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Arbitration Act 2025:

Practical Implications for Clients Arising From Changes to England's Arbitration Act

UK – March 2025

England's prevailing Arbitration Act was enacted in 1996 (the "1996 Act"), meaning that it has not been updated in almost 30 years. On 24 February 2025, a revised, modernised national arbitration law, the Arbitration Act 2025, received Royal Assent (the "2025 Act"). It will come into force substantively at a future date, which has not yet been designated.

This marked the culmination of an almost four-year process to update English arbitration law, during which the Law Commission, the body responsible for making recommendations, acknowledged that the 1996 Act "works well, and that root and branch reform is not needed or wanted".[1] Nevertheless, the 2025 Act does contain some significant changes.

This article provides a summary of four of the most important changes, and the impact those changes could have on current and future arbitrations seated in, or otherwise coming for consideration before the courts of England and Wales. Specifically, it focuses on: (i) how the law applicable to an arbitration agreement (e.g., the arbitration clause itself) will be determined; (ii) the codification of an arbitrator's – and now prospective arbitrator's – duty of disclosure; (iii) the new statutory summary determination procedure; and (iv) how arbitration awards can be challenged on grounds of substantive jurisdiction, which is governed by Section 67 of the 1996 Act.

The Law of the Arbitration Agreement: Now the Law of the Seat, Unless Explicitly Agreed Otherwise

The law applicable to an arbitration agreement is important because it governs how several key issues in an arbitration will be determined. These include whether a particular issue is legally capable of being resolved by arbitration, whether a dispute falls within the scope of a particular arbitration clause, which parties are bound by an arbitration clause, and whether the arbitration clause was validly agreed. These are points that are frequently raised in arbitrations because they can be determinative of a claim.

It has long been recognised that an arbitration agreement is separable from the contract within which it is contained. In this way, an arbitration agreement or clause can be thought of as a "contract within a contract".

Identifying which law governs this agreement can be complicated, because: (i) parties often do not expressly state the governing law of an arbitration clause specifically; and (ii) there will often be more than one system of law that could plausibly be relevant to the clause. The primary candidates here are usually the governing law of the wider contract and the law of the seat of the arbitration, although there can sometimes be others.

Different jurisdictions have different approaches when deciding which law should govern the arbitration agreement. The previous position under English law was set out in 2020 by the UK Supreme Court in *Enka v Chubb*.[2] In that case, the court decided that where an arbitration agreement did not contain an express choice of governing law, then the governing law of the wider contract would usually also apply to the arbitration agreement. This would generally (although not always) be the case even if the seat of the arbitration specified in the arbitration agreement was different.[3] As an example, if a contract provided for New York law to be the governing law of the substance of the contract, but specified a seat of arbitration in London in the arbitration agreement, then under the ruling in *Enka v Chubb*, New York law would ordinarily govern the arbitration agreement, as opposed to English law.

That will now change as a result of the 2025 Act. The new legislation provides that unless the arbitration agreement itself expressly states that a particular law is to apply, the applicable law will be the law of the seat of the arbitration.[4] The Law Commission felt this would promote simplicity and certainty for parties who specify a seat of arbitration in England and Wales in their arbitration agreement.[5]

This is good news for participants in arbitration insofar as it brings clarity and finality to an issue that had generated substantial academic debate and case law in recent years. Parties to the above-mentioned New York law contract providing for a London seat of arbitration will now know that the English courts would construe their arbitration clause as governed by English law. This will be the same for any arbitration clause that specifies a seat of arbitration in England and Wales, even if that arbitration clause is found in a wider contract that is itself governed by the law of a different jurisdiction.

1 House of Commons Library, Arbitration Bill [HL] 2024-25, Research Briefing, page 6.

2 *Enka Insaat Ve Sanayi AS v OOO Insurance Company Chubb* [2020] UKSC 38, [2020] 1 WLR 4117.

3 *Enka v Chubb* [2020] UKSC 38, [2020] 1 WLR 4117 [117].

4 Arbitration Act 2025, Section 1.

5 Law Commission, Review of the Arbitration Act 1996: Final report and Bill, ¶¶ 12.72-12.75.

Similarly, if parties specify an English seat in their arbitration clause but would like another system of law to govern that provision (and all the legal issues bound up with it), then they will now likely need to expressly state this in the arbitration clause itself.

Codification of Arbitrator's Duty of Disclosure

Under the existing 1996 Act, arbitrators are already subject to a duty to act impartially in administering a dispute.[6] Previous case law held that this gave rise to a duty on an arbitrator to disclose any circumstances that might reasonably give rise to justifiable doubts as to their impartiality.[7] The 2025 Act codifies this obligation in statute and provides some notable clarifications as to its scope.

First, under the 2025 Act, anyone who is approached in connection with a possible appointment as an arbitrator is subject to the new statutory duty of disclosure. Previously, this duty had applied to arbitrators only after they had been appointed to act. The statutory duty of disclosure will resemble the pre-existing common law standard: arbitrators and prospective arbitrators must disclose any "circumstances that might reasonably give rise to justifiable doubts as to the individual's impartiality in relation to the proceedings."[8] Those individuals must make this disclosure as soon as reasonably practicable after becoming aware of any such information. Importantly, the standard for disclosure is an objective one.

Second, the 2025 Act clarifies that the standard for determining what arbitrators or prospective arbitrators should disclose will be based on what they ought reasonably to aware of. This is not the same as a duty to disclose only matters within their actual knowledge. In practice, this is likely to place a greater emphasis on arbitrators or prospective arbitrators carrying out enquiries for themselves, as to potential circumstances that might affect their impartiality (for example, personal or business connections with the parties or their counsel). That an arbitrator was not actually aware of a particular potential conflict will not necessarily be enough to discharge the statutory duty to disclose it, if it was something that, in the circumstances, one would have expected them to discover through reasonable enquiries.

However, while the 2025 Act may encourage arbitrators and prospective arbitrators to conduct such enquiries before accepting or continuing with an arbitral appointment, the Law Commission deliberately decided not to impose an express duty to carry out enquiries. Instead, the Law Commission decided that whether such enquiries were necessary would vary from case-to-case.[9] So, while enquiries may now become more front-of-mind for prospective arbitrators, they will not necessarily be mandatory under the statute.

Disclosures by prospective arbitrators can sometimes be concerning to parties, particularly parties that are new to arbitration and who may not be able to draw on practical experience to assess whether to make an objection to an arbitrator's appointment based on information disclosed. In our experience, this is an issue that often benefits from close discussion with counsel, who are well-situated to help a party gauge how problematic a disclosure is likely to be. In general, a system that requires more disclosure, rather than less, is likely to be one that fosters greater transparency. Overall, therefore, this change to the 2025 Act is a sensible initiative that should reinforce the credibility and reliability of arbitrations administered within England and Wales.

Summary Determination: A New Power for Tribunals to Dispose of Arguments With No Real Prospect of Success

A notable feature of the 2025 Act is the incorporation of an express power for tribunals to make summary awards on claims, or issues that they consider have no real prospect of success. This power was widely understood to exist prior to the 2025 Act, but tribunals have often been reticent to use it in the absence of an express provision. The 2025 Act makes clear that the power does exist and clarifies the test: a tribunal can dispose of a dispute summarily if a claim, issue or defence has no real prospect of success. This test therefore mirrors the corresponding power that English courts have to render summary judgment on matters that are the subject of litigation before them.[10]

What can parties expect from this update? At first glance, if the result of placing this power on a statutory footing means that arbitral tribunals become more comfortable with engaging with applications for summary judgment, running "long shot" claims or defences through to a hearing may be more difficult. That could benefit parties by improving arbitral efficiency, discouraging frivolous or harassing claims, and reducing costs. Another potential effect might be a rise in applications for bifurcation, to present certain claims to be resolved in an initial summary determination while leaving others for a fuller determination.

However, it will take some time for the impact of this change to become known. The 2025 Act makes clear that the power to make summary awards will be subject to any agreement by the parties to the contrary. Relevant here is the fact that the rules of several arbitral institutions, which parties will often expressly agree to adopt within their arbitration agreement, already contain similar powers.[11] In practice these analogous mechanisms contained in the rules of arbitral institutions are often applied more stringently than the English court procedure that the 2025 Act seeks to mirror. The extent to which parties and arbitrators embrace the summary award procedure therefore remains to be seen.

6 Arbitration Act 1996, Section 33(1)(a).

7 *Halliburton Co v Chubb Bermuda Insurance Ltd* [2020] UKSC 48, [2021] AC 1083.

8 Arbitration Act 2025, Section 2(2).

9 Law Commission, Review of the Arbitration Act 1996: Final report and Bill, ¶ 3.96.

10 See Civil Procedure Rules, Rule 24.3.

11 For example, the HKIAC Administered Arbitration Rules 2024 (Art 43), the LCIA Rules 2020 (Art 22.1(viii) and the ICSID Arbitration Rules (Rule 41).

For now, parties should simply be aware that this mechanism now exists. Through its introduction, summary awards may be expected to become a more regular part of arbitrating within England and Wales. The prospect of a summary award should therefore be part of a party's strategic considerations during a dispute, particularly when either facing or considering a claim where the prospects of success seem low.

Challenges to Arbitral Awards Based on Lack of Substantive Jurisdiction: No *De Novo* Review

The final change considered in this article is a significant scaling back of the procedure for an English court to examine an arbitral tribunal's findings on matters of its substantive jurisdiction. This includes matters such as whether there was a valid arbitration agreement covering the dispute, or whether the tribunal was properly constituted.

Section 67 of the 1996 Act allows a party to an arbitration seated in England and Wales to challenge an arbitral tribunal's findings as to its substantive jurisdiction before the English courts. This is a "mandatory" provision under the 1996 Act, which means parties cannot agree to disapply it. To date, the scope of this right has been broad. Case law has stipulated that any challenge under Section 67 would be by way of a full rehearing, with no inherent legal or evidential weight being given to the tribunal's prior findings.[12] This allowed parties to, in theory, raise new arguments or facts when making such a challenge.

In consultations, the Law Commission criticised this *de novo* approach, saying it created delay, increased costs, and raised "basic questions of fairness" to the extent that it effectively allowed an unsuccessful party two bites of the jurisdictional cherry.[13]

In response to these concerns, the 2025 Act proscribes new rules as to the procedure for Section 67 challenges. Parties will not be able to raise arguments before a court in making a Section 67 challenge that they did not raise when taking part in the arbitration. Similarly, parties will not be able to rely on evidence in challenge proceedings, which was not put before the tribunal when it reasonably could have been. Finally, evidence that the arbitral tribunal heard should not be re-heard by the court.[14] While all these restrictions are subject to a court ruling "otherwise in the interests of justice", this is undoubtedly a significant curtailment of the complete rehearing that Section 67 challenges had previously involved. It should go some way toward increasing the efficiency of final dispute resolution and reducing costs.

These changes make it vital that parties to an English-seated arbitration fully develop their jurisdictional arguments—and the evidence supporting those arguments—during the arbitration proceedings themselves.

In the past, sometimes after a second opinion or fresh perspective from different counsel, parties' arguments on jurisdiction may have evolved between an arbitration and a subsequent Section 67 challenge before a court. That will no longer be possible under—or will at least be rendered substantially more difficult by—the 2025 Act.

When and How Do These New Changes Apply?

The operative provisions of the 2025 Act will come into force upon the passing of regulations by the secretary of state. The 2025 Act will not apply to arbitrations that are commenced before this point. That potentially creates a small window for parties whose interests align with the old regime to commence arbitration now, such that their proceedings still fall under the pre-existing rules. Once in force, the 2025 Act will apply to arbitration agreements "whenever made". This means that pre-existing contracts will be caught by the new rules so long as the arbitration proceeding itself was commenced after the date on which the 2025 Act came into force.

Conclusion

This article does not contain an exhaustive list of all changes contained in the 2025 Act. Other amendments have been made that are helpful in supporting the effectiveness of arbitration in England and Wales. For example, the 2025 Act also confirms that courts may: (i) make orders in support of arbitration against third parties (such as against potential witnesses); and (ii) enforce the peremptory orders of emergency arbitrators. Both measures are welcome efforts to support arbitration within the jurisdiction. In this article, we have focused on the reforms that we consider are likely to have the broadest impact on users of arbitration in England and Wales.

As noted above, the overall scope of the reforms under the 2025 Act are fairly limited, and certain of the changes simply codify international standards and norms that are already being applied in international arbitral proceedings under the rules of leading arbitral institutions. In many ways, the conduct of arbitration within this jurisdiction may change very little. However, in the areas directly affected by the 2025 Act, these changes will provide more clarity, reducing the scope for costly and time-consuming procedural wrangles. Importantly, they also progress the formal standardisation of arbitral norms and practices within national arbitration law, which will impact proceedings taking place outside of the auspices of leading arbitral institutions.

London remains one of the pre-eminent centres for international arbitration in the world. The courts in England and Wales have taken a strong pro-arbitration stance which supports London's role in the resolution of international disputes. This is very much the backdrop against which parties should understand the 2025 Act, with many changes being directly targeted at improving the time and cost efficiency of arbitration, as well as its fairness. The 1996 Act is growing old gracefully, and the 2025 Act seeks to implement an upgrade rather than a renovation.

12 *Dallah Real Estate & Tourism Holding Co v Ministry of Religious Affairs of the Government of Pakistan* [2010] UKSC 46, [2011] 1 AC 763.

13 Law Commission, Review of the Arbitration Act 1996: Final report and Bill, ¶¶ 9.16-9.17.

14 Arbitration Act 2025, Section 11.

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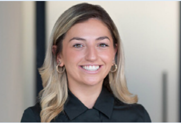

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