Reforming Arbitration in England: An Overview of the Arbitration Act 2025

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This article explores the Arbitration Act 2025, which modernises the Arbitration Act 1996 and strengthens England and Wales' position as a global arbitration hub. Key reforms include introducing a statutory duty for arbitrators to disclose potential conflicts of interest, clarifying the law governing arbitration agreements, enabling summary dismissal of unmeritorious claims, supporting emergency arbitration and interim measures, and revising how courts review jurisdictional challenges. While the Act aligns English arbitration law more closely with international standards, it leaves gaps—particularly around digitalisation and defining judicial discretion—highlighting areas for future reform.

INTRODUCTION

The long-awaited Arbitration Act 2025[1] received Royal Assent in February 2025 and has now introduced significant changes to the law of international commercial arbitration in England and Wales by updating and amending the Arbitration Act 1996.[2] The Act sought to build on the Law Commission's recommendations in this area and to modernise the law of arbitration and to maintain London's standing as a pre-eminent seat of arbitration globally. This article explores the Arbitration Act 2025, identifying the key reforms it has introduced, and contextualising these within the wider framework of global international arbitral culture and practice.

I. RATIONALE FOR REFORM

The English Arbitration Act 1996 has long been regarded internationally as a strong and clear arbitral law, which provided clarity and confidence to parties around the world to select the UK as a seat of arbitration.[3] Despite this, international commercial arbitration has developed globally over time. The Law Commission in its review of the Arbitration Act 1996, identified that English law required updating to ensure it could keep pace with developments in arbitral procedure and practices elsewhere.[4] The Arbitration Act 2025, based on the Law Commission's recommendations, has sought to modernise the law by addressing these issues.

II. KEY LEGISLATIVE REFORMS

2.1. STATUTORY DUTY OF DISCLOSURE BY ARBITRATORS

One of the shortcomings of the Arbitration Act 1996 was that it failed to provide for a clear duty of disclosure upon arbitrators to disclose circumstances which might cast doubt on their impartiality. Whilst the 1996 Act did impose a duty of impartiality upon arbitrators (requiring the arbitrator to act "fairly and impartially between the parties")[5] it did not expressly demand independence of the arbitrator, nor did it clearly

[1] Arbitration Act 2025.
[2] Arbitration Act 1996.
[3] Neil Newing and others, 'Modernising England's Arbitration Laws' (2025) 122 Law Society Gazette (11) 25, 25.
[4] Law Commission, 'Review of the Arbitration Act 1996: Final Report and Bill' (2023) Law Com No 413, HMSO.
[5] s33(1)(a) Arbitration Act 1996.

define when an arbitrator was obliged to disclose circumstances which might call their impartiality into doubt.[6] This is in contrast to the position of other leading arbitration jurisdiction's governing law on arbitration.[7] The UNCITRAL Model Arbitration Law emphasises for example that the arbitrator is under a positive duty to disclose "any circumstances likely to give rise to justifiable doubts as to his impartiality or independence".[8]

The failure of the Arbitration Act 1996 to impose such an express duty of disclosure on arbitrators caused unnecessary uncertainty and litigation in the UK. International norms such as those set out in the International Bar Association (IBA)'s Guidelines on Conflicts of Interest in International Arbitration were not accepted by the English courts as being part of English law historically.[9] It was only with the Supreme Court's decision in *Halliburton v Chubb Bermuda Insurance Co Ltd* that it was acknowledged that there was an implied duty of disclosure on arbitrators in English law to disclose circumstances which a fair-minded informed observer would conclude there was a real possibility of bias arising from.[10] Even this however meant that there could be doubt on a case-by-case basis as to just when such circumstances arose.[11]

The Arbitration Act 2025 has sought to address this.[12] Section 2(1) Arbitration Act 2025 amends the 1996 Act by inserting a new s23A which requires any person approached by another in connection with possibly being an arbitrator to "as soon as reasonably practicable, disclose to the person any circumstances of which the individual is, or becomes aware"[13] and the same is true to the parties to an arbitration when the arbitrator is already appointed under s2(2) Arbitration Act 2025.[14] Relevant circumstances meanwhile are circumstances which might "reasonably give rise to justifiable doubts as to the individual's impartiality".[15] The wording is that used by Article 12(1) of the UNCITRAL Model Law, and thus, UK arbitral law is finally brought into alignment and concordance with global international commercial arbitral norms. This clarifies the law and reinforces London's global appeal as a seat of arbitration.

2.2. GOVERNING LAW OF THE ARBITRATION AGREEMENT

Another weakness with English arbitral law as set out in the Arbitration Act 1996 was that determining the law applicable to an arbitration agreement where no express choice could be evidenced by the parties was a point of some uncertainty. The position was thrown into difficulty following the decision in *Enka Insaat Ve Sanayi AS v OOO Insurance Company Chubb* in which the Supreme Court held that in the absence of express choice, the law governing the arbitration would be that of the contract between the parties, not the seat of arbitration itself.[16]

[6] Ronan Feehily, 'Neutrality, Independence and Impartiality in International Commercial Arbitration: A Fine Balance in the Quest for Arbitral Justice' (2019) 7 Journal of Law & International Affairs 88, 89.

[7] Sumaiya Firoz Nomani, 'Neutrality vs Impartiality: Decoding the Core Principles of Arbitration' (2025) 28 International Arbitration Law Review 131, 132.

[8] Article 12(1) UNCITRAL Model Law on International Commercial Arbitration 1985 with amendments as adopted in 2006.

[9] *W Ltd v M SDN BHD* [2016] EWHC 422 (Comm); *Norbrook Laboratories Ltd v Tank* [2006] EWHC 1055 (TCC).

[10] [2020] UKSC 48.

[11] Nasser Meshin MA Al-Abda, 'Unveiling Arbitrator Disclosures and Bias in International Commercial Arbitration' (2025) 2 International Arbitration Law Review 95, 97.

[12] Dogan Gultutan, 'Appear as you are or be as you appear?' Sound Advice to Arbitrators Considering Independence and Impartiality Disclosures? A Comparative Analysis Advocating for Uniformity and Addressing Participant's Legitimate Expectations' (2024) 30 International Trade Law & Regulation 133, 134.

[13] s2(1) Arbitration Act 2025.

[14] ibid s2(2).

[15] ibid.

[16] [2020] UKSC 38.

This differed from the norms of international commercial arbitration more generally;[17] the Swiss Private International Law Act (PILA) provides that the law of the seat will be used in the absence of express choice.[18] The French Cour de Cassation has confirmed the same is true in France, creating dissonance with English law under *Enka Insaat*.[19] Section 1(2) of the Arbitration Act 2025 now redresses this, by making it clear that the seat of arbitration will provide the law governing the arbitration in the event that no express choice is made by the parties as applying to their arbitration agreement.[20] Once again, this materially improves the coherency of English arbitral law, and helps align it globally with internationally accepted norms.

2.3. SUMMARY DISMISSAL OF UNMERITORIOUS CLAIMS

As was noted in the introduction, the Arbitration Act 2025 also provides for a number of reforms to the procedural law around arbitration.[21] One of these is the new introduction of a new power provided for the tribunal to summarily dismiss claims or defences which have "no real prospect of success" under s7 Arbitration Act 2025.[22] Previously, parties would have had to rely on institutional rules to provide for such a power, or to expressly agree it as being part of the arbitrator's scope of powers in *ad-hoc* arbitration. The failure to agree to such a provision could always create a risk that arbitration was initiated as an abuse of process by a party, to delay or frustrate litigation or as part of a wider dispute without there being any underlying basis for such claim and this new power helps prevent such an abuse. Again, this is likely to be an attractive addition to the English arbitral law, especially as parties are free to agree to exclude such a power if they wish to do so.[23]

2.4. BETTER SUPPORT FOR THE ARBITRATION PROCESS AND ITS AUTONOMY: INTERIM MEASURES AND EMERGENCY ARBITRATION

The Arbitration Act 2025 now also provides greater clarity and statutory support for interim measures, strengthening the arbitral process and supporting its autonomy.[24] Under s9 of the Arbitration Act 2025, it is now the case that the court's power to award interim remedies to a party to support arbitration is extended to the making of such orders at any time, even before arbitration has been initiated.[25] Under the old s44(1) Arbitration Act 1996, it was necessary for the party against whom such an order was sought to be an actual party to arbitral proceedings. The new s44A which provides such orders are available "whether in relation to a party or any other person" rectifies this and also makes such orders possible against third parties where and when necessary.[26]

Another key change here introduced by the 2025 Act is that a new s41A Arbitration Act 1996 is introduced, recognising the enforceability of orders made by emergency arbitrators.[27] This brings English arbitral law into better

[17] Schereazade Dubash, 'A Global View of the Law Applicable to an Arbitration Agreement' (2021) Pinsent Masons, available at; <https://www.pinsentmasons.com/out-law/analysis/a-global-view-law-applicable-arbitration-agreement#:~:text=In%20the%20absence%20of%20such,arbitration%20(Article%2014).%22> accessed 7 July 2025.

[18] s178(2) Federal Act on Private International Law (PILA) of 18 December 1987.

[19] *Kabab-Ji SAL v Kout Food Group (Kuwait)* (2022) Cour de Cassation decision of 28 September 2022.

[20] s1(2) Arbitration Act 2025.

[21] Stavros Brekoulakis, 'Introducing the Special Issue: The Lasting Legacy of the 1996 Arbitration Act' (2024) 40 Arbitration International 1, 2.

[22] s7 Arbitration Act 2025.

[23] James Barratt and others, 'Modernising and Streamlining English-Seated Arbitration' (2025) 36 Cons. Law 2025 1, 1.

[24] Guiditta Cordero-Moss, 'Limits to Party Autonomy in International Commercial Arbitration' (2014) 1 Oslo Law Review 1, 2.

[25] s9 Arbitration Act 2025.

[26] s44A(1) Arbitration Act 1996.

[27] ibid s41A.

alignment with institutional rules such as those the LCIA's rules for example, which allow the appointment of emergency arbitrators.[28]

2.5. JURISDICTIONAL CHALLENGES; S67 ARBITRATION ACT 1996

One of the problematic issues with the Arbitration Act 1996 was the way in which s67 was drafted, allowing challenges to the award made by a tribunal on the basis that it lacked substantive jurisdiction.[29] The Supreme Court in *Dallah Real Estate and Tourism Holding Co v Pakistan* had held that s67 challenges were required to be on a *de novo* basis.[30] This was costly and time consuming, but it also marked a significant divergence between English law and international arbitral culture, in which the *kompetenz-kompetenz* of the tribunal to determine its own jurisdiction is typically more heavily emphasised.[31] The Law Commission[32] and other critics had suggested this needed reform,[33] and s11 of the 2025 Act reforms s67(3) Arbitration Act 1996 by allowing the court to confirm, vary, remit, or set aside the reward (or to declare it to be void in whole or in part) on a review, rather than a full rehearing of the case.[34] Evidence put before the tribunal must now, under s67(3B) and (3C), not be reheard by the court, "subject to the court ruling otherwise in the interests of justice".[35]

2.6. DIGITALISATION

One area where it was hoped that the Act would help modernise the law here was in respect of digitalisation.[36] This is an area of increasing importance and has been ever since the COVID-19 pandemic interrupted the holding of proceedings so significantly, but the Act is silent as to digital technology or its recognition. This represents a missed opportunity.

2.7. ANTI-SUIT INJUNCTIONS PROTECTED

The changes made to the law of the law governing arbitration in the absence of express-choice (now to be assumed to be the seat) under s1(1) Arbitration Act 2025 ought to remove much of the scope for anti-suit challenges to be brought before the English courts to restrain litigation brought elsewhere in the world in breach of an arbitration agreement. The UK Supreme Court in *UniCredit Bank GmbH v RusChemAlliance LLC* had held in 2024 that the English courts have jurisdiction to issue injunctions restraining parties beginning or continuing litigation abroad where there was an arbitration agreement in place, even when the seat of that arbitration is outside of the United Kingdom.[37] As such a position would typically now automatically mean that England was the seat of arbitration much of the difficulty attached to the making of anti-suit injunctions is removed by the 2025 Act.

III. ONGOING CHALLENGES AND FURTHER REFORM

Despite the Arbitration Act 2025 making several significant and positive changes to the law of arbitration in England and Wales, there are still some areas where further clarity would be welcomed. In the first, regarding the duty of disclosure, the failure to ensure that arbitrators are under a specific duty of independence, as well as one of impartiality allows questions to be raised as to precisely what the threshold for "justifiable

[28] Article 9B London Court of International Arbitration Rules 2020.
[29] s67 Arbitration Act 1996.
[30] [2010] UKSC 46; *Azov Shipping Co v Baltic Shipping Co* [1999] 1 Lloyd's Rep 68.
[31] Robert Merkin, 'Substantive Jurisdiction and the Arbitration Act 1996' (2021) 3 Journal of Business Law 273, 274.
[32] Law Commission, 'Review of the Arbitration Act 1996: Final Report and Bill' (2023) Law Com No 413, HMSO.
[33] Kyriaki Noussia, 'The Arbitration Act 1996: Time for Reform?' (1999) 2 Journal of Business Law 140, 140.
[34] s10 Arbitration Act 2025.
[35] ibid s11.
[36] Julian Critchlow, 'The Arbitration Act 2025: Key Changes' Costigan & King available at; < https://www.costigan-king.com/insights-2/the-arbitration-act2025-key-changes> accessed 7 July 2025.
[37] *Unicredit Bank GmbH v RusChemAlliance LLC* [2024] UKSC/2024/0015.

doubts" as to an arbitrator's impartiality might be in English law.[38] Justifiable doubts, for these purposes, remains the test set out for risk of bias set out in *Porter v Magill* as to whether a fair minded and informed observer would conclude such a possibility to be present.[39]In cases such as *Tank v Norbrook* however, where the arbitrator made undisclosed phone calls to one of the parties, the application of this test has historically failed to catch within it the failure of the arbitrator to act impartially because only their neutrality, and not necessarily their impartiality, was called into question.[40]

Introducing a specific obligation of independence, along with one of impartiality would bring the English law into better alignment with global norms.[41] Further, the 2025 Act missed the opportunity to clarify the acceptability of digital documents, risking arbitration being left behind by digital advances.

Finally, under the revised s67 of the 1996 Act, the court's power to rehear in full jurisdictional challenges is restricted to cases where the court feels it is necessary to rehear evidence in the interests of justice.[42] However, the Act does not define this threshold, leaving its scope to judicial interpretation. This is likely to become a contested area of practice in the coming years, as courts determine what kinds of procedural irregularities or evidential gaps justify departing from the default review standard.

IV. CONCLUSION

In summary, the Arbitration Act 2025 is to be welcomed as providing significant improvements to the English law of international commercial arbitration. The Act clarifies several matters where significant uncertainty and a lack of legal clarity had developed and ensures alignment of English arbitral law with the legal norms accepted elsewhere. These changes ought to re-establish London as an attractive seat of arbitration, even if the Act constitute a missed opportunity in other respects.

[38] Emma Lindsay, Camilla Gambarini, 'The Proposed Reform of the English Arbitration Act on Arbitrators' Independence and Impartiality and the Duty of Disclosure from a Comparative Perspective' (2024) 40 Arbitration International 37, 38.

[39] *Porter v Magill* [2002] 2 AC 357 (HL).

[40] *Norbrook Laboratories Ltd v Tank* [2006] EWHC 1055 (TCC).

[41] Feehily (n7).

[42] s11 Arbitration Act 2025; s67(3C) Arbitration Act 1996.