

ARBITRATION BILL: FACTSHEET

What are we going to do?

- The Arbitration Bill will modernise the law on arbitration in England, Wales, and Northern Ireland by updating the Arbitration Act 1996.
- The Bill will clarify the law governing arbitration agreements, strengthen the courts' supporting powers, and facilitate quicker dispute resolution.

How are we going to do it?

The Arbitration Bill updates the current arbitral framework set out in the Arbitration Act 1996 by:

- Conferring a power on arbitrators to dispose summarily of issues that have no real prospect of success, on an application by any of the parties to a dispute. This will make arbitrations more efficient and aligns with summary judgments available in court proceedings;
- Introducing a statutory duty on arbitrators to disclose any circumstances which might give rise to justifiable doubts about their impartiality. This will codify the common law and align English law with international best practice to promote trust in arbitration;
- Extending arbitrator immunity against liability for resignations, unless shown to be unreasonable, and the costs of the application to court for their removal, unless they have acted in bad faith. This will support arbitrators to make robust and impartial decisions without fear of being sued by a disappointed party;
- Providing that the law governing an arbitration agreement will be the law of the seat chosen for arbitration unless parties expressly agree otherwise. This will ensure that, where arbitration is located in England and Wales or Northern Ireland, it will be fully supported by our arbitration law which is among the most supportive of arbitration globally;
- Simplifying the procedure for challenging arbitral awards on substantive jurisdiction under section 67 of the Arbitration Act 1996 by providing for rules of court that would mean these applications should contain no new evidence or new arguments. This will avoid challenges based on jurisdiction becoming a full rehearing, reducing the delay and costs involved in court hearings repeating what has already been argued before the tribunal;
- Providing emergency arbitrators with the power to issue peremptory orders and apply to the court to order compliance with them, or otherwise apply directly to the court to issue its own order. This will give emergency arbitrators the same pathways to enforce their orders as other arbitrators and enhance their effectiveness;
- Providing that the court can make orders in support of arbitral proceedings against third parties. This will resolve conflicting decisions in the case law and aligns with the approach in court proceedings.

Background

- In England and Wales, and Northern Ireland, arbitration is regulated by the Arbitration Act 1996. The Arbitration Act 1996 is now over 25 years old. There is a risk that other jurisdictions might be seen as offering a more modern arbitral framework, resulting in a loss of business for the UK.
- In March 2021, the Ministry of Justice asked the Law Commission of England and Wales to conduct a review of the Arbitration Act 1996 to determine whether any amendments to the Act were needed to ensure that it remains fit for purpose.
- The Law Commission conducted two public consultations in 2022-23, and published its final report in September 2023 containing its conclusions and recommendations for reform.
- The Arbitration Bill implements all the Law Commission's recommendations for reform of the Arbitration Act 1996.

How much will these measures cost?

The impact assessments published alongside the Bill indicates that the Bill entails no direct costs. There could be costs to businesses if points of law under the new arbitral regime are litigated, but these are not expected to exceed £500k over the entire decade.

What is the scope of these measures

The provisions in this Bill apply to England and Wales, and to Northern Ireland.

Key facts

England and Wales is among the world's foremost jurisdictions for arbitration. Industry estimates suggest international arbitration has grown by about 26 per cent between 2016 and 2020, with London as the world's most popular seat of arbitration.

England, Wales, and Northern Ireland's arbitration sector is world-leading in its facilitation of domestic and international legal disputes. The Law Commission of England and Wales estimate there are at least 5,000 domestic and international arbitrations each year in England and Wales, worth £2.5 billion to the economy in fees alone.

It is vital to ensure our arbitration framework is up to date, to be able to respond to competition from abroad and maintain our competitive edge. Competing jurisdictions have updated their legislation more recently: Singapore in 2023, Hong Kong in 2022, and Sweden and Dubai in 2018. In 2021, Singapore ranked equal first to London as preferred choice of seat for the first time according to research from Queen Mary University.