Articles + Publications | March 17, 2025

The Key Reforms to Arbitration Act 2025 Which Will Reinforce the UK's Position as World Leader in Arbitration

WRITTEN BY

Reem Ayad

This article was originally published on March 17, 2025 and updated on August 13, 2025. It was republished in the July-August 2025 issue of Dispute Resolution Journal.

For commercial parties globally, England has long been heralded as a leader for dispute resolution, particularly in arbitration. To maintain its competitive position, in 2022, the Law Commission of England and Wales conducted a review of the current framework, the Arbitration Act 1996 (1996 Act), and subsequently made recommendations for various improvements to be incorporated into the Arbitration Bill.

This is in-keeping with governmental support of London as an international arbitration hub: its stated hope is that the reforms will "turbocharge the UK's position as the world-leader in arbitration" by (i) making arbitration "fairer and more efficient by simplifying procedures to reduce costs" and (ii) strengthening "courts' powers to support emergency arbitration so time-sensitive decisions can be made more easily."

The new Arbitration Act 2025 (2025 Act) formally came into force on August 1, 2025. It introduces enhancements and brings further clarity to the 1996 Act. Its effect will be to amend the existing 1996 Act, rather than to replace it. Below is a summary of key changes commercial parties should consider:

1. Determining the law that governs the arbitration proceedings:

The 2025 Act provides welcome clarity as to the choice of law governing the arbitration where the parties have failed to expressly state this. In doing so, it effectively reverses the common law position.

Following a period of inconsistency as to the position at common law, the Supreme Court decision in *Enka v Chubb [2020] UKSC 38* determined that if an arbitration clause is silent as to the governing law, the choice of law made in the contract containing the arbitration agreement applies to the arbitration proceedings.

The 2025 Act introduces welcome clarity by setting out the position as a matter of statute. This is achieved through the new Section 6A, whereby if the parties have not expressly agreed on the governing law within an arbitration agreement, then the law of the seat of the arbitration will apply to the arbitration proceedings.

The introduction of this default rule is intended to bring more certainty to the question of applicable governing law where an arbitration agreement doesn't specify one, and to reduce preliminary disputes litigating the choice of

law.

Section 6A(2) clarifies that the express agreement by the parties of a governing law to the underlying contract, does not constitute the parties' express agreement of the law of the arbitration for the purposes of Section 6A(1). Other caveats to the default rule have been included in Section 6A(3).[1]

The default rule does not apply to proceedings that commenced prior to the 2025 Act coming into force.

2. Arbitrators' power to make an award on a summary basis:

Section 39A provides an express power for a tribunal to make an award on a summary basis where a party has no real prospect of succeeding on a particular aspect or issue of their case. This power is triggered where a party applies for summary disposal of an issue and the parties have not otherwise agreed to exclude this power from the arbitration proceedings. This has the obvious ambition of promoting efficiency and saving the parties time and costs.

3. Challenges to arbitration awards in the English courts based on lack of jurisdiction:

Following the Supreme Court's decision in *Dallah v Pakistan [2010] UKSC 46* and under Section 67 of the 1996 Act, a party could challenge an arbitration award in the English courts on grounds that the tribunal lacked substantive jurisdiction[2]. Until now, this has provided a means to a full rehearing of the dispute, as opposed to a review of the tribunal's decision. The 2025 Act shall prevent parties from submitting new evidence or grounds of objection to the English court that had not already been put before the arbitral tribunal. Furthermore, the English court shall no longer be able to rehear evidence previously heard by the arbitral turbinal, save when it would be in the interests of justice. Under this section, the court may confirm, vary, set aside, declare an award has no effect (in whole or part), or remit an award to the tribunal for reconsideration.

This provision is therefore expected to reduce the potential delays which parties might incur as a result of jurisdiction challenges.

4. Emergency arbitrator powers:

When the 1996 Act was enacted, it did not include provision for the appointment of emergency arbitrators to provide urgent relief in circumstances where an arbitral tribunal is not fully constituted. Since then, many arbitral institutions have introduced rules to enable emergency arbitrators to make interim orders which are open to modification by a tribunal, once fully constituted.

The amendments introduced by the 2025 Act grant powers to emergency arbitrators to make orders in relation to Section 44 of the 1996 Act (including powers to make interim orders relating to evidence) and peremptory order, which are equal to those made by an arbitral tribunal. Furthermore, the changes included in the 2025 Act permit a party to apply to court for interim relief in support of arbitration, including in relation to third parties. This is a significant power because arbitral tribunals ordinarily have no powers over third parties and can only make decisions concerning the parties to the arbitration agreement. Notably, parties may use this provision to garner the support of the English court against third parties, whether seated in England or elsewhere, for example, to obtain

an order for witness evidence from a third party.

5. Extension of arbitrator rights and duties:

The 2025 Act bolsters the 1996 Act legislation by extending the rights and duties of arbitrators. Under the 1996 Act, arbitrators are required to disclose factors affecting their impartiality. The changes to be introduced under Section 23A of the 2025 Act in relation to the appointment of arbitrators extend a duty to disclose relevant circumstances which shall include what they ought reasonably to be aware in addition to what they actually know.

Furthermore, the 2025 Act provides further protection to arbitrators, including immunity from civil suit and exclusion of any liability following the resignation of an arbitrator, unless the resignation was unreasonable.

This provision should provide arbitrators with comfort that they may make decisions, acting reasonably, independently, and in good faith, without fear of civil suit from disgruntled or dissatisfied parties.

6. Power to award costs despite no substantive jurisdiction:

The 2025 Act incorporates amendments to Section 61 of the 1996 Act clarifying that arbitral tribunals may make costs awards even in circumstances where they, or a court, have declared that the tribunal has no jurisdiction in respect of the dispute.

Implications

The 2025 Act applies to arbitration agreements whenever they were made, but it shall not apply to arbitration proceedings which have commenced prior to August 1, 2025 or to any related court proceedings.[3]

When drafting arbitration clauses in cases where the governing law of the main contract and the seat are different, practitioners should consider specifying the governing law for the arbitration clause. If the governing law is not specified in the arbitration agreement and if London is specified as the seat of the arbitration, English law will govern the arbitration agreement. In view of the English court's pro-arbitration stance and expertise in supporting arbitration, practitioners and commercial parties are expected to welcome the introduction of these provisions which should ultimately reduce satellite litigation as to the law applicable to an arbitration agreement.

Until now, the 1996 Act has been largely unaltered and has proven to be an effective and robust framework for the conduct of arbitration, ultimately culminating in England having forged a reputation as a leading seat for commercial parties globally. The amendments introduced by the 2025 Act constitute positive developments to the UK's statutory arbitration framework and should bolster England's reputation as a leader for international arbitration.

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[1] The default rule shall not apply to an arbitration agreement derived from a standing offer to submit disputes to arbitration where the offer is contained in a treaty, or legislation of a country or territory outside the UK, Section 6A (3)(a) and (b).

[2] Section 30 (1) Arbitration Act 1996, a tribunal's competence to rule on its own jurisdiction i.e. as to "(a)whether

there is a valid arbitration agreement, (b) whether the tribunal is properly constituted, and (c) what matters have been submitted to arbitration in accordance with the arbitration agreement"

[3] Section 17(4)(ii) This includes*"court proceedings (whenever commenced) in connection with pre-commencement arbitral proceedings or an award made in pre-commencement arbitral proceedings…"*. Furthermore, the 2025 Act shall not apply to:*"any other court proceedings commenced before the day on which the section making the amendment comes into force" -Section 17(4)(iii).*

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