

SCHEDULE 2

Rule 46

PROVISIONS OF ARBITRATION ACTS

PART 1

Provisions of the Arbitration Act 1950 which apply in the case of proceedings before the Tribunal in England and Wales.

Sections 12, 14, 17 and 26 shown below—

Conduct of proceedings, witnesses, &c.

12.—(1) Unless a contrary intention is expressed therein, every arbitration agreement shall, where such a provision is applicable to the reference, be deemed to contain a provision that the parties to the reference, and all persons claiming through them respectively, shall, subject to any legal objection, submit to be examined by the arbitrator or umpire, on oath or affirmation, in relation to the matters in dispute, and shall, subject as aforesaid, produce before the arbitrator or umpire all documents within their possession or power respectively which may be required or called for, and do all other things which during the proceedings on the reference the arbitrator or umpire may require.

(2) Unless a contrary intention is expressed therein, every arbitration agreement shall, where such a provision is applicable to the reference, be deemed to contain a provision that the witnesses on the reference shall, if the arbitrator or umpire thinks fit, be examined on oath or affirmation.

(3) An arbitrator or umpire shall, unless a contrary intention is expressed in the arbitration agreement, have power to administer oaths to, or take the affirmations of, the parties to and witnesses on a reference under the agreement.

(4) Any party to a reference under an arbitration agreement may sue out a writ of subpoena ad testificandum or a writ of subpoena duces tecum, but no person shall be compelled under any such writ to produce any document which he could not be compelled to produce on the trial of an action, and the High Court or a judge thereof may order that a writ of subpoena ad testificandum or of subpoena duces tecum shall issue to compel the attendance before an arbitrator or umpire of a witness wherever he may be within the United Kingdom.

(5) The High Court or a judge thereof may also order that a writ of habeas corpus ad testificandum shall issue to bring up a prisoner for examination before an arbitrator or umpire.

(6) The High Court shall have, for the purpose of and in relation to a reference, the same power of making orders in respect of—

- (a) security for costs;
- (b) discovery of documents and interrogatories;
- (c) the giving of evidence by affidavit;
- (d) examination on oath of any witness before an officer of the High Court or any other person, and the issue of a commission or request for the examination of a witness out of the jurisdiction;
- (e) the preservation, interim custody or sale of any goods which are the subject matter of the reference;
- (f) securing the amount in dispute in the reference;
- (g) the detention, preservation or inspection of any property or thing which is the subject of the reference or as to which any question may arise therein, and authorising for any of the purposes aforesaid any persons to enter upon or into any land or building in the possession of any party to the reference, or authorising any samples to be taken or any observation to

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be made or experiment to be tried which may be necessary or expedient for the purpose of obtaining full information or evidence; and

(h) interim injunctions or the appointment of a receiver;

as it has for the purpose of and in relation to an action or matter in the High Court:

Provided that nothing in this subsection shall be taken to prejudice any power which may be vested in an arbitrator or umpire of making orders with respect to any of the matters aforesaid.

Interim awards

14. Unless a contrary intention is expressed therein, every arbitration agreement shall, where such a provision is applicable to the reference, be deemed to contain a provision that the arbitrator or umpire may, if he thinks fit, make an interim award, and any reference in this Part of this Act to an award includes a reference to an interim award.

Power to correct slips

17. Unless a contrary intention is expressed in the arbitration agreement, the arbitrator or umpire shall have power to correct in an award any clerical mistake or error arising from any accidental slip or omission.

Enforcement of award

26. —(1)(1) An award on an arbitration agreement may, by leave of the High Court or a judge thereof, be enforced in the same manner as a judgment or order to the same effect, and where leave is so given, judgment may be entered in terms of the award.

(2) If—

- (a) the amount sought to be recovered does not exceed the county court limit, and
- (b) a county court so orders,

it shall be recoverable (by execution issued from the county court or otherwise) as if payable under an order of that court and shall not be enforceable under subsection (1) above.

(3) An application to the High Court under this section shall preclude an application to a county court and an application to a county court under this section shall preclude an application to the High Court.

(4) In subsection (2)(a) above "the county court limit" means the amount which for the time being is the county court limit for the purposes of section 16 of the County Courts Act 1984 (money recoverable by statute).

PART 2

Provisions of the Arbitration Act (Northern Ireland) 1937 which apply in the case of proceedings before the Tribunal in Northern Ireland.

A. Sections 13, 14, 16, 21 and 24 shown below—

(1) Section 26 was amended by section 17(2) of the Administration of Justice Act 1977 (c. 38) and section 148(1) of, and paragraph 22 of Schedule 2 to, the County Courts Act 1984 (c. 28).

Powers of arbitrators

13. The arbitrators or umpire acting under a reference in an arbitration agreement shall, unless the arbitration agreement or the reference thereunder expresses a contrary intention, have power to administer oaths to or take the affirmations of the parties and witnesses appearing, and to correct in an award any clerical mistake or error arising from any accidental slip or omission.

Attendance of witnesses

14. Any party to a reference under an arbitration agreement may sue out a writ of subpoena ad testificandum, or a writ of subpoena duces tecum, but no person shall be compelled under any such writ to produce any document which he could not be compelled to produce on the trial of an action:

Provided that no writ shall issue under this section unless the arbitrator has entered on the reference or has been called on to act by notice in writing from a party to the reference and has agreed to do so.

Entry of judgment in terms of award

16. An award on a reference under an arbitration agreement may, by leave of the court, be entered as a judgment in terms of the award, and shall thereupon have the same force and effect as a judgment or order of the court.

Additional powers of court

21.—(1) The court shall have, for the purpose of and in relation to a reference, the same power of making orders in respect of any of the matters set out in the Second Schedule to this Act as it has for the purpose of and in relation to an action or matter in the court:

Provided that nothing in the foregoing provision shall be taken to prejudice any power which may be vested in an arbitrator or umpire of making orders with respect to any of the matters aforesaid.

(2) Where relief by way of interpleader is granted and it appears to the court that the claims in question are matters to which an arbitration agreement, to which the claimants are parties, applies, the court may direct the issue between the claimants to be determined in accordance with the agreement.

(3) Where an application is made to set aside an award the court may order that any money made payable by the award shall be brought into court or otherwise secured pending the determination of the application.

Additional powers to compel attendance of witnesses

24.—(1) The court may order that a writ of subpoena ad testificandum or of subpoena duces tecum shall issue to compel the attendance of a witness before any referee, arbitrator or umpire.

(2) The court may also order that a writ of habeas corpus ad testificandum shall issue to bring up a prisoner for examination before any referee, arbitrator or umpire.

B. First Schedule (provisions to be implied in arbitration agreements), paragraphs 4, 5 and 8 shown below—

4. The parties to the reference and all persons claiming through them respectively shall, subject to any legal objection, submit to be examined by the arbitrators or umpire on oath or affirmation in relation to the matters in dispute and shall, subject as aforesaid, produce before the arbitrators or umpire all books, deeds, papers, accounts, writings and documents within their possession or power respectively which may be required or called for, and do all other things which during the proceedings on the reference the arbitrators or umpire may require.

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5. The witnesses on the reference shall, if the arbitrators or umpire think fit, be examined on oath or affirmation.

8. The arbitrators or umpire may, if they think fit, make an interim award.

C. Second Schedule (matters in respect of which court may make orders) referred to in section 21(1), shown below–

1. Security for costs.

2. Discovery of documents and interrogatories.

3. The giving of evidence by affidavit.

4. Examination on oath of any witnesses before an officer of the court or any other person, and the issue of a commission or request for the examination of a witness out of the jurisdiction.

5. The preservation, interim custody, or sale, of any goods which are the subject matter of the reference.

6. Securing the amount in dispute in the reference.

7. The detention, preservation or inspection of any property or thing which is the subject of the reference or as to which any question may arise therein, and authorising for any of the purposes aforesaid any persons to enter upon or into any land or building in the possession of any party to the reference, or authorising any samples to be taken or any observation to be made or experiment to be tried which may be necessary or expedient for the purpose of obtaining full information or evidence.

8. Interim injunctions or the appointment of a receiver.