



# Arbitration Act 1996

## 1996 CHAPTER 23

### PART I

#### ARBITRATION PURSUANT TO AN ARBITRATION AGREEMENT

##### *The arbitral tribunal*

#### **15 The arbitral tribunal.**

- (1) The parties are free to agree on the number of arbitrators to form the tribunal and whether there is to be a chairman or umpire.
- (2) Unless otherwise agreed by the parties, an agreement that the number of arbitrators shall be two or any other even number shall be understood as requiring the appointment of an additional arbitrator as chairman of the tribunal.
- (3) If there is no agreement as to the number of arbitrators, the tribunal shall consist of a sole arbitrator.

#### **16 Procedure for appointment of arbitrators.**

- (1) The parties are free to agree on the procedure for appointing the arbitrator or arbitrators, including the procedure for appointing any chairman or umpire.
- (2) If or to the extent that there is no such agreement, the following provisions apply.
- (3) If the tribunal is to consist of a sole arbitrator, the parties shall jointly appoint the arbitrator not later than 28 days after service of a request in writing by either party to do so.
- (4) If the tribunal is to consist of two arbitrators, each party shall appoint one arbitrator not later than 14 days after service of a request in writing by either party to do so.
- (5) If the tribunal is to consist of three arbitrators—

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- (a) each party shall appoint one arbitrator not later than 14 days after service of a request in writing by either party to do so, and
  - (b) the two so appointed shall forthwith appoint a third arbitrator as the chairman of the tribunal.
- (6) If the tribunal is to consist of two arbitrators and an umpire—
- (a) each party shall appoint one arbitrator not later than 14 days after service of a request in writing by either party to do so, and
  - (b) the two so appointed may appoint an umpire at any time after they themselves are appointed and shall do so before any substantive hearing or forthwith if they cannot agree on a matter relating to the arbitration.
- (7) In any other case (in particular, if there are more than two parties) section 18 applies as in the case of a failure of the agreed appointment procedure.

## **17 Power in case of default to appoint sole arbitrator.**

- (1) Unless the parties otherwise agree, where each of two parties to an arbitration agreement is to appoint an arbitrator and one party (“the party in default”) refuses to do so, or fails to do so within the time specified, the other party, having duly appointed his arbitrator, may give notice in writing to the party in default that he proposes to appoint his arbitrator to act as sole arbitrator.
- (2) If the party in default does not within 7 clear days of that notice being given—
- (a) make the required appointment, and
  - (b) notify the other party that he has done so,
- the other party may appoint his arbitrator as sole arbitrator whose award shall be binding on both parties as if he had been so appointed by agreement.
- (3) Where a sole arbitrator has been appointed under subsection (2), the party in default may (upon notice to the appointing party) apply to the court which may set aside the appointment.
- (4) The leave of the court is required for any appeal from a decision of the court under this section.

## **18 Failure of appointment procedure.**

- (1) The parties are free to agree what is to happen in the event of a failure of the procedure for the appointment of the arbitral tribunal.

There is no failure if an appointment is duly made under section 17 (power in case of default to appoint sole arbitrator), unless that appointment is set aside.

- (2) If or to the extent that there is no such agreement any party to the arbitration agreement may (upon notice to the other parties) apply to the court to exercise its powers under this section.
- (3) Those powers are—
- (a) to give directions as to the making of any necessary appointments;
  - (b) to direct that the tribunal shall be constituted by such appointments (or any one or more of them) as have been made;
  - (c) to revoke any appointments already made;

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- (d) to make any necessary appointments itself.
- (4) An appointment made by the court under this section has effect as if made with the agreement of the parties.
- (5) The leave of the court is required for any appeal from a decision of the court under this section.

## **19 Court to have regard to agreed qualifications.**

In deciding whether to exercise, and in considering how to exercise, any of its powers under section 16 (procedure for appointment of arbitrators) or section 18 (failure of appointment procedure), the court shall have due regard to any agreement of the parties as to the qualifications required of the arbitrators.

## **20 Chairman.**

- (1) Where the parties have agreed that there is to be a chairman, they are free to agree what the functions of the chairman are to be in relation to the making of decisions, orders and awards.
- (2) If or to the extent that there is no such agreement, the following provisions apply.
- (3) Decisions, orders and awards shall be made by all or a majority of the arbitrators (including the chairman).
- (4) The view of the chairman shall prevail in relation to a decision, order or award in respect of which there is neither unanimity nor a majority under subsection (3).

## **21 Umpire.**

- (1) Where the parties have agreed that there is to be an umpire, they are free to agree what the functions of the umpire are to be, and in particular—
  - (a) whether he is to attend the proceedings, and
  - (b) when he is to replace the other arbitrators as the tribunal with power to make decisions, orders and awards.
- (2) If or to the extent that there is no such agreement, the following provisions apply.
- (3) The umpire shall attend the proceedings and be supplied with the same documents and other materials as are supplied to the other arbitrators.
- (4) Decisions, orders and awards shall be made by the other arbitrators unless and until they cannot agree on a matter relating to the arbitration.

In that event they shall forthwith give notice in writing to the parties and the umpire, whereupon the umpire shall replace them as the tribunal with power to make decisions, orders and awards as if he were sole arbitrator.

- (5) If the arbitrators cannot agree but fail to give notice of that fact, or if any of them fails to join in the giving of notice, any party to the arbitral proceedings may (upon notice to the other parties and to the tribunal) apply to the court which may order that the umpire shall replace the other arbitrators as the tribunal with power to make decisions, orders and awards as if he were sole arbitrator.

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- (6) The leave of the court is required for any appeal from a decision of the court under this section.

## **22 Decision-making where no chairman or umpire.**

- (1) Where the parties agree that there shall be two or more arbitrators with no chairman or umpire, the parties are free to agree how the tribunal is to make decisions, orders and awards.
- (2) If there is no such agreement, decisions, orders and awards shall be made by all or a majority of the arbitrators.

## **23 Revocation of arbitrator's authority.**

- (1) The parties are free to agree in what circumstances the authority of an arbitrator may be revoked.
- (2) If or to the extent that there is no such agreement the following provisions apply.
- (3) The authority of an arbitrator may not be revoked except—
- (a) by the parties acting jointly, or
  - (b) by an arbitral or other institution or person vested by the parties with powers in that regard.
- (4) Revocation of the authority of an arbitrator by the parties acting jointly must be agreed in writing unless the parties also agree (whether or not in writing) to terminate the arbitration agreement.
- (5) Nothing in this section affects the power of the court—
- (a) to revoke an appointment under section 18 (powers exercisable in case of failure of appointment procedure), or
  - (b) to remove an arbitrator on the grounds specified in section 24.

## **24 Power of court to remove arbitrator.**

- (1) A party to arbitral proceedings may (upon notice to the other parties, to the arbitrator concerned and to any other arbitrator) apply to the court to remove an arbitrator on any of the following grounds—
- (a) that circumstances exist that give rise to justifiable doubts as to his impartiality;
  - (b) that he does not possess the qualifications required by the arbitration agreement;
  - (c) that he is physically or mentally incapable of conducting the proceedings or there are justifiable doubts as to his capacity to do so;
  - (d) that he has refused or failed—
    - (i) properly to conduct the proceedings, or
    - (ii) to use all reasonable despatch in conducting the proceedings or making an award,
 and that substantial injustice has been or will be caused to the applicant.
- (2) If there is an arbitral or other institution or person vested by the parties with power to remove an arbitrator, the court shall not exercise its power of removal unless satisfied

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that the applicant has first exhausted any available recourse to that institution or person.

- (3) The arbitral tribunal may continue the arbitral proceedings and make an award while an application to the court under this section is pending.
- (4) Where the court removes an arbitrator, it may make such order as it thinks fit with respect to his entitlement (if any) to fees or expenses, or the repayment of any fees or expenses already paid.
- (5) The arbitrator concerned is entitled to appear and be heard by the court before it makes any order under this section.
- (6) The leave of the court is required for any appeal from a decision of the court under this section.

**Modifications etc. (not altering text)**

- C1** S. 24(1)(a)(c)(2)(3)(5)(6) applied (with modifications) (E.W.) (21.5.2001) by S.I. 2001/1185, arts. 2, 3, **Sch. para. 43(1)** (which amending S.I. was revoked (6.4.2004) by S.I. 2004/753, **art. 3** (subject to art. 8))
- C2** S. 24(1)(a)(c)(2)(3)(5)(6) applied (with modifications) (E.W.) (6.4.2003) by The ACAS (Flexible Working) Arbitration Scheme (England and Wales) Order 2003 (S.I. 2003/694), art. 2, **Sch. para. 43** (which amending S.I. was revoked (1.10.2004) by S.I. 2004/2333, art. 3 (subject to art. 6))
- C3** S. 24(1)(a)(c)(2)(3)(5)(6) applied (with modifications) (E.W.) (6.4.2004) by The ACAS Arbitration Scheme (Great Britain) Order 2004 (S.I. 2004/753), art. 1, **Sch. para. 52EW**
- C4** S. 24(1)(a)(c)(2)(3)(5)(6) applied (with modifications) (E.W.) (1.10.2004) by The ACAS (Flexible Working) Arbitration Scheme (Great Britain) Order 2004 (S.I. 2004/2333), art. 4, **Sch. para. 52EW** (with art. 6)
- C5** S. 24(1)(a)(c)(2)(3)(5)(6) applied (with modifications) (N.I.) (21.5.2006) by The Labour Relations Agency (Flexible Working) Arbitration Scheme Order (Northern Ireland) 2006 (S.R. 2006/206), arts. 2, 3, **Sch. para. 43**

**25 Resignation of arbitrator.**

- (1) The parties are free to agree with an arbitrator as to the consequences of his resignation as regards—
  - (a) his entitlement (if any) to fees or expenses, and
  - (b) any liability thereby incurred by him.
- (2) If or to the extent that there is no such agreement the following provisions apply.
- (3) An arbitrator who resigns his appointment may (upon notice to the parties) apply to the court—
  - (a) to grant him relief from any liability thereby incurred by him, and
  - (b) to make such order as it thinks fit with respect to his entitlement (if any) to fees or expenses or the repayment of any fees or expenses already paid.
- (4) If the court is satisfied that in all the circumstances it was reasonable for the arbitrator to resign, it may grant such relief as is mentioned in subsection (3)(a) on such terms as it thinks fit.
- (5) The leave of the court is required for any appeal from a decision of the court under this section.

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**26 Death of arbitrator or person appointing him.**

- (1) The authority of an arbitrator is personal and ceases on his death.
- (2) Unless otherwise agreed by the parties, the death of the person by whom an arbitrator was appointed does not revoke the arbitrator's authority.

**27 Filling of vacancy, &c.**

- (1) Where an arbitrator ceases to hold office, the parties are free to agree—
  - (a) whether and if so how the vacancy is to be filled,
  - (b) whether and if so to what extent the previous proceedings should stand, and
  - (c) what effect (if any) his ceasing to hold office has on any appointment made by him (alone or jointly).
- (2) If or to the extent that there is no such agreement, the following provisions apply.
- (3) The provisions of sections 16 (procedure for appointment of arbitrators) and 18 (failure of appointment procedure) apply in relation to the filling of the vacancy as in relation to an original appointment.
- (4) The tribunal (when reconstituted) shall determine whether and if so to what extent the previous proceedings should stand.

This does not affect any right of a party to challenge those proceedings on any ground which had arisen before the arbitrator ceased to hold office.
- (5) His ceasing to hold office does not affect any appointment by him (alone or jointly) of another arbitrator, in particular any appointment of a chairman or umpire.

**28 Joint and several liability of parties to arbitrators for fees and expenses.**

- (1) The parties are jointly and severally liable to pay to the arbitrators such reasonable fees and expenses (if any) as are appropriate in the circumstances.
- (2) Any party may apply to the court (upon notice to the other parties and to the arbitrators) which may order that the amount of the arbitrators' fees and expenses shall be considered and adjusted by such means and upon such terms as it may direct.
- (3) If the application is made after any amount has been paid to the arbitrators by way of fees or expenses, the court may order the repayment of such amount (if any) as is shown to be excessive, but shall not do so unless it is shown that it is reasonable in the circumstances to order repayment.
- (4) The above provisions have effect subject to any order of the court under section 24(4) or 25(3)(b) (order as to entitlement to fees or expenses in case of removal or resignation of arbitrator).
- (5) Nothing in this section affects any liability of a party to any other party to pay all or any of the costs of the arbitration (see sections 59 to 65) or any contractual right of an arbitrator to payment of his fees and expenses.
- (6) In this section references to arbitrators include an arbitrator who has ceased to act and an umpire who has not replaced the other arbitrators.

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## **29 Immunity of arbitrator.**

- (1) An arbitrator is not liable for anything done or omitted in the discharge or purported discharge of his functions as arbitrator unless the act or omission is shown to have been in bad faith.
- (2) Subsection (1) applies to an employee or agent of an arbitrator as it applies to the arbitrator himself.
- (3) This section does not affect any liability incurred by an arbitrator by reason of his resigning (but see section 25).

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