Arbitration (Scotland) Bill

Bill Number: SP Bill 19
Introduced on: 29 January 2009
Introduced by: Kenny MacAskill MSP (Executive Bill)
Passed: 18 November 2009
Royal Assent: 5 January 2010

Passage of the Bill
The Arbitration (Scotland) Bill was introduced on 29 January 2009 by Kenny MacAskill MSP. The Economy, Energy and Tourism Committee was lead committee on the Bill and took oral evidence on the Bill at Stage 1 on 20 and 27 May and 3 June 2009. The Committee published its Stage 1 Report on 18 June 2009 and the Stage 1 debate took place on 25 June 2009.

Stage 2 consideration of amendments was completed by the Economy, Energy and Tourism Committee on 7 October 2009. Sixty government amendments were lodged at Stage 2 (there were no non-executive amendments). All amendments were agreed to (without division).

Stage 3 consideration of amendments and debate took place on 18 November 2009. Thirty government amendments were lodged at Stage 3 (there were no non-executive amendments). All amendments were agreed to (again, without division).

The Bill, as amended, was passed unanimously by Parliament.

Purpose and objectives of the Bill
The primary objectives of the Bill are that it clarifies and consolidates Scottish arbitration law (filling in gaps where they exist); provides a statutory framework for arbitrations which will operate in the absence of agreement to the contrary; ensures fairness and impartiality in the arbitration process; and minimises expense and ensures that the arbitration process is efficient.
Provisions of the Bill

A broad outline of the contents of the Bill is as follows:

- provisions about the extent of the Bill and to which arbitration agreements it will apply
- when the optional and mandatory rules in the Bill will apply
- suspension of court proceedings pending arbitration
- enforcement of arbitral awards
- provision to apply and adapt specific statutory arbitration procedures to reflect the Bill
- provision on the recognition and enforcement of New York Convention foreign arbitral awards
- provision on prescription and limitation and other miscellaneous provisions
- detailed rules to regulate arbitration (mostly optional, some compulsory), including:
  - commencement, appointment and challenge procedures
  - conduct of proceedings and the powers and duties of the arbitrator
  - duties of the parties
  - arbitral awards
  - intervention and control by the court
  - expenses
  - miscellaneous

Parliamentary consideration

In its Stage 1 Report, the Committee, with some caveats, indicated its support for the general principles of the Bill and recommended to the Parliament that they be approved. However, the Committee agreed (by majority) that the Bill, as it stood, was not yet fit for purpose and suggested that further amendments would be needed if it is to achieve its objectives. The Committee also reminded the Minister of his commitment to meet with relevant bodies to ensure consensus on how to amend the Bill at Stage 2 and called on the Minister to consult with consumer groups and trade bodies. The Committee made a number of specific recommendations and these can be accessed in its Stage 1 Report.

Amendments at Stage 2 were lodged and agreed to in relation to: anonymity in legal proceedings; tribunal decisions: absence of unanimity or majority; awards and interest; appeals; eligibility to act as arbitrator; UNCITRAL Model Law; arbitral appointments referee; power to amend Act: UNCITRAL arbitration rules; commencement arrangements. All other amendments were minor, technical or consequential.

Stage 3 amendments were lodged and agreed to in relation to provisional awards, court procedures, anonymity orders, rights to appeal and challenging awards.