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Beyond London: The Global Reach Of The English Arbitration Act 2025

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Commentary

Beyond London: The Global Reach Of The English Arbitration Act 2025

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[Editor's Note: Fiona Cain is Counsel in the Dispute Resolution team in the London office of Haynes and Boone LLP and co-author of the firm's Arbitration Rules Comparison Tool. Any commentary or opinions do not reflect the opinions of Haynes and Boone LLP or LexisNexis®, Mealey Publications™. Copyright © 2025 by Fiona Cain. Responses are welcome.]

England and Wales has long been recognised as a leading jurisdiction for international arbitration, with London consistently ranked as one of the world's foremost arbitral seats. The Arbitration Act 2025 (the 2025 Act), which came into force in August this year, introduces the first significant reforms to the country's arbitration framework since the Arbitration Act 1996 (the 1996 Act). This article examines the principal changes introduced by the 2025 Act, their implications for parties choosing London as an arbitral seat and the likely global impact of these reforms.

London Seated Arbitration

The 1996 Act has governed arbitration in England and Wales for nearly three decades. It has underpinned the UK's reputation as a jurisdiction with a modern and arbitration friendly legal framework. Many arbitrations take place in England and Wales every year with The Law Commission of England and Wales estimating in its 2022 consultation paper on the 1996 Act that there are “at least 5000 domestic and international arbitrations in England and Wales every year, potentially worth at least £2.5 billion to the economy”.

In terms of its international reach, London is usually considered the most preferred seat of arbitration glob-

ally. It topped the list of preferred seats for arbitration in the 2025 Queen Mary University of London International Arbitration Survey, and a similar picture is recorded by leading arbitral institutions. During 2024, the International Chamber of Commerce (the ICC) and the London Court of International Arbitration (the LCIA) both recorded that London was the most frequently selected city as a place of arbitration.

The 2025 Act

On 1 August 2025, the new 2025 Act entered into full force in England and Wales and Northern Ireland. The reforms introduced by the 2025 Act are designed to update but not overhaul the 1996 Act and to ensure that the UK continues to be one of the world's premier seats of arbitration. The amended Act will apply to all arbitrations commenced after that date.

The key changes introduced by the 2025 Act which are discussed in this article relate to:

1. The law applicable to arbitration agreements;
2. Emergency arbitrators;
3. Summary disposal of claims and defences;
4. Arbitrator's duty of disclosure; and
5. Challenging the arbitrator's jurisdiction.

In addition, the 2025 Act introduces changes concerning immunity of an arbitrator for costs on their removal and resignation; the jurisdiction of the tribunal; court orders and their application to third parties; the arbitrator's power to award costs; and time limits for appeals or challenges to an award. The 1996 Act contained over 100 sections and 4 schedules, whereas

the 2025 Act only runs to 18 sections – an indication of the limited but targeted nature of the reforms.

The Law Applicable To Arbitration Agreements

Under the 1996 Act, the law governing an arbitration agreement was not expressly addressed. Instead, the law in England and Wales had developed pursuant to case law and was most recently addressed by the Supreme Court in *Enka Insaat Ve Sanayi A.S. v OOO Insurance Company Chubb* [2020] UKSC 38. In that case, the court set out a three-stage test which, in essence, provided that if there was no express or implied choice of law by the parties, the law governing the agreement would be that which is “*most closely connected*” with the arbitration agreement. The application of this test to individual cases was not straightforward and led to disputes over jurisdiction.

As a result, the 1996 Act has been amended by the 2025 Act with the introduction of section 6A. This states that, unless parties have expressly agreed to the contrary, the law governing an arbitration agreement will be the law of the seat of the arbitration. This will be the case regardless of the nationality of the parties to the arbitration agreement and the law that they have chosen to govern the contract unless it concerns an investment treaty arbitration.

Best practice is for parties to expressly agree the arbitral seat and the law governing the arbitration agreement in addition to agreeing the law which governs the contract itself. Where parties fail to do so, the popularity of London as an arbitral seat in international contracts is likely to cause an increase in the number of arbitration agreements governed by the laws of England and Wales as a result of this new provision.

Emergency Arbitrators

In recent years, new arbitral rules, including the ICC Rules 2021 and the LCIA Rules 2020, have made provision for the appointment of emergency arbitrators. As a relatively new concept, the possibility of appointing arbitrators to act promptly pending the appointment of the main arbitral tribunal was not addressed in the 1996 Act. Section 41A of the 1996 Act (as amended) now supports the powers of emergency arbitrators and provides that, where parties have agreed to arbitral rules allowing for the appointment of an emergency arbitrator and one has been appointed, if

a party fails to comply with the emergency arbitrator’s order or directions without showing sufficient cause, the emergency arbitrator has the authority to make a peremptory order (i.e. an order providing for a final deadline for compliance with a specific consequence for non-compliance) to the same effect.

In addition, while the Act already provides that the English courts can make an order requiring a party to comply with any peremptory order made by a tribunal, this now extends to orders made by emergency arbitrators.

Summary Disposal Of Claims And Defences

As with emergency arbitrators, the 1996 Act made no reference to an arbitral tribunal’s power to make an award on a summary basis. It was considered that while summary disposal was not prohibited in London seated arbitrations, the lack of reference to it in the Act meant that it was unclear whether English law supported those arbitral rules which contained such procedures. The 2025 Act has now clarified this by introducing at section 39A an explicit power for tribunals to make an award on a summary basis for arbitrations seated in England. Parties may however agree to exclude this power.

As such, unless excluded, section 39A empowers parties to ask for an expedited determination of a claim or defence or a particular issue arising therefrom so the tribunal can determine whether the claim or issue has no real prospect of success and, if so, make an award on a summary basis. This is the same threshold that is applied to summary judgment applications in the English courts. To apply, the tribunal is required to give both parties a “*reasonable opportunity to make representations to the tribunal*”.

Parties throughout the world who choose to seat their arbitrations in London will benefit from this clarity as well as the opportunity to resolve disputes more quickly.

Arbitrator’s Duty Of Disclosure

Prior to the 2025 Act, an arbitrator was required to disclose their connections to demonstrate their impartiality, but the scope of that duty was unclear and had led to a growing number of decisions before the English Courts attempting to define this duty. This included the UK Supreme Court in *Halliburton Co. v*

Chubb Bermuda Insurance Ltd (formerly Ace Bermuda Insurance Ltd) [2020] UKSC 48 determining that an arbitrator has a duty to disclose repeat appointments “in the absence of an agreement to the contrary between the parties to whom disclosure would otherwise be made”.

A new section 23A has been introduced to codify this duty and ensure that English arbitration remains at least comparable to its competitors in terms of an arbitrator’s impartiality. The new section requires arbitrators and any individual who is approached to be appointed as an arbitrator, as soon as reasonably practicable, to disclose “circumstances that might reasonably give rise to justifiable doubts” about their impartiality. The scope of this mandatory duty also covers situations where an arbitrator “ought reasonably to be aware” of any circumstances impacting their impartiality. It applies to arbitrators appointed or nominated by the parties and also to those arbitrators who are appointed or nominated by their co-arbitrators. In certain instances, it may be necessary for an arbitrator to provide repeat disclosures.

Challenging The Tribunal’s Substantive Jurisdiction

The 2025 Act has also amended the procedure for challenging an arbitrator’s jurisdiction. As a result

of the amendments to section 67 of the 1996 Act, a party participating in arbitral proceedings is no longer permitted to introduce any new grounds of challenge or evidence before a court once an arbitral tribunal has ruled on the jurisdictional challenge, unless a party was not aware or could not have been aware of the ground by undertaking reasonable due diligence.

The 2025 Act has also confirmed that the court cannot rehear evidence as part of the challenge unless a court decides it is in the interests of justice to do so. This amendment seeks to remove what was considered by some to be a “second bite at the cherry” when it came to jurisdictional challenges.

The Global Impact Of The 2025 Act

Building on the strong foundations of the 1996 Act, the amendments introduced by the 2025 Act are intended to ensure that London remains the preferred seat for international arbitration. Any award made in London can, by virtue of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958 (known as the New York Convention), be directly enforced in 172 countries worldwide, confirming its global reach. ■

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