= Arbitration Act 1979 =

The Arbitration Act 1979 (c.42) was an Act of the Parliament of the United Kingdom that reformed arbitration law in England and Wales . Prior to 1979 , arbitration law was based on the Arbitration Act 1950 , which allowed use of the " Case Stated " procedure and other methods of judicial intervention , which marked English arbitration law as significantly different from that of other jurisdictions . The prior law significantly increased the cost and time required for arbitration , which made England an unpopular jurisdiction to conduct such negotiations in . As a result , while London maintained its traditional position as a centre for arbitration in insurance , admiralty and commodities trading , it failed to attract more modern forms of trade . Following pressure from industry groups , the Lord Chancellor introduced the Arbitration Bill into Parliament , having it passed hours before the dissolution of James Callaghan 's government . It was given the Royal Assent on 4 April 1979 , and commenced working on 1 August 1979 .

The Act completely abolished the " Case Stated " procedure and other forms of judicial interference , replacing it with a limited system of appeal to the High Court of Justice and Court of Appeal of England and Wales ; it also allowed for exclusion agreements limiting the rights of parties to arbitration to appeal to the courts , and gave arbitrators the ability to enforce interlocutory orders . Academics met the Act with a mixed response ; while some praised it for bringing English law more into line with that of other nations , others criticised the wording used as unnecessarily complex and hazy . The Act did , in the eyes of some commentators , lead to a shift in judicial policy away from legal certainty and towards a system focused on speed and finality . Having been repealed in its entirety by Section 107 (2) of the Arbitration Act 1996 , the Act is no longer in force .

= = Background = =

= = = Previous law = = =

London was historically a centre for trade and arbitration , which Peter S. Smedresman , writing in the Journal of Maritime Law and Commerce divides into three categories of transaction . English commodities trading , through bodies such as the Baltic Exchange , specify that any conflicts are to be settled through arbitration in London , even when the goods being traded have no relation to the United Kingdom . London has also been a centre for arbitration on maritime issues , and insurance . However , it failed to significantly attract more modern forms of trade , such as major communications developments or high @-@ technology projects , due to the nature of its arbitration law . These contracts normally involve large amounts of money and are administered by the International Chamber of Commerce , which rarely sent arbitration cases to London due to the individual nature of English law on the subject .

In most nations , arbitrators can apply the principle of " amiable composition " ; the case is decided under broad , sweeping principles of equity , without judicial oversight or the application of national commercial law . In England , this was not the case ; the Arbitration Act 1950 , in Section 22 (1) , allowed the courts to instruct an arbitrator to " correct " his decision , if it had an incorrect statement of law immediately obvious . In response to this , English arbitrators simply stopped giving reasons for their decisions . The second form of judicial oversight was found in Section 21 , and was an application of the " Case Stated " procedure . This allowed judicial review of a decision by the High Court of Justice , and was regularly applied during the 1970s , because the freeze on interest rates during a delayed case made it attractive for debtors to delay ; conversely , this made London a far less attractive venue for creditors .

Before the 1979 Act , English law did not provide many ways to avoid the Case Stated procedure , even prohibiting parties from agreeing in advance not to use it ; this was due to Scrutton LJ 's statement , in Czarnikow v Roth , Schmidt & Co , that " There must be no Alsatia in England where the King 's writ does not run " . In The Lysland , the Court of Appeal of England and Wales gave a decision interpreted as saying that the courts must consider a Case Stated " even if there is no great

some in dispute , no point of general importance is involved or the answer is reasonably clear " . Lord Denning 's statement in that case has been described as " [T] he death knell of arbitrator autonomy " , and led to arbitrators almost automatically asking for judicial supervision for fear that they would otherwise be found to have committed misconduct . For obvious reasons , companies and parties to a case who submit their issues to arbitration expect something private , quick , and cheap , with fixed results . The traditional English emphasis on judicial oversight , therefore , meant that with the Case Stated procedure , London was a highly unpopular venue for arbitration .

= = = Development of the Act = = =

By the 1960s , even before the increase of abuse of the Case Stated procedure , the United Kingdom was estimated to be losing £ 500 million a year through the movement of arbitration business to other countries . In response , the Lord Chancellor convened a Commercial Court Users Conference in 1960 , and tasked them with reviewing the system ; the conclusion was that the status quo should remain . With the increased use of the Case Stated procedure , more calls for reform came . In June 1977 the London Arbitration Group (LAG) was formed , taking it upon itself to make the government aware of the damage current law was causing . In 1978 , in reaction to the continued pressure , the Lord Chancellor established a Commercial Court Committee to again look at the issue ; their report , in June 1978 , recommended changing the system so that appeal was only allowed when either the High Court permitted it , or both parties to the arbitration agreed it was necessary . This was intended to ensure that any new Act of Parliament fulfilled two roles ? firstly , decreasing the use of the Case Stated procedure , and secondly , encouraging arbitrators to give reasons for their decisions .

The report was endorsed by the government , and published the following month . After being announced in the Queen 's Speech , the Arbitration Bill was introduced to the House of Lords by the Lord Chancellor in late 1978 , given its second reading on 12 December 1978 , and after passing through the committee stage , its third reading on 15 February 1979 . Before it could be sent to the House of Commons , however , James Callaghan 's government collapsed following a motion of no confidence . As " the final drama " , the Arbitration Bill quickly made it to the House of Commons and was passed during the few hours it took Callaghan to get to Buckingham Palace and ask for a dissolution . Royal Assent was granted on 4 April 1979 , and the Arbitration Act 1979 came into force on 1 August .

= = Act = =

The Act was " a compromise between two opposing jurisprudential approaches to arbitration ... that the courts should be kept out of arbitration altogether except to prevent abuses against the rules of natural justice , [and] that the courts should retain a substantial measure of control over arbitrations to ensure that arbitral awards apply the law " .

= = = Section 1 = = =

The primary reforms are found in Section 1 of the Act . Section 1 (1) repeals Section 21 of the 1950 Act , abolishing the Case Stated procedure in arbitration matters , and states that the courts cannot set aside a decision based on an error in law or fact that is blatantly obvious , effectively repealing Section 22 (1) . Instead , Sections 1 (2) and 1 (3) provide that an appeal may be made " on any question of law arising out of an award made on an arbitration agreement " , if either the High Court agrees the appeal is valid , or if both parties to the arbitration request it . In Petraco (Bermuda) Ltd v Petromed International , the Court of Appeal was asked to explain what guidelines should be applied by a High Court judge when deciding whether or not to grant an appeal . The High Court had refused leave to appeal , because a point was raised which had not been mentioned during arbitration . Staughton LJ , with the rest of the Court in agreement , explained that :

the judge should give such weight as he thinks fit to the failure to argue the point before the

arbitrator . In particular , he should have regard to whether the new point is similar to points that were argued , perhaps a variant of one of those points or a different way of putting it on the one hand , or whether it is a totally new and different point on the other .

The conditions for leave to appeal are laid out in Section 1 (4) . No conditions attach to an appeal where all parties consent , but when the permission of the High Court is sought , the judge may only grant leave if he " considers that ... the question of law concerned could substantially affect the rights of one or more parties to the arbitration agreement " . Under Sections 1 (5) and 1 (6) , the High Court may ask for additional reasons as to why the arbitrator reached the decision that he did , but only if one of the parties gave notice to the arbitrator that reasons would be required , or there was " some special reason why such a notice was not given " . In Universal Petroleum Co v Handels und Transport GmbH , the Court of Appeal interpreted the meaning of Sections 1 (4) and 1 (5) . The dispute came from a highly detailed " Schedule of Further Reasons " ordered by the High Court because the judge felt that there was an ambiguous element in the reasons given . The appellate judges found that Section 1 (5) required judges to order further reasons only to deal with points of law arising from the award . Material ambiguity was " inadmissible and irrelevant for the purpose of the exercise of any jurisdiction under section 1 of the Act " .

If the High Court refuses to hear an appeal , the case cannot proceed further ; similarly , with one exception , once the High Court has heard a case , no decision may be reviewed by the Court of Appeal . The one exception is laid out in Section 1 (7) , and provides that leave to appeal is only valid if either the High Court or Court of Appeal certifies it as such , and the High Court confirms that the case concerns a point of law which merits consideration . In National Westminster Bank Plc v Arthur Young McClelland Moores & Co (No.1) , the Court of Appeal confirmed that , once the High Court has decided not to allow an appeal , the registrar of the Court of Appeal cannot intervene and otherwise validate such a request .

= = = Sections 2 ? 6 = = =

Section 21 of the 1950 Act contained a secondary method of appeal to the High Court . Through the " Consultative Case " procedure , parties in a pending arbitration could ask the High Court to quickly give a decision on a point of law . This provision was maintained in the 1979 Act , despite efforts by legislators to remove it . Section 2 provides that , should a party apply to the High Court with either the consent of the arbitrator or the other parties , the High Court may explain any point of law given in the reference , on the condition that the point of law meets the requirements laid out in Section 1 , and if " the determination of the application might produce substantial savings in costs to the parties " .

Czarnikow v Roth , Schmidt & Co , the decision in which it was decided agreements excluding judicial supervision are invalid , is partially overruled by Sections 3 and 4 . Section 3 provides that , where such an agreement is drafted , the High Court no longer has the automatic right to request additional reasons from the arbitrator or grant leave to appeal the decision . Such exclusion clauses must be specific , but can be general in nature ; Section 3 (2) states that it can be framed " to relate to a particular award , to awards under a particular reference or to any other description of awards , whether arising out of the same reference or not " . Section 3 (6) provides an exception , which covers " domestic " arbitration agreements ; these are defined as agreements where leave to appeal would not be valid in a jurisdiction outside the United Kingdom , and no parties are businesses or individuals legally based in the UK . In this situation , the exclusion clause is only valid if agreed to after the start of arbitration . A second exception is found in Section 4 (1) ; where the contract arbitration is based on is within admiralty jurisdiction , to do with commodities trading , or an insurance agreement , it will not be valid unless either it was entered into after the start of arbitration or the law applicable to the contract is not that of England and Wales . In any situation , the High Court can be asked to give a decision on a point of law , or the exclusion clause removed , should all parties agree .

Prior to the 1979 Act , arbitrators were allowed to make interlocutory orders penalising parties who failed to follow the arbitrator 's timetable or requests ; there was , however , no effective

enforcement mechanism . Section 5 of the Act allows the High Court to intervene ; if a party fails to comply , the High Court may (on the application of the arbitrator or any other party) order the arbitrator to continue as if the offending party was not there ; he can immediately issue an award without considering their missing submission or failure to appear . Section 6 amends the 1950 Act , which required any two arbitrators hearing a case to immediately appoint an umpire . This caused unnecessary delay and expenditure . Section 6 instead provides that arbitrators can choose to appoint an umpire at any point , but must do " forthwith " if they fundamentally disagree .

= = Assessment = =

David Shenton and Gordon Toland concluded that the Act brought judicial oversight in English law into compliance with that of other nations , saying that it is " broadly comparable to the provisions ... to be found in Swedish , Swiss and French law " . Smedresman , however , argued that it would do little to help attract new arbitration and would in fact drive it away , saying that " the vagueness of the statutory language , combined with the rather hazy policy considerations behind the Act , make confusion and litigation likely " . David Hacking , who helped promote the Act , says that it " was not drafted with the elegance of the 1996 Arbitration Act . In the style of the Parliamentary Draftsmen of that time , many of its provisions were drafted with a complexity which was happily avoided in the 1996 Act " , and criticises the failure to achieve more than minor reform of existing law . However , he does note that the Act led to a shift in judicial policy , with future judgments to be issued with regards " to the need for finality ... the striving for legal accuracy may be said to have been overtaken by commercial expediency " . Jaffe agrees , writing in the journal Arbitration that " [i] t is clear that with the passage of the 1979 Act ... there has been a distinct and noticeable shift of emphasis from legal certainty to finality for arbitral awards " . The Act is no longer in force , having been repealed in its entirety by Section 107 (2) of the Arbitration Act 1996 .