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## The Arbitration Act 2025: Refinement Not Revolution

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On 24 February 2025, the Arbitration Act 2025 (the 2025 Act) received Royal Assent. The exact date on which it will come into force is yet to be confirmed, though the U.K. government has stated that it will seek to do so as soon as possible. The 2025 Act refines rather than overhauls the existing legislative framework that applies to arbitration in England and Wales.

### Background

The Arbitration Act 1996 (the 1996 Act) provides the structure governing arbitration in England and Wales. Between 2021 and 2023, the Law Commission of England and Wales conducted, at the request of the U.K. government, a review of the 1996 Act to identify whether it should be amended to ensure it remains fit for purpose and that England and Wales remains a leading destination for commercial arbitration.

In September 2023, the Law Commission published a report with its proposed reforms. In November 2023, the Arbitration Bill was introduced into the U.K. Parliament. However, the Bill was delayed due to the general election. In July 2024, the Bill was reintroduced into Parliament.

### Key Reforms

The most notable amendments introduced by the 2025 Act are as follows:

1. **The governing law of arbitration agreements:** In the absence of express agreement, the arbitration agreement by default will be governed by the law of the seat of the arbitration. This reverses the Supreme Court's decision in *Enka v Chubb* [2020] UKSC 38. Depending on the parties' chosen seat, the governing law of the arbitration agreement may well be different to the governing law of the contract.

The 2025 Act provides for an exception to this default rule for arbitrations under investment treaties and for standing offers to arbitrate disputes contained in legislation of countries outside the U.K.

2. **Limits on jurisdictional challenges:** The 2025 Act confers power for rules of court to impose restrictions on the circumstances in which parties can challenge an arbitral award under Section 67 of the 1996 Act on the basis that the tribunal did not have jurisdiction.

In particular, rules of court may provide that where the tribunal has already made a ruling on a party's objection to its substantive jurisdiction, unless it is necessary in the interests of justice: (i) the challenging party cannot raise a ground for objection or rely on evidence that had not previously been raised before the tribunal if, when it participated in the arbitration, the party could not have done so with reasonable diligence; and (ii) the court cannot re-hear the same evidence

that was heard by the tribunal. The new regime aims to avoid unnecessary costs and delays by dispensing with a full rehearing of the jurisdictional issues.

3. **Duty to disclose arbitrator conflicts:** The 2025 Act introduces a statutory duty for arbitrators (including prospective arbitrators approached by a party to the arbitration) to disclose any circumstances which might reasonably give rise to justifiable doubts as to their impartiality as soon as reasonably practicable.

This is a codification of the existing common law duty recognised in *Halliburton v Chubb* [2018] UKSC 48, with the aim of fostering confidence in the arbitral process by increasing transparency and integrity.

4. **Power of summary dismissal:** Unless the parties have otherwise agreed, the tribunal will have the power, only upon application by a party and after affording the parties a reasonable opportunity to make representations, to make an award in relation to a claim or a decision on a particular issue on a summary basis in circumstances where a party has “no real prospect of succeeding”.

The introduction of this power (i) brings the 1996 Act in line with the arbitration rules of certain prominent arbitral institutions, including the LCIA, and (ii) aims to expedite proceedings on claims or issues with no real merit, thereby improving efficiency and reducing costs and delays.

5. **Emergency arbitrators:** The 2025 Act grants emergency arbitrators the ability to make peremptory orders (with a prescribed time period for compliance) in the event that a party fails to comply with any order or directions of the emergency arbitrator, unless otherwise agreed by the parties. The peremptory orders of emergency arbitrators are enforceable by the English court.
6. **Court-granted interim relief can bind third parties:** The 2025 Act clarifies that the English court’s powers under section 44 to issue orders in support of arbitral proceedings can bind third parties. This significantly strengthens the ability of parties to seek interim injunctions and similar remedies from the English courts to preserve the status quo pending resolution of the dispute through arbitration.
7. **Arbitrator immunity:** The 2025 Act confirms that arbitrators will not be liable for (i) their resignation, unless the resignation was unreasonable in all the circumstances, or (ii) the costs of a party’s application to court for their removal, provided that the arbitrator has not acted in bad faith.

This is an extension of the general immunity of arbitrators from liability for anything done or omitted in the discharge or purported discharge of their functions as an arbitrator. The objective of this change is to support arbitrators to act impartially and to make decisions without fear of undue challenges, for example where an aggrieved party is dissatisfied with an arbitrator’s decision.

## What Happens Next?

The key provisions of the 2025 Act will come into force on a date to be determined by the Secretary of State.

When in force, these targeted reforms are expected to:

- Further modernise the framework for arbitration in England and Wales;
- Clarify certain ambiguities;
- Provide tribunals and users of arbitration with increased efficiency and opportunities to reduce costs;
- Bolster the integrity of the arbitral process; and
- Cement the position of London as a leading forum for international arbitration.

Subject to any transitional or saving provision, the amendments introduced by the 2025 Act do not apply to (i) arbitrations commenced before the effective date or (ii) court proceedings in connection with arbitrations commenced or an award made prior to the effective date, irrespective of when those court proceedings were initiated. Those proceedings will continue in accordance with the unamended 1996 ct. However, in the absence of any transitional or saving provision, the amendments will apply to arbitration agreements irrespective of when those agreements were made.

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