

# ARBITRATION (SCOTLAND) ACT 2010

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### *Supplementary*

#### *Section 23 – Prescription and limitation*

77. Both positive and negative prescriptive periods whereby rights are created or expire are interrupted by arbitration. Section 23(2)(a) provides that interruption of the prescriptive period does not arise if an arbitrator is not appointed. If the appointment is made, the interruption is backdated to the notice to submit the claim to arbitration. This is to avoid the possibility that the running of the prescriptive period could be interrupted by arbitration but the arbitration does not proceed because no party to the arbitration moves to appoint an arbitrator.
78. By amending the Prescription and Limitation (Scotland) Act 1973, subsections (2) and (3) align the date deemed to be the date of judicial interruption with the “commencement” date when the arbitration begins (see Scottish Arbitration Rule 1 for the default position). The Act substitutes the definition of “preliminary notice” in the 1973 Act to that effect.
79. Subsections (4) and (6) alter rules on the limitation of court actions so that the periods that apply for the limitation of actions are interrupted by recourse to arbitration. Subsection (5) provides that the date of the interruption of the running of the limitation period is the “commencement” date of the arbitration. Limitation will continue as at present not to prevent recourse to arbitration.