Arbitration Bill Progress Tracker

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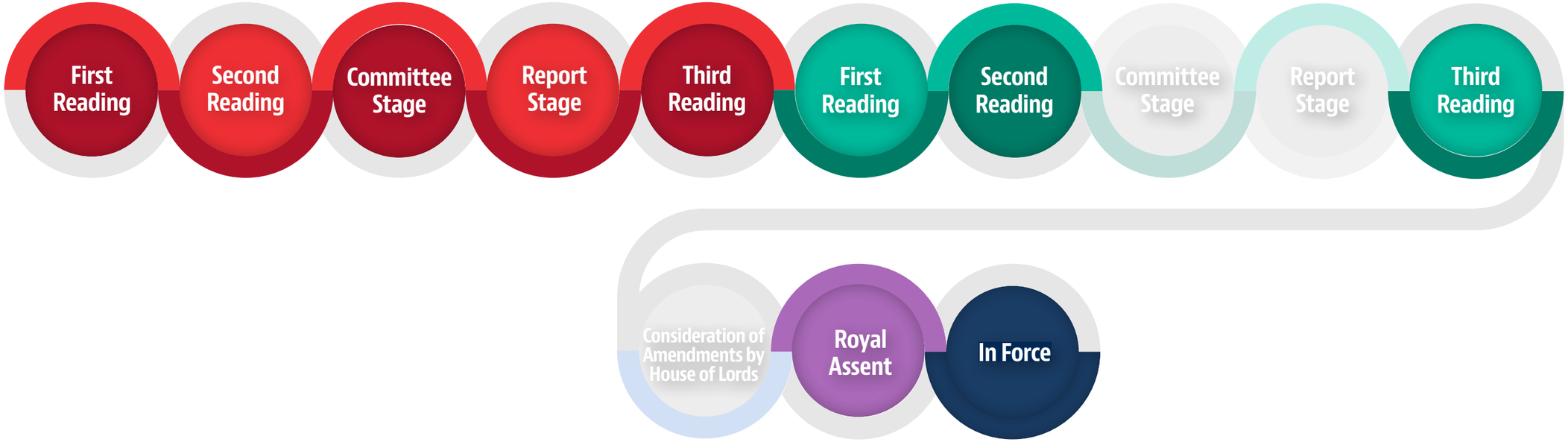
House of Lords

House of Commons



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The Arbitration Bill

The UK Government asked the Law Commission (LC) to review the Arbitration Act 1996 (AA) – the principal legislation governing arbitrations in England and Wales and in Northern Ireland – to determine whether any amendments are required in order to ensure that the AA remains fit for purpose and continues to promote the UK as a leading destination for commercial arbitration. The LC published its first consultation paper in September 2022 and its second in March 2023. Having received a large number of detailed responses from a wide range of consultees, the Arbitration Bill (the Bill) was first introduced into Parliament on 21 November 2023 (before it was shelved temporarily following the 2024 election). It was re-introduced under the Labour government in near-identical terms later in 2024. The Bill received royal assent in early 2025, and entered into force as the Arbitration Act 2025 in August.

Many of the new provisions simply codify the position with respect to accepted conventions in arbitral practice and/or simplify some of the more complicated precedent that has developed since the AA was enacted in 1996.

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Quick Guide to the key proposed changes

Clause 1 – Law Applicable to the Arbitration Agreement
Arbitration agreements will be governed by the law of the seat unless (i) the parties expressly agree otherwise or (ii) the arbitration is commenced before the Bill is in force. Note however that these provisions will not apply to arbitration agreements derived from a standing offer to submit to disputes to arbitration where that offer is contained in a treaty or foreign legislation.

Clause 2 – Arbitrators' Duty of Disclosure
Arbitrators will be under a statutory duty to disclose any circumstances which "might reasonably give rise to justifiable doubts" as to their impartiality.

Clauses 3 and 4 – Arbitrator Immunity
Arbitrators will be protected from (i) liability, where they resign, unless their resignation is found to be unreasonable; and (ii) costs, where they are removed on successful application by one party, unless they have acted in bad faith.

Clauses 5 and 6 – Jurisdiction
Under Clause 5, a party may only bring an application to challenge the tribunal's jurisdiction under Section 32 of the AA if the tribunal has not yet ruled on the jurisdictional objection. If the tribunal has already ruled on the jurisdictional objection, the tribunal's decision can only be challenged under Section 67 of the AA. Clause 6 provides that where a tribunal determines it does not have jurisdiction, it will nonetheless have the power to determine and award costs.

Clause 7 – Summary Judgment
Arbitrators will be expressly empowered to make an award on a summary basis if a particular issue has no real prospect of success (replicating the test employed by the courts). The parties to an arbitration have the option to "opt-out" of this rule under the proposed provision.

Clause 8 – Emergency Arbitrators (EA)
EAs may make peremptory orders where a party has failed to comply with the EA's orders or directions, and the courts will be empowered to make orders enforcing the orders of EAs.

Clause 9 – Third Parties
The court may make orders against third parties in support of arbitral proceedings.

Clauses 10 and 11 – Challenges to the Award
The remedies available to the court will be the same whether a challenge is brought under Sections 67, 68 or 69 of the AA, and where a challenge is brought under Section 67, the court will not permit a re-hearing, nor any new evidence and/or arguments.

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Additional information and implications if the Bill is passed

New Section 6A of the AA, as introduced by Clause 1 of the Bill – Applicable Law

This amendment represents a departure from the current position (developed by precedent), whereby the law of the contract (not the law of the seat) was implied as the governing law of the arbitration agreement where it had not otherwise been agreed by the parties and drafted into the agreement. Under the updated Act, the law of the seat will be implied as the law governing the arbitration agreement, unless the agreement to arbitrate is derived from an international treaty or foreign legislation.

Careful consideration should be given to the governing law when drafting an arbitration agreement. If the parties intend for any potential dispute to be governed by the law of a jurisdiction which is distinct from the seat of the arbitration, this must be expressly provided for.

Updated Section 23 of the AA, as amended by Clause 2 of the Bill – Arbitrators' Duty of Disclosure

Clause 2 of the Bill simply codifies the general duty of disclosure already incumbent on arbitrators, as established by the relevant case law on the issue. Note that under the updated AA, arbitrators will be required to disclose any circumstances that might reasonably give rise to justifiable doubts as to their impartiality.

The duty arises from the point at which the arbitrator is approached about their potential appointment (i.e. before they are actually appointed), and continues to apply after their appointment. It captures any circumstances of which the arbitrator is actually aware, and of which they ought reasonably to be aware.

Updated Sections 24 and 29 of the AA, as amended by Clauses 3 and 4 of the Bill – Arbitrator Immunity

The purpose of the amendments introduced by Clauses 3 and 4 of the Bill is to extend the scope of immunity afforded to arbitrators in two specific circumstances:

1. Removal: Where an arbitrator is removed following a successful application by a party to the arbitration (under Section 24 of the AA). Under the updated Act, an arbitrator will not be liable for the costs of the application for their removal, unless the arbitrator is found to have acted in bad faith. This amendment reverses the position established under case law, whereby the court was empowered (should it so decide) to order the arbitrator to pay those costs.

2. Resignation: Where an arbitrator resigns of their own accord. Under the updated Act, an arbitrator will not incur liability, unless it is found that the resignation was unreasonable, in all the circumstances.

Additional information and implications if the Bill is passed

Updated Sections 32 and 61 of the AA, as amended by Clauses 5 and 6 of the Bill –
Jurisdiction

Clauses 5 and 6 of the Bill both concern jurisdiction.

Clause 5 provides clarity on the application of existing Section 32 of the AA, which, under the updated Act, may only be invoked by a party where the tribunal has not yet ruled on an objection to its jurisdiction. If the tribunal has already ruled on its jurisdiction, a party must bring a challenge to the tribunal's decision under Section 67 of the AA.

Under updated Section 61 of the AA (as amended by Clause 6 of the Bill), where a tribunal is determined not to have jurisdiction over a dispute (by its own decision, or that of the court), the tribunal can nevertheless determine the award of the costs of the arbitral proceedings up until that point in time.

New Section 39A of the AA, as introduced by Clause 7 of the Bill –
Summary Judgment

This amendment makes express the existing power arbitrators have to issue an award summarily where an issue, claim or defence has no real prospect of success. The "no real prospect of success" test is the threshold applied in litigation proceedings.

Note that new Section 39A of the AA is not mandatory, meaning that the parties can agree to opt out of the provision. From a practical perspective, careful thought should be given to whether there is a strategic benefit, or disadvantage, in exercising the available opt out option.

New Section 41A of the AA, as introduced by Clause 8 of the Bill –
Emergency Arbitrators

This amendment applies where the parties have agreed that an arbitration should be governed by arbitral rules that provide for the appointment of an EA. Under new Section 41A, an EA appointed to determine an interim application will have the same powers as an ordinary arbitrator. For example, to make a peremptory order where a party fails to comply with an order, and/or to apply to the court to order compliance with the EA's order.

In short, EAs will have express powers to ensure compliance with their orders.

Additional information and implications if the Bill is passed

Updated Section 44 of the AA, as amended by Clause 9 of the Bill – Third Parties

Clause 9 of the Bill extends the powers of the court in respect of third parties in arbitral proceedings to align with those it has in litigation proceedings. Such an order may relate, for example, to the grant of an interim injunction, the preservation and collection of evidence, or the sale of goods.

Importantly, the updated Act also grant rights of appeal to third parties who are subject to an order under Section 44 of the AA without having to apply for leave of the court. Practically speaking, the amendment definitively increases the reach of the court beyond the parties to the dispute, resolving an ambiguity in the existing case law.

Updated Section 67 of the AA, as amended by Clauses 10 and 11 of the Bill – Challenges to the Award

These amendments will have implications for how a party may challenge the substantive jurisdiction of an arbitral award under Section 67 of the AA, and the remedies available under this section. For instance, per Clause 11 an applicant will not be entitled t o a full rehearing before the court where a tribunal has already ruled on the applicant's challenge; nor will the applicant be permitted to rely on any evidence or legal argument in support of its challenge that was not heard by the tribunal at the original hearing, unless (i) it was not reasonably possible to put this material before the tribunal, or (ii) it is necessary in the interests of justice.

On a practical note, this amendment reverses the position developed under case law, which permitted a full re-hearing used to be permitted.

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"Strategic thinkers who provided excellent case management"
Global Arbitration Review 2023, ranked 10th globally

"The team provides very pragmatic and commercially-focused advice, coupled with a proactive approach"
Chambers UK 2024, Commercial Arbitration

"On top of the detail, familiar with the client's requirements, and able to deliver under intense pressure"
Legal 500 UK 2024, International Arbitration

"Has a well-known team of arbitration practitioners"
Chambers UK 2024, Commercial Arbitration