent of the arbitrator is required unless the case is one of urgency. The arbitration may continue notwithstanding the application to the court.
183. Rule 46(4) applies rule 46 to arbitrations which have begun and to disputes which have or might arise, where an arbitration agreement provides for the dispute to be resolved by arbitration.
184. Rule 46(5) means that the rule does not affect the court’s powers under any rule of law or the tribunal’s powers (see in particular rule 35).