

Written evidence from the Law Society

Arbitration Bill [HL]

House of Lords, Special Public Bill Committee, Call for Evidence

The Law Society of England and Wales is the independent professional body that works globally to support and represent 200,000 solicitors, promoting the highest professional standards and the rule of law.

1. Introduction

The Law Society supports the proposals in the Arbitration Bill. The Bill will amend the Arbitration Act 1996, the principal legislation governing arbitrations in England and Wales and in Northern Ireland. The changes provided for in the Bill would implement recommendations from the Law Commission following consultation.

Summary

- The Law Society welcomes and supports the Arbitration Bill.
- We responded to both Law Commission consultations and welcome the introduction of legislation which implements their recommendations.
- Modernising arbitration is essential for ensuring that England and Wales remain the jurisdiction of choice for international dispute resolution. The Law Commission estimates that there are at least 5,000 arbitrations annually in England and Wales, worth at least £2.5 billion to the economy in arbitrator and legal fees alone.
- The Bill successfully updates and refines our arbitration law to maintain the UK's competitive edge and capitalise on the economic value of English and Welsh law.
- Arbitration will need further review in the coming years. Areas such as the impact of developing technologies will need to be updated in the future if we are to protect the strong reputation of English and Welsh law.

2. Maintaining the UK's position as the global jurisdiction of choice

Our legal services provide the hidden wiring that supports UK exports and global enterprise, and we are the global jurisdiction of choice for international business deals and the largest legal services sector outside of the US.

According to [ONS figures on Trade in Services](#), legal services consistently generate a trade surplus, helping to offset the UK's overall trade deficit. In 2021, total exports of UK legal services stood at £6.6bn highlighting how English law is used around the world by clients seeking a neutral law to govern their international commercial contracts.

England and Wales is the jurisdiction of choice for arbitration. English law governs 40% of global corporate arbitrations, and the London Maritime Arbitrators Association handles the majority of global maritime disputes.

The consistency and speed of decisions means that foreign businesses overwhelmingly choose English and Welsh law to govern international business deals.

The Law Society has recently launched its [annual international insights report](#) highlighting the global position of English and Welsh law. Our analysis shows:

The international power of English and Welsh law:

- The value of the UK's legal services continues to rise.
- The UK's total exports for legal services was £6.6bn in 2021, compared to £5.9bn in 2020.
- London is the most attractive centre for commercial litigation and international arbitration, attracting international business into the UK.
- English law governed £545 trillion in over-the-counter (OTC) derivatives transactions and metals trading in 2021.

3. Support for the Law Commission's recommendations

The Law Society responded to both Law Commission consultations on updating and refining our arbitration law. This Bill will update the 1996 Arbitration Act which was strongly influenced by the UN's UNCITRAL Model Law on International Commercial Arbitration, published in 1985.

This Bill is not a wide-ranging reform of the 1996 Arbitration Act but makes important tweaks to bring the law up to date with domestic and global changes. The most valuable impact of the Bill will be to ensure that we maintain our position as the jurisdiction of choice for international arbitration, an area where we face competition from other jurisdictions such as the US and Singapore.

The Bill makes important changes to the law around arbitrator conflicts and the enforcement of emergency arbitrator orders.

3.1 Arbitrator conflicts

We agree with the Law Commission that arbitrators should have a continuing duty to disclose any circumstances which might reasonably give rise to justifiable doubts as to their impartiality. We also agree that an express duty would provide useful clarification in this area.

We have been clear in our consultation response that the question of the state of knowledge required of an arbitrators' duty of disclosure is best left to the courts. A duty to make reasonable inquiries would be consistent with other duties required of professionals.

3.2 Emergency arbitrators

The Bill introduces provisions to clarify the power of the courts to support arbitration proceedings and emergency arbitrators.

This context suggests that if the Arbitration Act 1996 is to be amended, there should be a carefully worded and tailored provision in the Act. When responding to the Law Commission's consultation we raised concerns over unintended consequences arising from a general application of the Act to emergency arbitration.

Under the current Act, when a normal arbitrator makes an order during arbitration proceedings, and an arbitrating party fails to comply with that order, there are the following possible consequences:

- The arbitrator can issue a peremptory order (by section 41), and if there is still no compliance, an application can be made to court for the court to order compliance with the arbitrator's order (by section 42).
- Alternatively, an application can be made directly to court, for the court to make its own order (by section 44).

Clause 8 of the Bill amends the Act to extend that scheme to emergency arbitrators. Adding these additional steps for emergency arbitrators seems to go against the need for emergency arbitration to operate quickly.

4. Future opportunities

The Law Commission had the opportunity to tackle upcoming challenges that will have an impact on arbitration when consulting on and drafting this Bill. The rapid development of technologies such as AI could significantly impact the way that arbitration takes place.

While it may be too early to legislate on AI in relation to arbitration, the sector should be keeping a close watch on this developing issue. We would welcome further discussion with both policymakers and the legal profession to ensure that we grasp the opportunities and mitigate against risks.

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