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SCOTTISH STATUTORY INSTRUMENTS

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**2010 No. 195 (C. 10)**

**ARBITRATION**

**The Arbitration (Scotland) Act 2010 (Commencement  
No. 1 and Transitional Provisions) Order 2010**

*Made - - - - 13th May 2010*

The Scottish Ministers make the following Order in exercise of the powers conferred by sections 33(1)(b) and 35(2) of the Arbitration (Scotland) Act 2010(1).

**Citation and interpretation**

1.—(1) This Order may be cited as the Arbitration (Scotland) Act 2010 (Commencement No. 1 and Transitional Provisions) Order 2010.

(2) In this Order—

“the Act” means the Arbitration (Scotland) Act 2010; and

“statutory arbitration” means arbitration pursuant to an enactment which provides for a dispute to be submitted to arbitration(2).

**Commencement**

2.—(1) Subject to paragraph (2), the provisions of the Act not already in force come into force on 7th June 2010.

(2) Those provisions of the Act do not come into force for the purposes of statutory arbitration, except for section 17 (power to adapt enactments providing for statutory arbitration) which comes into force for all purposes.

**Transitional provisions**

3.—(1) The enactments amended or repealed by sections 23, 27 and 29 of the Act and any rule of law otherwise modified by any provisions of the Act continue to apply as they stood before that modification—

(a) to legal proceedings relating to arbitration (whether or not an arbitration has begun) raised or depending before any court before 7th June 2010;

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(1) 2010 asp 1 (“the Act”).

(2) Section 16 of the Act define “statutory arbitration” in those terms.

(b) to statutory arbitration, before the Act is commenced for the purposes of statutory arbitration,

and the provisions of the Act which would otherwise be applicable are not to apply.

**4.** In applying rule 47(2)(b) or (3)(d) (considerations applicable to the substance of the dispute) of the Scottish Arbitration Rules<sup>(3)</sup> to an arbitration agreement made before 7th June 2010, that agreement is to have effect in accordance with the rules of law (including any conflict of law rules) as they stood immediately before that day.

**5.**—(1) Where an enactment provides for the date upon which arbitration begins for the purposes of that enactment, section 4(4)(b) of the Prescription and Limitation (Scotland) Act 1973<sup>(4)</sup> is to be read as if the reference to rule 1 of the Scottish Arbitration Rules is a reference to when arbitration begins under that enactment.

(2) This article ceases to have effect on date on which the Act is commenced for the purposes of statutory arbitration.

**6.** For the purposes of section 36(9) of the Act, section 36 of the Act is deemed to come into force on 7th June 2010 in the application of the Act, except in respect of statutory arbitration.

St Andrew's House,  
Edinburgh  
13th May 2010

*JIM MATHER*  
Authorised to sign by the Scottish Ministers

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<sup>(3)</sup> The Scottish Arbitration Rules are applied by section 7 of and set out in schedule 1 to the Act.

<sup>(4)</sup> 1973 c.52. Section 4(4)(b) was amended by section 23(2)(c) of the Arbitration (Scotland) Act 2010 (asp 1). There are other amendments to the 1973 Act not relevant to this Order.

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## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order brings into force on 7th June 2010 the Arbitration (Scotland) Act 2010 (“the Act”) insofar as it applies to disputes submitted to arbitration under contractual arbitration agreements.

the Act is not commenced insofar as it applies to statutory arbitrations where enactments provide for disputes to be submitted to arbitration (except for the order-making power in section 17 which enables the Scottish Ministers to adapt statutory arbitration procedures).

Sections 2, 31 to 35 and 37 of the Act came into force on the date of Royal Assent on 5th January 2010.

The main transitional arrangements for the commencement of the Act are set out in section 36 of the Act. In particular, the Act does not apply to an arbitration which begins before 7th June 2010. Further transitional provision is made—

- for continuity of court proceedings which begin before 7th June 2010 (article 3(a))
- for statutory arbitration (article 3(b))
- to preserve the old law in relation to contractual clauses which provide for equitable considerations to be relevant in relation to decisions on the merits of arbitration (article 4)
- to exclude the effect of rule 1 of the Act for enactments which provide for when arbitration begins (article 5)
- for the application of section 36(9) of the Act as a result of this Order (article 6)