

ARBITRATION (SCOTLAND) ACT 2010

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Statutory arbitration

Section 16 – Statutory arbitration: special provisions

61. The Act interacts with various other Acts (and subordinate legislation) which provide for particular arbitration procedures for particular statutory purposes. The Act will allow parties to those arbitrations the benefits of the procedures set out in the Act where appropriate.
62. The Act provides that where a dispute on a particular matter is referred to arbitration under such legislation, the Act will apply to any arbitration under that other legislation, as if the reference to arbitration was as a result of an agreement between the parties. Subsection (3) provides however that if the other legislation makes provision which is inconsistent with the Act, that other legislation prevails.
63. Subsection (4) provides that every statutory arbitration is to be seated in Scotland. In the case of domestic arbitration, the effect is to prevent parties to a statutory arbitration from agreeing to seat the arbitration outwith Scotland. This is however subject to conflict of law rules (for instance on the interaction with the equivalent section 95(2) of the Arbitration Act 1996 for the other jurisdictions of the UK).
64. Subsection (5) identifies the rules that do not apply to statutory arbitrations. Subsection (6) limits the circumstances in which statutory arbitrations covering different matters can be consolidated together (permitted by rule 40 where parties so agree).

Section 17 – Power to adapt enactments providing for statutory arbitration

65. The subordinate legislation powers in paragraph (a) allow the Scottish Ministers by order to modify the rules (and other Act provisions) as they apply to statutory arbitrations and in paragraph (b) to amend any enactment which provides for arbitration to satisfactorily apply the rules (or other Act provisions) to arbitrations conducted under that specific legislation. The statutory instrument procedure requiring affirmative approval by the Scottish Parliament applies where primary legislation is amended.