MC MS Blog

A sensible Act to follow: The practical implications of the Arbitration Act 2025 for UK construction arbitrations

MARCH 04, 2025

Many of you will have seen last week's long-awaited and significant news in the world of arbitration. No, not me fundraising for next month's Cycle to PAW, but the most substantial update to the arbitration framework in England, Wales and Northern Ireland in nearly thirty years (the Scots will rightly point out that they had their own substantial update in 2010!).

On 24th February, the Arbitration Act 2025 (the 2025 Act) received Royal Assent, and it introduces fifteen "targeted reforms" of the Arbitration Act 1996 (the 1996 Act). The 2025 Act will now apply to any arbitration (or arbitration-related court proceedings) commenced on or after the date on which the substantive parts of the 2025 Act come into force (to be confirmed in due course).

Before talking about the reforms, a little on the 1996 Act. At the beginning of my arbitration training with the Chartered Institute of Arbitrators, we were each given a spiral bound copy of the 1996 Act by our tutor, the late Donald Valentine. I still have my copy within arms length of my desk, dutifully marked-up with highlights of the mandatory and non-mandatory sections (now rather faded!), and, in my view, it was, and still is, one of the most well written pieces of legislation that I've had cause to read. I have conducted quite a few arbitrations where there have been no institutional rules, and the process has not been lacking due to the absence of rules; this is because almost everything an arbitrator needs is contained in the 1996 Act.

However, given changes in practice since 1996 and the importance of the circa £2.5 billion that London's international arbitration business is estimated to contribute annually to the UK economy, it is unsurprising that the UK Government decided to review the arbitration provisions. The Government hopes that the 2025 Act will "*turbocharge the UK's position as the world-leader in arbitration*" and make England and Wales the *"...global destination of choice for the legal sector..."*.

Readers will have no doubt seen much written about the reforms already, a lot of which has concentrated on the larger international arbitrations that are seated in London. However, what about the implications for domestic construction arbitrations, i.e. those where the parties and the project are based in the UK? Given the popularity of adjudication and the resounding improvements to the TCC over the past 25 years, the number of domestic construction disputes now referred to arbitration is far less than in the 1990s. In my experience, these days arbitration is often only selected in a standard form of construction contract where an architect or surveyor (rather than a solicitor) is completing the contract, and, having spotted the name of their esteemed professional institution as an arbitral appointing body, has decided to select arbitration in place of litigation. I also sometimes see arbitration agreements being a feature of bespoke subcontracts, which is often because these

subcontracts were originally drafted in the 1990s or earlier. Consequently, many of the domestic disputes which end up at arbitration don't involve major projects, and the sums in dispute are much lower than we see in international arbitrations.

So how will the 2025 Act impact these lower value domestic disputes, if at all, and could the Act be a catalyst for the inclusion of arbitration, rather than TCC litigation, in more UK major contracts? Here are my thoughts …

1. Increased speed and efficiency

(i) Summary dismissal – Arbitral tribunals seated in England, Wales or Northern Ireland will now have the express authority to summarily dismiss claims, defences or issues with "*no real prospect of success*". As many of you will recognise, this sits nicely alongside the threshold used for summary judgment in the English courts. This change aims to improve efficiency and reduce costs by allowing tribunals to swiftly dispose of unsubstantiated claims and addresses some of the issues that parties have with the arbitration process. For smaller domestic arbitrations, particularly with more straightforward issues at play, this means that parties can potentially save time and costs, as trivial claims can be swiftly dismissed without going through lengthy hearings or long-winded procedural steps. SMEs or individuals with limited resources should benefit from quicker action, especially when facing malicious claims.

(ii) Emergency arbitrators for interim relief – One of the Government's hopes is that the new reforms will strengthen the "*courts' powers to support emergency arbitration so time-sensitive decisions can be made more easily*". Thanks to the 2025 Act, emergency arbitrators now possess the same powers as full tribunals, and are empowered to issue peremptory orders during arbitration, providing a faster route for interim measures. Time will tell as to the extent to which parties to UK domestic arbitrations will make use of the emergency arbitration provisions, and it is important to note that this will only be available where any applicable rules make provision for an emergency arbitrator, for example as the LCIA Rules do. If the Construction Industry Model Arbitration Rules (CIMAR), which currently apply to arbitrations under JCT standard forms, adopt such provisions, then we may see use of emergency arbitrators increase to provide timely and effective interim relief in urgent situations, such as a need to freeze assets or injunct specific actions before final resolution. However, this also depends on appointing bodies such as RICS and CIArb adopting procedures which will enable the swift appointment of emergency arbitrators.

2. Restricting jurisdictional challenges

The reforms include important changes to how jurisdictional challenges are handled. The Act modifies the process for challenging an arbitrator's jurisdiction in court, removing the right to apply to the court under section 32 to determine substantive jurisdiction if the arbitrator has already ruled on the matter. Amendments to section 67 also limit the parties to the grounds and evidence presented during the arbitration unless new information arises that could not have been previously discovered, and prevents evidence that was heard by the tribunal from being re-heard by the court. These changes support the concept of *kompetenz-kompetenz* in arbitration (i.e. the power of the arbitrator to determine their own jurisdiction), and aim to prevent unjustified challenges to awards. This should be particularly helpful in domestic proceedings when the section 67 challenges can be abused in an attempt to simply delay the proceedings and/or delay compliance with an award.

3. Improved arbitrator impartiality and transparency

(i) Duty of disclosure: Importantly, the 2025 Act codifies the test in Halliburton Company v Chubb Bermuda Insurance Ltd [2020] UKSC 48 (27 November 2020) (**refer to my blog on the Supreme Court decision and it's impact on adjudication**) setting out a stricter duty for arbitrators to disclose potential conflicts of interest, both before and during the arbitration. Whilst most arbitrators

are used to disclosing such matters, and indeed already have an obligation to disclose every matter they consider could potentially lead a fair minded and informed observer to conclude that there was a real possibility that they are biased, the codification of *Halliburton v Chubb* can only be a good thing. In practice, it should improve transparency and build trust in the arbitration process as all of the participants, and especially the arbitrator, will appreciate the implications of failing to comply with their statutory obligations of disclosure. However, whether this leads to increased use of arbitration in UK construction contracts is another matter because my perception is that concern over conflicts is not a significant factor in parties and their solicitors choosing litigation over arbitration.

(ii) Arbitrator immunity: The Act extends protections for arbitrators, shielding them from liability related to their resignation or removal, provided their actions are not in bad faith. The expansion of arbitrator immunity for all but the most severe cases is undoubtedly a good thing, and will allow arbitrators to continue to practice without fear of costs being awarded against them. Whether this results in any changes for UK domestic arbitrations remains a mute point though, as my perception is that there is already a wide pool of very capable willing and able arbitrators.

4. Clarity on time limits

Whenever I complete an arbitration award, I always highlight to the parties that any application to correct my award under section 67 of the 1996 Act, or application to appeal under section 70, must be made within 28 days of the date of my Award, and not the date my award is issued to the parties. I'm now going to have to amend that advice because there are some important changes to the time periods for appeal under section 70. For example, where there has been a correction or an additional award under section 57, the 28-day period for appeals will now run from the date that the corrected award is issued, which is clearly a sensible change. Parties to domestic arbitrations may therefore have longer to decide whether to appeal an award to the court.

5. Other changes

The 2025 Act introduces other changes, including concerning the governing law of arbitration agreements (following the *Enka v Chubb* case) and third-party involvement in arbitration proceedings, but I consider it unlikely that these will have a significant impact on domestic construction arbitrations.

In summary

The new reforms are therefore not ground-breaking, but as I said at the beginning of this blog, the 1996 Act is very well written and easy to use, and I agree with the approach of tweaking it, rather than wholesale changes.

By introducing mechanisms like summary disposal and emergency arbitrators, and reducing the likelihood of unjustified jurisdictional challenges, the 2025 Act arguably reduces barriers for UK parties which might otherwise consider TCC litigation. This, combined with the flexibility in the 1996 Act which is retained, should allow parties and arbitrators to tailor arbitration procedures to their needs, and this should be particularly helpful for parties to domestic construction arbitrations. However, it doesn't necessarily follow that we'll see an increase in the inclusion of arbitration in major UK contraction contracts as there is stiff competition from the TCC, and perhaps the 2025 Act will simply help ensure London keeps its seat at the table of the world-leading arbitration centres.

Speaking of seats, it's time I got back on the saddle for another training ride in this glorious sunshine…..

JONATHAN COPE