



Courts and Legal Services Act 1990

1990 CHAPTER 41

PART V

ARBITRATION

99 Arbitration by official referee

For section 11 of the Arbitration Act 1950 (reference to official referee) there shall be substituted—

“11 Power of official referee to take arbitrations

- (1) An official referee may, if in all the circumstances he thinks fit, accept appointment as sole arbitrator, or as umpire, by or by virtue of an arbitration agreement.
- (2) An official referee shall not accept appointment as arbitrator or umpire unless the Lord Chief Justice has informed him that, having regard to the state of official referees' business, he can be made available to do so.
- (3) The fees payable for the services of an official referee as arbitrator or umpire shall be taken in the High Court.
- (4) Schedule 3 to the Administration of Justice Act 1970 (which modifies this Act in relation to arbitration by judges, in particular by substituting the Court of Appeal for the High Court in provisions whereby arbitrators and umpires, their proceedings and awards are subject to control and review by the court) shall have effect in relation to official referees appointed as arbitrators or umpires as it has effect in relation to judge-arbitrators and judge-umpires (within the meaning of that Schedule).
- (5) Any jurisdiction which is exercisable by the High Court in relation to arbitrators and umpires otherwise than under this Act shall, in relation to an official referee appointed as arbitrator or umpire, be exercisable instead by the Court of Appeal.

- (6) In this section “official referee” means any person nominated under section 68(1)(a) of the Supreme Court Act 1981 to deal with official referees' business.
- (7) Rules of the Supreme Court may make provision for—
- (a) cases in which it is necessary to allocate references made under or by virtue of arbitration agreements to official referees;
 - (b) the transfer of references from one official referee to another.”

100 Specific powers of arbitrator exercisable by High Court

After section 43 of the Supreme Court Act 1981 there shall be inserted the following section—

“43A Specific powers of arbitrator exercisable by High Court

In any cause or matter proceeding in the High Court in connection with any contract incorporating an arbitration agreement which confers specific powers upon the arbitrator, the High Court may, if all parties to the agreement agree, exercise any such powers.”

101 Power of parties in certain cases to fill vacancy

- (1) In section 10 of the Arbitration Act 1950 (power of court in certain cases to appoint an arbitrator or umpire), the following shall be substituted for subsection (3)—

“(3) In any case where—

- (a) an arbitration agreement provides that the reference shall be to three arbitrators, one to be appointed by each party and the third to be appointed by the two appointed by the parties or in some other manner specified in the agreement; and
- (b) one of the parties (“the party in default”) refuses to appoint an arbitrator or does not do so within the time specified in the agreement or, if no time is specified, within a reasonable time,

the other party to the agreement, having appointed his arbitrator, may serve the party in default with a written notice to appoint an arbitrator.

- (3A) A notice under subsection (3) must indicate whether it is served for the purposes of subsection (3B) or for the purposes of subsection (3C).
- (3B) Where a notice is served for the purposes of this subsection, then unless a contrary intention is expressed in the agreement, if the required appointment is not made within seven clear days after the service of the notice—
- (a) the party who gave the notice may appoint his arbitrator to act as sole arbitrator in the reference; and
 - (b) his award shall be binding on both parties as if he had been appointed by consent.
- (3C) Where a notice is served for the purposes of this subsection, then, if the required appointment is not made within seven clear days after the service of the notice, the High Court or a judge thereof may, on the application of the party who gave the notice, appoint an arbitrator on behalf of the party in

default who shall have the like powers to act in the reference and make an award (and, if the case so requires, the like duty in relation to the appointment of a third arbitrator) as if he had been appointed in accordance with the terms of the agreement.

(3D) The High Court or a judge thereof may set aside any appointment made by virtue of subsection (3B).”

- (2) Section 10 of the Act of 1950 shall continue to apply in relation to any arbitration agreement entered into before the commencement of this section as if this section had not been enacted.
- (3) Subsection (2) does not apply if a contrary intention is expressed in the arbitration agreement, whether or not as the result of a variation made after the commencement of this section.

102 Want of prosecution

After section 13 of the Arbitration Act 1950 (time for making an award) there shall be inserted—

“13A Want of prosecution

- (1) Unless a contrary intention is expressed in the arbitration agreement, the arbitrator or umpire shall have power to make an award dismissing any claim in a dispute referred to him if it appears to him that the conditions mentioned in subsection (2) are satisfied.
- (2) The conditions are—
 - (a) that there has been inordinate and inexcusable delay on the part of the claimant in pursuing the claim; and
 - (b) that the delay—
 - (i) will give rise to a substantial risk that it is not possible to have a fair resolution of the issues in that claim; or
 - (ii) has caused, or is likely to cause or to have caused, serious prejudice to the respondent.
- (3) For the purpose of keeping the provision made by this section and the corresponding provision which applies in relation to proceedings in the High Court in step, the Secretary of State may by order made by statutory instrument amend subsection (2) above.
- (4) Before making any such order the Secretary of State shall consult the Lord Chancellor and such other persons as he considers appropriate.
- (5) No such order shall be made unless a draft of the order has been laid before, and approved by resolution of, each House of Parliament.”

103 Repeal of High Court’s power to order discovery etc

Section 12(6)(b) of the Arbitration Act 1950 (power of High Court to order discovery of documents and interrogatories) shall cease to have effect.