
Status: This version of this Act contains provisions that are prospective.
Changes to legislation: There are currently no known outstanding effects for the Arbitration Act 1996. (See end of Document for details)

- (b) ordering that samples be taken from, or any observation be made of or experiment conducted upon, the property.
- (5) The tribunal may direct that a party or witness shall be examined on oath or affirmation, and may for that purpose administer any necessary oath or take any necessary affirmation.
- (6) The tribunal may give directions to a party for the preservation for the purposes of the proceedings of any evidence in his custody or control.

Modifications etc. (not altering text)

- C55** Power to apply conferred (31.1.1997) by 1966 c. 41, s. 3 (as substituted by 1996 c. 23, s. 107(1), **Sch. 3 para. 24**) (with s. 81(2)); S.I. 1996/3146, art. 3 (with art. 4, Sch. 2)
- C56** Power to apply conferred (31.1.1997) by 1988 c. 8, s. 6(1) (as substituted by 1996 c. 23, s. 107(1), **Sch. 3 para. 49** (with S. 81(2)); S.I. 1996/3146, art. 3 (with art. 4, Sch. 2)

39 Power to make provisional awards.

- (1) The parties are free to agree that the tribunal shall have power to order on a provisional basis any relief which it would have power to grant in a final award.
- (2) This includes, for instance, making—
 - (a) a provisional order for the payment of money or the disposition of property as between the parties, or
 - (b) an order to make an interim payment on account of the costs of the arbitration.
- (3) Any such order shall be subject to the tribunal’s final adjudication; and the tribunal’s final award, on the merits or as to costs, shall take account of any such order.
- (4) Unless the parties agree to confer such power on the tribunal, the tribunal has no such power.

This does not affect its powers under section 47 (awards on different issues, &c.).

Modifications etc. (not altering text)

- C57** Power to apply conferred (31.1.1997) by 1966 c. 41, s. 3 (as substituted by 1996 c. 23, s. 107(1), **Sch. 3 para. 24**) (with s. 81(2)); S.I. 1996/3146, art. 3 (with art. 4, Sch. 2)
- C58** Power to apply conferred (31.1.1997) by 1988 c. 8, s. 6(1) (as substituted by 1996 c. 23, s. 107(1), **Sch. 3 para. 49** (with s. 81(2)); S.I. 1996/3146, art. 3 (with art. 4, Sch. 2)

40 General duty of parties.

- (1) The parties shall do all things necessary for the proper and expeditious conduct of the arbitral proceedings.
- (2) This includes—
 - (a) complying without delay with any determination of the tribunal as to procedural or evidential matters, or with any order or directions of the tribunal, and

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- (b) where appropriate, taking without delay any necessary steps to obtain a decision of the court on a preliminary question of jurisdiction or law (see sections 32 and 45).

Modifications etc. (not altering text)

C59 Power to apply conferred (31.1.1997) by 1966 c. 41, s. 3 (as substituted by 1996 c. 23, s. 107(1), Sch. 3, para. 24) (with s. 81(2)); S. I. 1996/3146, art. 3 (with art. 4, Sch. 2)

C60 Power to apply conferred (31.1.1997) by 1988 c. 8, s. 6(1) (as substituted by 1996 c. 23, s. 107(1), Sch. 3 para. 49) (with s. 81(2)); S.I. 1996/3146, art. 3 (with art. 4, Sch. 2)

41 Powers of tribunal in case of party's default.

- (1) The parties are free to agree on the powers of the tribunal in case of a party's failure to do something necessary for the proper and expeditious conduct of the arbitration.
- (2) Unless otherwise agreed by the parties, the following provisions apply.
- (3) If the tribunal is satisfied that there has been inordinate and inexcusable delay on the part of the claimant in pursuing his claim and that the delay—
 - (a) gives rise, or is likely to give rise, to a substantial risk that it is not possible to have a fair resolution of the issues in that claim, or
 - (b) has caused, or is likely to cause, serious prejudice to the respondent,
 the tribunal may make an award dismissing the claim.
- (4) If without showing sufficient cause a party—
 - (a) fails to attend or be represented at an oral hearing of which due notice was given, or
 - (b) where matters are to be dealt with in writing, fails after due notice to submit written evidence or make written submissions,
 the tribunal may continue the proceedings in the absence of that party or, as the case may be, without any written evidence or submissions on his behalf, and may make an award on the basis of the evidence before it.
- (5) If without showing sufficient cause a party fails to comply with any order or directions of the tribunal, the tribunal may make a peremptory order to the same effect, prescribing such time for compliance with it as the tribunal considers appropriate.
- (6) If a claimant fails to comply with a peremptory order of the tribunal to provide security for costs, the tribunal may make an award dismissing his claim.
- (7) If a party fails to comply with any other kind of peremptory order, then, without prejudice to section 42 (enforcement by court of tribunal's peremptory orders), the tribunal may do any of the following—
 - (a) direct that the party in default shall not be entitled to rely upon any allegation or material which was the subject matter of the order;
 - (b) draw such adverse inferences from the act of non-compliance as the circumstances justify;
 - (c) proceed to an award on the basis of such materials as have been properly provided to it;
 - (d) make such order as it thinks fit as to the payment of costs of the arbitration incurred in consequence of the non-compliance.

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Modifications etc. (not altering text)

- C61** Power to apply conferred (31.1.1997) by 1966 c. 41, s. 3 (as substituted by 1996 c. 23, s. 107(1), **Sch. 3, para. 24**) (with s. 81(2)); S.I. 1996/3146, **art. 3** (with art. 4, Sch. 2)
- C62** Power to apply conferred (31.1.1997) by 1988 c. 8, s. 6(1) (as substituted by 1996 c. 23, s. 107(1), **Sch. 3 para. 49**) (with s. 81(2)); S.I. 1996/3146, **art. 3** (with art. 4, **Sch. 2**)

Powers of court in relation to arbitral proceedings

42 Enforcement of preemptory orders of tribunal.

- (1) Unless otherwise agreed by the parties, the court may make an order requiring a party to comply with a preemptory order made by the tribunal.
- (2) An application for an order under this section may be made—
 - (a) by the tribunal (upon notice to the parties),
 - (b) by a party to the arbitral proceedings with the permission of the tribunal (and upon notice to the other parties), or
 - (c) where the parties have agreed that the powers of the court under this section shall be available.
- (3) The court shall not act unless it is satisfied that the applicant has exhausted any available arbitral process in respect of failure to comply with the tribunal's order.
- (4) No order shall be made under this section unless the court is satisfied that the person to whom the tribunal's order was directed has failed to comply with it within the time prescribed in the order or, if no time was prescribed, within a reasonable time.
- (5) The leave of the court is required for any appeal from a decision of the court under this section.

Modifications etc. (not altering text)

- C63** Power to apply conferred (31.1.1997) by 1966 c. 41, s. 3 (as substituted by 1996 c. 23, s. 107(1), **Sch. 3 para. 24**) (with s. 81(2)); S.I. 1996/3146, **art. 3** (with art. 4, Sch. 2)
- C64** S. 42 applied (with modifications)(E.W.)(1.5.1998) by S.I. 1998/649, art. 2, **Sch. Pt. 1 para.24**
- C65** Power to apply conferred (31.1.1997) by 1988 c. 8, s. 6(1)(as substituted by 1996 c. 23, s. 107(1), **Sch. 3 para. 49**) (with s. 81(2)); S.I. 1996/3146, **art. 3** (with art. 4, Sch. 2)

43 Securing the attendance of witnesses.

- (1) A party to arbitral proceedings may use the same court procedures as are available in relation to legal proceedings to secure the attendance before the tribunal of a witness in order to give oral testimony or to produce documents or other material evidence.
- (2) This may only be done with the permission of the tribunal or the agreement of the other parties.
- (3) The court procedures may only be used if—
 - (a) the witness is in the United Kingdom, and