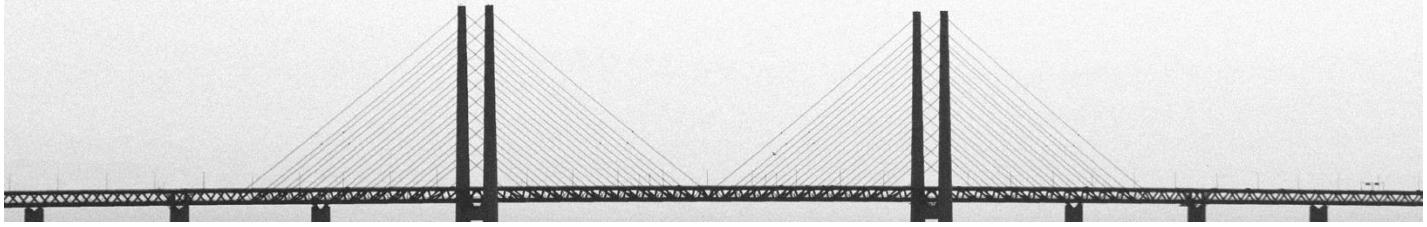
INTERNATIONAL ARBITRATION NOTES 1/2025

The 2025 English Arbitration Act: key amendments and takeaways



On 24 February 2025, the Arbitration Act 2025 ("**Arbitration Act**"), reforming the 1996 arbitral legislation of England & Wales and Northern Ireland (the "**Reform**"), received Royal Assent, signifying its formal approval by the monarch and the completion of the legislative process. This milestone marks the final step for the Reform to become law, while its formal entry into force will take place on a date to be set by the Secretary of State. The provisions of the new Arbitration Act will govern arbitration proceedings initiated after its effective date, as well as any court proceedings related to arbitrations commenced from that date onward. The Reform represents a significant evolution from its 1996 predecessor, introducing changes aimed at modernizing and enhancing the efficiency, flexibility, and attractiveness of London as an arbitral seat.

The Reform is of particular significance to arbitration users, including Italian companies, who often designate London as the seat of arbitration in their agreements. This is so because, in international arbitration, the *lex arbitri* – being the procedural law governing the arbitration – is determined by the seat selected by the parties. Accordingly, any modifications to the *lex arbitri* bear important legal consequences for parties to arbitration proceedings, as they impact matters such as judicial oversight, parties' procedural discretion, and the enforceability of arbitral awards.

This note offers an initial analysis of the key changes introduced by the Reform and their practical implications for the parties. It also serves as a preliminary guide for prospective participants in arbitral proceedings, assisting them in evaluating the impact of choosing London (or any other seat in England & Wales or Northern Ireland) during contract negotiations.

Table of Contents

I Law applicable to arbitration agreements

Arbitration Act 1996	Arbitration Act 2025
No provision in the original text	**"Section 6A - Law applicable to arbitration agreement** The law applicable to an arbitration agreement is— (a) the law that the parties expressly agree applies to the arbitration agreement, or (b) where no such agreement is made, the law of the seat of the arbitration in question. [...]"

The newly introduced Section 6A of the Arbitration Act explicitly determines the law governing an arbitration agreement in the absence of the parties' express choice. Identifying the applicable law is a crucial issue, as it governs, among other aspects, both the validity and enforceability of the arbitration agreement itself. Indeed, this issue has historically been a point of contention.

The Reform has provided definitive clarity by establishing that, for all arbitrations seated in London, English law shall govern the arbitration agreement in the absence of an agreement between the parties. This is opposite to other jurisdictions, including Italy, where in the absence of the parties' express choice, the law applicable to the arbitration agreement is that of the main contract in which the arbitration agreement is incorporated.

Section 6A marks a significant departure from existing case law. In *Enka Insaat ve Sanayi AS v Insurance Company Chubb* [2020] UKSC 38, the UK Supreme Court held that, in the absence of an express choice of law governing the arbitration agreement, the governing law of the main contract will generally apply as an implied choice. However, if no such choice is indicated, the law of the arbitral seat will apply by default. This statutory clarification definitively resolves a highly contentious issue, eliminating the need for parties to London-seated arbitrations to engage in costly and time-consuming disputes over the governing law of arbitration agreements.

II Disclosure duties of arbitrators

Arbitration Act 1996	Arbitration Act 2025
No provision in the original text	**"Section 23A – Impartiality: duty of disclosure** (1) An individual who has been approached by a person in connection with the individual's possible appointment as an arbitrator must, as soon as reasonably practical, disclose to the person any relevant circumstances of which the individual is, or becomes, aware. (2) An arbitrator must, as soon as reasonably practical, disclose to the parties to the arbitral proceedings any relevant circumstances of which the arbitrator is, or becomes, aware. For the purposes of this section— (a) "relevant circumstances", in relation to an individual, are circumstances that might reasonably give rise to justifiable doubts as to the individual's impartiality in relation to the proceedings, or potential proceedings, concerned, and (b) an individual is to be treated as being aware of circumstances of which the individual ought reasonably to be aware".

The duty of disclosure for arbitrators introduced by Section 23A of the Arbitration Act was already widely observed in practice, even though it had not been formally codified in England & Wales and Northern Ireland until today. Upon closer examination, this newly established statutory provision aligns with the existing common law principle that mandates arbitrators to disclose *"facts and circumstances which would or might reasonably give rise to the appearance of bias"* (*Halliburton Company v Chubb Bermuda Insurance Ltd [2020] UKSC 48*).

Most notably, however, the Reform omits any reference to the arbitrator's independence. As explained in the Law Commission Consultation Paper 257, requiring an arbitrator to be independent vis-à-vis the parties, or the lawyers representing them, can be very difficult to achieve in practice given the limited number of professionals and the often-confined areas in which they specialise (e.g.

sports, maritime or commodities arbitrations), and would too often result in challenges to arbitrator appointments.

Nevertheless, the arbitrators' duty to disclose circumstances that may affect their independence (and impartiality too) is codified in the major arbitral rules, such as the ICC Rules (Article 11.2), the LCIA Rules (Article 5.4) and the CAM Rules (Article 20), as well as in soft-law instruments such as the IBA Rules on the Conflict of Interest in International Arbitration (Article 3a). Consequently, arbitrators in London-seated arbitrations conducted under institutional rules contemplating such duty may still be subject to the disclosure of circumstances that may affect their independence, despite the omission of any such reference in Section 23A.

The Reform affords parties to London-seated arbitrations not conducted under institutional rules contemplating such duty (and not adhering to the IBA Rules) an express right to seek arbitrators' disclosure limited to "*circumstances that might reasonably give rise to justifiable doubts as to the individual's impartiality in relation to the proceedings*".

III Determination of preliminary points on jurisdiction

Arbitration Act 1996	Arbitration Act 2025
"**Section 32 Determination of preliminary point of jurisdiction.** (1) The court may, on the application of a party to arbitral proceedings (upon notice to the other parties), determine any question as to the substantive jurisdiction of the tribunal. A party may lose the right to object (see section 73). (2) An application under this section shall not be considered unless— (a) it is made with the agreement in writing of all the other parties to the proceedings, or (b) it is made with the permission of the tribunal and the court is satisfied - (i) that the determination of the question is likely to produce substantial savings in costs, (ii) that the application was made without delay, and	"**Section 32 Determination of preliminary point of jurisdiction.** (1) The court may, on the application of a party to arbitral proceedings (upon notice to the other parties), determine any question as to the substantive jurisdiction of the tribunal. (1A) An application under this section must not be considered to the extent that it is in respect of a question on which the tribunal has already ruled. A party may lose the right to object (see section 73). (2) An application under this section shall not be considered unless— (a) it is made with the agreement in writing of all the other parties to the proceedings, or (b) it is made with the permission of the tribunal ~~and the court is satisfied –~~

(iii) that there is good reason why the matter should be decided by the court. (3) An application under this section, unless made with the agreement of all the other parties to the proceedings, shall state the grounds on which it is said that the matter should be decided by the court. [...] (5) Unless the court gives leave, no appeal lies from a decision of the court whether the conditions specified in subsection (2) are met. [...]."	~~(i) that the determination of the question is likely to produce substantial savings in costs,~~ ~~(ii) that the application was made without delay, and~~ ~~(iii) that there is good reason why the matter should be decided by the court.~~ ~~(3) An application under this section, unless made with the agreement of all the other parties to the proceedings, shall state the grounds on which it is said that the matter should be decided by the court.~~ [...] (5) Unless the court gives leave, no appeal lies from a decision of the court whether ~~the conditions specified in subsection (2) are~~ either condition specified in subsection (2) is met. [...]."

The Reform introduces paragraph 1A to Section 32. It provides that applications to English courts for the determination of any question regarding the substantive jurisdiction of the arbitral tribunal shall no longer be considered if the arbitral tribunal has already ruled on that question. This amendment enhances procedural efficiency and reduces both time and costs for parties by limiting unnecessary court intervention.

Separately, provided that there is an agreement in writing (or the arbitral tribunal's permission) to apply to national courts for the determination of a preliminary point of jurisdiction, the Reform clarifies that national courts, in order to rule on a party's application, are no longer required to be satisfied that the conditions previously set forth in paragraphs 2(b)(i), (ii), and (iii) are met. In this way, the Reform enhances judicial flexibility by allowing English courts to rule on meritorious applications without assessing the presence of additional requirements.

IV Awards on summary basis

Arbitration Act 1996	Arbitration Act 2025
No provision in the original text	**"Section 39A Power to make award on summary basis** Unless the parties otherwise agree, the arbitral tribunal may, on an application made by a party to the proceedings (upon notice to the other parties), make an award on a summary basis in relation to a claim, or a particular issue arising in a claim, if the tribunal considers that— (a) a party has no real prospect of succeeding on the claim or issue, or (b) a party has no real prospect of succeeding in the defence of the claim or issue."

The power to issue summary awards – allowing arbitral tribunals to resolve claims that are either manifestly well-founded or unmeritorious in a more expedited and cost-effective manner than a full arbitration culminating in an evidentiary hearing – was already recognized under certain arbitral rules (e.g., Article 22.1(viii) of the LCIA Rules). However, Section 39A of the Arbitration Act codifies the arbitral tribunals' authority to render summary awards in proceedings not conducted under institutional rules granting such power to arbitrators.

The recognition of the faculty to apply to the arbitral tribunal for summary awards may certainly benefit users. For claimants, a summary award may offer a swift resolution of the dispute, particularly beneficial for straightforward cases, where early determinations can save the time and costs that a full merit arbitration entails. For respondents, a summary award may provide a procedural mechanism to seek the early dismissal of unmeritorious claims, thereby mitigating the financial and administrative burdens associated with protracted defence efforts.

Nevertheless, it shall be considered that concerns persist regarding the enforcement of such awards, as courts outside England & Wales and Northern Ireland may be reluctant to recognize and enforce such awards under the 1958 New York Convention, which refers solely to "awards" without expressly addressing the status of summary awards (*see* G. Born, *International Commercial Arbitration,* Volume III, Kluwer Law International, 2021, p. 3873).

V Emergency arbitrators

Arbitration Act 1996	Arbitration Act 2025
No provision in the original text	**"Section 41A Emergency arbitrators** This section applies where— (a) the parties have agreed to the application of rules that provide for the appointment of an individual as an emergency arbitrator, and (b) an emergency arbitrator has been appointed pursuant to those rules. Unless otherwise agreed by the parties, if without showing sufficient cause a party fails to comply with any order or directions of the emergency arbitrator, the emergency arbitrator may make a peremptory order to the same effect, prescribing such time for compliance with it as the emergency arbitrator considers appropriate."

Section 41A of the Arbitration Act expressly grants emergency arbitrators the power to issue peremptory orders (binding directives requiring a party to comply with a procedural or substantive obligation) which are enforceable by the courts. This power applies provided that the parties have adopted institutional rules permitting the appointment of emergency arbitrators (e.g., Article 9B of the LCIA Rules or Article 21 of the ICC Rules) and an emergency arbitrator has been appointed in accordance with those rules. Prior to the Reform, only a fully constituted arbitral tribunal had the authority to make such orders.

The introduction of Section 41A may represent an improvement in terms of efficiency for parties to London-seated arbitrations. By authorizing emergency arbitrators to issue peremptory orders directly, the Reform ensures that urgent relief remains effective, thereby enhancing the efficiency of emergency arbitration and safeguarding the parties' interests until the tribunal is constituted. Furthermore, by incorporating references to emergency arbitration throughout the Arbitration Act, the Reform firmly establishes emergency arbitrators as having equal status of arbitrators of fully constituted panels, eliminating any uncertainty regarding the standing and enforceability of their decisions. The Reform therefore provides parties to arbitrations seated in London with a more effective mechanism to safeguard their interests before the tribunal is constituted, thus enhancing the stability and efficiency of the process.

VI Courts' orders in support of arbitration against third parties

Arbitration Act 1996	Arbitration Act 2025
"Section 44 - Court powers exercisable in support of arbitral proceedings. (1) Unless otherwise agreed by the parties, the court has for the purposes of and in relation to arbitral proceedings the same power of making orders about the matters listed below as it has for the purposes of and in relation to legal proceedings. [...]"	**"Section 44 - Court powers exercisable in support of arbitral proceedings.** (1) Unless otherwise agreed by the parties, the court has for the purposes of and in relation to arbitral proceedings the same power of making orders (whether in relation to a party or any other person) about the matters listed below as it has for the purposes of and in relation to legal proceedings. [...]"

As is well established, arbitral tribunals do not possess coercive authority. Consequently, judicial intervention is often necessary to secure measures to preserve evidence, compel a witness to appear, or freeze assets.

Before the Reform, certain courts held that relief under Section 44 could not be granted against non-signatories to the arbitration agreement. For instance, in *A, B v C, D, E* [2020] EWHC 258 (Comm), the High Court declined the request to compel a third party to provide witness testimony by way of deposition.

The new Section 44 resolves this ambiguity by expressly confirming that courts may issue orders in support of arbitral proceedings against "*a party or any other person*". The Reform, by codifying English courts' power to require third-party compliance with measures issued in support of arbitrations, enhances legal certainty and procedural effectiveness. As a result, parties to arbitral proceedings – whether seated in London or abroad – are now more likely to seek judicial assistance from English courts when intervention in support of arbitration is required.

VII Challenging the award on jurisdictional grounds

Arbitration Act 1996	Arbitration Act 2025
"**Section 67 Challenging the award: substantive jurisdiction.** [...] (3) On an application under this section challenging an award of the arbitral tribunal as to its substantive jurisdiction, the court may by order— (a) confirm the award, (b) vary the award, or (c) set aside the award in whole or in part. [...]."	"**Section 67 Challenging the award: substantive jurisdiction.** [...] (3) On an application under this section the court may by order— (a) confirm the award, (b) vary the award, (c) remit the award to the tribunal, in whole or in part, for reconsideration, (d) set aside the award in whole or in part, or (e) declare the award to be of no effect, in whole or in part. (3A) The court must not exercise its power to set aside or to declare an award to be of no effect, in whole or in part, unless it is satisfied that it would be inappropriate to remit the matters in question to the tribunal for reconsideration. (3B) Rules of court about the procedure to be followed on an application under this section may, in particular, include provision within subsection (3C) in relation to a case where the application— (a) relates to an objection as to the arbitral tribunal's substantive jurisdiction on which the tribunal has already ruled, and (b) is made by a party that took part in the arbitral proceedings. (3C) Provision is within this subsection if it provides that subject to the court ruling otherwise in the interests of justice— (a) a ground for the objection that was not raised before the arbitral tribunal must not be raised before the court unless the applicant shows that, at the time the applicant took part in the

	proceedings, the applicant did not know and could not with reasonable diligence have discovered the ground; (b) evidence that was not put before the tribunal must not be considered by the court unless the applicant shows that, at the time the applicant took part in the proceedings, the applicant could not with reasonable diligence have put the evidence before the tribunal; [...]."

Section 67 sets forth the court's powers when a party challenges an arbitral tribunal's substantive jurisdiction. The 2025 Reform grants courts, in response to a challenge to an award, also the power to remit the award to the arbitral tribunal for reconsideration and the power to declare that the award is of no effect. This amendment enhances judicial flexibility, allowing courts to tailor their approach to the specific needs of each case.

More significantly, the revised Section 67 imposes limitations on the grounds and evidence a party may present to the court when challenging an award on jurisdictional grounds. Previously, parties could introduce new grounds and evidence in their challenge, leading to concerns about potential delays and increased costs. Indeed, in *Dallah Real Estate and Tourism Holding Co. v Ministry of Religious Affairs of the Government of Pakistan* [2010] UKSC 46, the UK Supreme Court ruled that jurisdictional challenges required a full re-hearing, thereby allowing for the introduction of new evidence and grounds by the parties.

The Reform addresses these concerns through the introduction of paragraph 3(C), which applies where a party to the arbitration brings an objection to the tribunal's substantive jurisdiction that has already been ruled upon by the arbitral tribunal. Under paragraph 3(C), a party is precluded from introducing new grounds or evidence unless it demonstrates that, despite exercising reasonable diligence, it could not have discovered the grounds or presented the evidence during the arbitration. The courts retain discretion to allow the introduction of new grounds and evidence in the interests of justice. Accordingly, the Reform prevents parties from re-litigating issues that have already been resolved in the arbitration, thereby enhancing procedural certainty and saving time and costs for parties challenging arbitral awards on jurisdictional grounds before English courts.

THE 2025 ENGLISH ARBITRATION ACT: TAKEAWAYS FOR PARTIES

- LAW APPLICABLE TO ARBITRATION AGREEMENTS – Section 6A

Clarification is provided by the Reform regarding the law applicable to the arbitration agreement (regulating the validity of the arbitration agreement itself) which shall always be the law of the seat, absent the parties' agreement. Parties are therefore relieved of the financial burden of engaging in disputes over the law governing the arbitration agreement.

- DISCLOSURE DUTIES OF ARBITRATORS – Section 23A

The duty of arbitrators to disclose circumstances that may prejudice their impartiality – already a customary practice and provided for in major arbitral rules in relation to arbitrator's independence as well – is expressly codified by the Reform, thus expanding its applicability also to London-seated arbitrations not governed by institutional rules contemplating such a duty.

- DETERMINATION OF PRELIMINARY POINTS ON JURISDICTION – Section 32

Applications to English courts for the determination of any question regarding the substantive jurisdiction of the arbitral tribunal will no longer be considered if the arbitral tribunal has already ruled on that question. Consequently, the Reform enhances procedural efficiency and reduces both time and costs by minimizing unnecessary court involvement.

- AWARDS ON A SUMMARY BASIS – Section 39A

The Reform grants arbitral tribunals the power to issue awards on a summary basis, allowing arbitral tribunals to resolve claims that are either manifestly well-founded or unmeritorious in a more expedited and cost-effective manner.

- EMERGENCY ARBITRATORS – Section 41A

Emergency arbitrators are empowered to issue peremptory orders, ensuring that parties no longer need to resort to ordinary courts to obtain such orders before the constitution of the arbitral tribunal.

- COURTS' ORDERS IN SUPPORT OF ARBITRATION AGAINST THIRD PARTIES – Section 44

The Reform clarifies the power of English courts to issue orders in support of arbitration proceedings against third parties. Parties to a London-seated arbitration are therefore afforded an effective tool to secure evidence or obtain a freezing order against non-signatories to the arbitration agreement.

- CHALLENGING THE AWARD ON JURISDICTIONAL GROUNDS – Section 67

The Reform restricts the introduction before English Courts of new grounds and evidence in jurisdictional challenges of arbitral awards, enhancing procedural fairness and cost.

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