

## Foreword

The Family Law Arbitration Group (Scotland) – FLAGS – has consisted of a number of specialist family law solicitors, advocates and members of the judiciary who have worked collaboratively to devise a system of arbitration suited to Scottish family law cases.

The passing of the Arbitration (Scotland) Act 2010 provided both the impetus and framework for these Rules which are primarily based on Schedule 1 of the 2010 Act. However, there was a need to address issues which commonly arise in and are specific to family cases such as the full range of disposals in awards, including the regulation of occupancy rights, the sale or transfer of a property and pension sharing. Also it was considered appropriate to have more detailed provision on some procedural issues such as disclosure of financial information and remits to experts where specialist valuation evidence is required.

We have aimed to produce a set of Rules that comprehensively cover the issues arising in family law disputes, with a view to providing a straightforward, focused and cost-effective method of arbitration. We are indebted to our colleagues in IFLA who have generously shared with us their draft Agreement to Arbitrate and other documents.

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Mandatory rules are marked “M”  
Default rules are marked “D”

## **PART 01.**

### **Commencement and Constitution of Tribunal etc.**

#### **Rule 1 Commencement of arbitration D**

1. An arbitration by a member of FLAGS will commence when both the parties have signed an agreement to arbitrate in form A and it has been received by the arbitrator.

#### **Rule 2 Appointment of tribunal D**

2. An arbitration agreement need not appoint (or provide for appointment of) the tribunal, but if it does so provide it may –
  - (a) specify who is to form the tribunal,
  - (b) require the parties to appoint the tribunal,
  - (c) permit another person to appoint the tribunal, or
  - (d) provide for the tribunal to be appointed in any other way.

#### **Rule 3 Arbitrator to be an individual M**

3. Only an individual may act as an arbitrator.

#### **Rule 4 Eligibility to act as a FLAGS Arbitrator M**

4. An individual is ineligible to act as a FLAGS arbitrator if:
  - (a) is not on the approved panel of FLAGS,
  - (b) aged under 16, or
  - (c) an incapable adult (within the meaning of section 1(6) of the Adults with Incapacity (Scotland) Act 2000 (asp 4)).

#### **Rule 5 Number of arbitrators D**

5. Where there is no agreement as to the number of arbitrators, the tribunal is to consist of a sole arbitrator.

#### **Rule 6 Method of appointment D**

6. The tribunal is to be appointed as follows -
  - (a) where there is to be a sole arbitrator, the parties must appoint an eligible individual jointly (and must do so within 28 days of either party requesting the other to do so),
  - (b) where there is to be a tribunal consisting of two or more arbitrators –
    - (i) each party must appoint an eligible individual as an arbitrator (and must do so within 28 days of the other party requesting it to do so), and

- (ii) where more arbitrators are to be appointed, the arbitrators appointed by the parties must appoint eligible individuals as the remaining arbitrators.

#### **Rule 7 Failure of appointment procedure M**

- 7. (1) This rule applies where a tribunal (or any arbitrator who is to form part of a tribunal) is not, or cannot be, appointed in accordance with –
  - (a) any appointment procedure set out in the arbitration agreement (or otherwise agreed between the parties), or
  - (b) rule 6.
- (2) Unless the parties otherwise agree, either party may refer the matter to an arbitral appointments referee.
- (3) The referring party must give notice of the reference to the other party.
- (4) That other party may object to the reference within 7 days of notice of reference being given by making an objection to –
  - (a) the referring party, and
  - (b) the arbitral appointments referee.
- (5) If –
  - (a) no such objection is made within that 7 day period, or
  - (b) the other party waives the right to object before the end of that period, the arbitral appointments referee may make the necessary appointment.
- (6) Where –
  - (a) a party objects to the arbitral appointments referee making an appointment,
  - (b) an arbitral appointments referee fails to make an appointment within 21 days of the matter being referred, or
  - (c) the parties agree not to refer the matter to an arbitral appointments referee, the court may, on an application by any party, make the necessary appointment.
- (7) The court’s decision on whom to appoint is final.
- (8) Before making an appointment under this rule, the arbitral appointments referee or, as the case may be, the court must have regard to –
  - (a) the nature and subject-matter of the dispute,
  - (b) the terms of the arbitration agreement (including, in particular, any terms relating to appointment of arbitrators), and
  - (c) the skills, qualifications, knowledge and experience which would make an individual suitable to determine the dispute.

- (9) Where an arbitral appointments referee or the court makes an appointment under this rule, the arbitration agreement has effect as if it required that appointment.

**Rule 8 Duty to disclose any conflict of interests M**

8. (1) This rule applies to -
- (a) arbitrators, and
  - (b) individuals who have been asked to be an arbitrator but who have not yet been appointed.
- (2) An individual to whom this rule applies must, without delay disclose –
- (a) to the parties, and
  - (b) in the case of an individual not yet appointed as an arbitrator, to any arbitral appointments referee, other third party or court considering whether to appoint the individual as an arbitrator, any circumstances known to the individual (or which become known to the individual before the arbitration ends) which might reasonably be considered relevant when considering whether the individual is impartial and independent.

**Rule 9 Arbitrator's tenure D**

9. An arbitrator's tenure ends if -
- (a) the arbitrator becomes ineligible to act as an arbitrator (see rule 4),
  - (b) the tribunal revokes the arbitrator's appointment,
  - (c) the arbitrator is removed by the parties, a third party or the Outer House (see rules 11 and 12),
  - (d) the Outer House dismisses the tribunal of which the arbitrator forms part (see rule 13), or
  - (e) the arbitrator resigns (see rule 15) or dies (see rule 79).

**Rule 10 – deleted D**

**Rule 11 Removal of arbitrator by parties D**

11. (1) An arbitrator may be removed -
- (a) by the parties acting jointly, or
  - (b) by any third party to whom the parties give power to remove an arbitrator.
- (2) A removal is effected by notifying the arbitrator.

**Rule 12            Removal of arbitrator by court M**

12. The Outer House may remove an arbitrator if satisfied on the application by any party -
- (a) that the arbitrator is not impartial and independent,
  - (b) that the arbitrator has not treated the parties fairly,
  - (c) that the arbitrator is incapable of acting as an arbitrator in the arbitration (or that there are justifiable doubts about the arbitrator's ability to so act),
  - (d) that the arbitrator does not have a qualification which the parties agreed (before the arbitrator's appointment) that the arbitrator must have,
  - (e) that substantial injustice has been or will be caused to that party because the arbitrator has failed to conduct the arbitration in accordance with -
    - (i) the arbitration agreement,
    - (ii) these rules (in so far as they apply), or
    - (iii) any other agreement by the parties relating to conduct of the arbitration.

**Rule 13            Dismissal of tribunal by court M**

13. The Outer House may dismiss the tribunal if satisfied on the application by a party that substantial injustice has been or will be caused to that party because the tribunal has failed to conduct the arbitration in accordance with -
- (a) the arbitration agreement,
  - (b) these rules (in so far as they apply), or
  - (c) any other agreement by the parties relating to conduct of the arbitration.

**Rule 14            Removal and dismissal by court: supplementary M**

14. (1) The Outer House may remove an arbitrator, or dismiss the tribunal, only if –
- (a) the arbitrator or, as the case may be, tribunal has been -
    - (i) notified of the application for removal or dismissal, and
    - (ii) given the opportunity to make representations, and
  - (b) the Outer House is satisfied that any available recourse to a third party who the parties have agreed is to have power to remove an arbitrator (or dismiss the tribunal) has been exhausted.
- (2) A decision of the Outer House under rule 12 or 13 is final.
- (3) The tribunal may continue with the arbitration pending the Outer House's decision under rule 12 or 13.

**Rule 15            Resignation of arbitrator M**

15. (1) An arbitrator may resign (by giving notice of resignation to the parties and any other arbitrators) if -
- (a) the parties consent to the resignation,
  - (b) the arbitrator has a contractual right to resign in the circumstances,
  - (c) the arbitrator's appointment is challenged under rule 10 or 12,
  - (d) the parties disapply or modify rule 34(1) (expert opinions) after the arbitrator is appointed, or
  - (e) the Outer House has authorised the resignation.
- (2) The Outer House may authorise a resignation only if satisfied, on an application by the arbitrator, that it is reasonable for the arbitrator to resign.
- (3) The Outer House's determination of an application for resignation is final.

**Rule 16            Liability etc. of arbitrator when tenure ends M**

16. (1) Where an arbitrator's tenure ends, the Outer House may, on an application by any party or the arbitrator concerned, make such order as it thinks fit -
- (a) about the arbitrator's entitlement (if any) to fees and expenses,
  - (b) about the repaying of fees or expenses already paid to the arbitrator,
  - (c) where the arbitrator has resigned, about the arbitrator's liability in respect of acting as an arbitrator.
- (2) The Outer House must, when considering whether to make an order in relation to an arbitrator who has resigned, have particular regard to whether the resignation was made in accordance with rule 15.
- (3) The Outer House's determination of an application for an order is final.

**Rule 17            Reconstitution of tribunal D**

17. (1) Where an arbitrator's tenure ends, the tribunal must be reconstituted –
- (a) in accordance with the procedure used to constitute the original tribunal, or
  - (b) where that procedure fails, in accordance with rules 6 and 7.
- (2) It is for the reconstituted tribunal to decide the extent, if any, to which previous proceedings (including any award made, appointment by or other act done by the previous tribunal) should stand.

- (3) The reconstituted tribunal's decision does not affect a party's right to object or appeal on any ground which arose before the tribunal made its decision.

**Rule 18 Arbitrators nominated in arbitration agreements D**

18. Any provision in an arbitration agreement which specifies who is to be an arbitrator ceases to have effect in relation to an arbitration when the specified individual's tenure as an arbitrator for that arbitration ends.



## PART 02.

### Jurisdiction of Tribunal

#### **Rule 19 Power of tribunal to rule on own jurisdiction M**

19. The tribunal may rule on -
- (a) whether there is a valid arbitration agreement (or, in the case of a statutory arbitration, whether the enactment providing for arbitration applies to the dispute),
  - (b) whether the tribunal is properly constituted, and
  - (c) what matters have been submitted to arbitration in accordance with the arbitration agreement.

#### **Rule 20 Objections to tribunal's jurisdiction M**

20. (1) Any party may object to the tribunal on the ground that the tribunal does not have, or has exceeded, its jurisdiction in relation to any matter.
- (2) An objection must be made -
- (a) before, or as soon as is reasonably practicable after, the matter to which the objection relates is first raised in the arbitration, or
  - (b) where the tribunal considers that circumstances justify a later objection, by such later time as it may allow, but, in any case, an objection may not be made after the tribunal makes its last award.
- (3) If the tribunal upholds an objection it must -
- (a) end the arbitration in so far as it relates to a matter over which the tribunal has ruled it does not have jurisdiction, and
  - (b) set aside any provisional or part award already made in so far as the award relates to such a matter.
- (4) The tribunal may -
- (a) rule on an objection independently from dealing with the subject-matter of the dispute, or
  - (b) delay ruling on an objection until it makes its award on the merits of the dispute (and include its ruling in that award), but, where the parties agree which of these courses the tribunal should take, the tribunal must proceed accordingly.

#### **Rule 21 Appeal against tribunal's ruling on jurisdictional objection M**

21. (1) A party may, no later than 14 days after the tribunal's decision on an objection under rule 20, appeal to the Outer House against the decision.

- (2) The tribunal may continue with the arbitration pending determination of the appeal.
- (3) The Outer House's decision on the appeal is final.

**Rule 22 Referral of point of jurisdiction D**

22. The Outer House may, on an application by any party, determine any question as to the tribunal's jurisdiction.

**Rule 23 Jurisdiction referral: procedure etc. M**

23. (1) This rule applies only where an application is made under rule 22.
- (2) Such an application is valid only if -
- (a) the parties have agreed that it may be made, or
  - (b) the tribunal has consented to it being made and the court is satisfied -
    - (i) that determining the question is likely to produce substantial savings in expenses,
    - (ii) that the application was made without delay, and
    - (iii) that there is a good reason why the question should be determined by the court.
- (3) The tribunal may continue with the arbitration pending determination of an application.
- (4) The Outer House's determination of the question is final (as is any decision by the Outer House as to whether an application is valid).

## PART 03.

### General Duties

#### **Rule 24          General duty of the tribunal M**

24. (1) The tribunal must -
- (a) be impartial and independent,
  - (b) treat the parties fairly, and
  - (c) conduct the arbitration -
    - (i) without unnecessary delay, and
    - (ii) without incurring unnecessary expense.
- (2) Treating the parties fairly includes giving each party a reasonable opportunity to put its case and to deal with the other party's case.

#### **Rule 25          General duty of the parties M**

25. The parties must ensure that the arbitration is conducted-
- (a) without unnecessary delay, and
  - (b) without incurring unnecessary expense.

#### **Rule 26          Confidentiality D**

26. (1) Disclosure by the tribunal, any arbitrator or a party of confidential information relating to the arbitration is to be actionable as a breach of an obligation of confidence unless the disclosure -
- (a) is authorised, expressly or impliedly, by the parties (or can reasonably be considered as having been so authorised),
  - (b) is required by the tribunal or is otherwise made to assist or enable the tribunal to conduct the arbitration,
  - (c) is required -
    - (i) in order to comply with any enactment or rule of law,
    - (ii) for the proper performance of the discloser's public functions, or
    - (iii) in order to enable any public body or office-holder to perform public functions properly,
  - (d) can reasonably be considered as being needed to protect a party's lawful interests,
  - (e) is in the public interest,
  - (f) is necessary in the interests of justice, or
  - (g) is made in circumstances in which the discloser would have absolute privilege had the disclosed information been defamatory.

- (2) The tribunal and the parties must take reasonable steps to prevent unauthorised disclosure of confidential information by any third party involved in the conduct of the arbitration.
- (3) The tribunal must, at the outset of the arbitration, inform the parties of the obligations which this rule imposes on them.
- (4) “Confidential information”, in relation to an arbitration, means any information relating to -
  - (a) the dispute,
  - (b) the arbitral proceedings,
  - (c) the award, or
  - (d) any civil proceedings relating to the arbitration in respect of which an order has been granted under section 15 of this Act, which is not, and has never been, in the public domain.

**Rule 27      Tribunal deliberations D**

27. (1) The tribunal’s deliberations may be undertaken in private and accordingly need not be disclosed to the parties.
- (2) But, where an arbitrator fails to participate in any of the tribunal’s deliberations, the tribunal must disclose that fact (and the extent of the failure) to the parties.

## PART 04.

### Arbitral Proceedings

#### **Rule 28 Procedure and evidence D**

28. (1) It is for the tribunal to determine -
- (a) the procedure to be followed in the arbitration,
  - (b) the admissibility, relevance, materiality and weight of any evidence,
  - (c) the extent and scope of evidence required to make a determination,
  - (d) the scope for instruction of a single expert or experts, and
  - (e) where the issue to be determined falls within Part I of the Children (Scotland) Act 1995 the tribunal shall take account of the Child's age and maturity and shall so far as practicable –
    - (i) give him an opportunity to indicate whether he wishes to express his views,
    - (ii) if he does so wish, give him an opportunity to express them, and
    - (iii) have regard to such views as he may express
- Without prejudice to the foregoing generality of this paragraph a child 12 years of age or more shall be presumed to be of sufficient age and maturity to form a view.
- (2) The tribunal may direct a party to produce information, documents or other materials in a specified manner and/or within a specified time.
- (3) On commencement of the arbitration, the tribunal may invite the parties to make submissions setting out briefly their respective views as to the nature of the dispute, the issues, what form in procedure should be adopted, the timetable and any other relevant matters.
- (4) If appropriate, the tribunal may convene a preliminary meeting, telephone conference or other suitable forum for exchange of views between the parties or their representatives.
- (5) Within a reasonable time of ascertaining the parties' views, the tribunal will give directions and set a timetable for the procedural steps in the arbitration.

#### **Rule 29 Place of arbitration D**

29. The tribunal may meet, and otherwise conduct the arbitration, anywhere it chooses (in or outwith Scotland).

**Rule 30      Tribunal decisions D**

30. (1) Where the tribunal is unable to make a decision unanimously (including any decision on an award), a decision made by the majority of the arbitrators is sufficient.
- (2) Where there is neither unanimity nor a majority in favour of or opposed to making any decision -
- (a) the decision is to be made by the arbitrator nominated to chair the tribunal, or
  - (b) where no person has been so nominated, the decision is to be made -
    - (i) where the tribunal consists of 3 or more arbitrators, by the last arbitrator to be appointed, or
    - (ii) where the tribunal consists of 2 arbitrators, by an umpire appointed by the tribunal or, where the tribunal fails to make an appointment within 14 days of being requested to do so by either party or any arbitrator, by an arbitral appointments referee (at the request of a party or an arbitrator).

**Rule 31      Tribunal directions D**

31. (1) The tribunal may give such directions to the parties as it considers appropriate for the purposes of conducting the arbitration.
- (2) A party must comply with such a direction by such time as the tribunal specifies.

**Rule 32      Power to appoint clerk, agents or employees etc. D**

32. (1) The tribunal may appoint a clerk (and such other agents, employees or other persons as it thinks fit) to assist it in conducting the arbitration.
- (2) But the parties' consent is required for any appointment in respect of which significant expenses are likely to arise.

**Rule 33      Party representatives D**

33. (1) A party may be represented in the arbitration by a solicitor and/or counsel or may be assisted by a named individual in the conduct of proceedings if that named individual is a suitable person to act in that capacity and if the tribunal is of the opinion that it would be efficient to the administration of justice to allow the said individual to assist.

- (2) But the party must, before representation begins, give notice of the representative -
  - (a) to the tribunal, and
  - (b) to the other party.

**Rule 34          Experts D**

- 34. (1) The tribunal may obtain an expert opinion on any matter arising in the arbitration.
- (2) The parties must be given a reasonable opportunity -
  - (a) to make representations about any written expert opinion, and
  - (b) to hear any oral expert opinion and to ask questions of the expert giving it.
- (3) The Tribunal may order the parties or either of them to find caution for the expenses of any expert opinion within such timeframe as subject to such conditions as the tribunal deems fit. Caution will be held by the tribunal on behalf of the parties. Where a party fails to find caution, the tribunal may terminate the arbitration and make such order as to the expenses of the arbitration as the tribunal deems fit.

**Rule 35          Powers relating to property D**

- 35. The tribunal may direct a party -
  - (a) to allow the tribunal, an expert or another party -
    - (i) to inspect, photograph, preserve or take custody of any property which that party owns or possesses which is the subject of the arbitration (or as to which any question arises in the arbitration), or
    - (ii) to take samples from, or conduct an experiment on, any such property, or
  - (b) to preserve any document or other evidence which the party possesses or controls.

**Rule 36          Oaths or affirmations D**

- 36. The tribunal shall, where a party or witnesses are to be examined, administer an oath or affirmation to that party or witness for that purpose.

**Rule 37          Failure to submit claim or defence timeously D**

- 37. (1) Where -
  - (a) a party unnecessarily delays in submitting or in otherwise pursuing a claim,

- (b) the tribunal considers that there is no good reason for the delay, and
  - (c) the tribunal is satisfied that the delay -
    - (i) gives, or is likely to give, rise to a substantial risk that it will not be possible to resolve the issues in that claim fairly, or
    - (ii) has caused, or is likely to cause, serious prejudice to the other party, the tribunal must end the arbitration in so far as it relates to the subject-matter of the claim and may make such award (including an award on expenses) as it considers appropriate in consequence of the claim.
- (2) Where -
- (a) a party unnecessarily delays in submitting a defence to the tribunal, and
  - (b) the tribunal considers that there is no good reason for the delay, the tribunal must proceed with the arbitration (but the delay is not, in itself, to be treated as an admission of anything).

**Rule 38 Failure to attend hearing or provide evidence D**

38. Where -
- (a) a party fails -
    - (i) to attend a hearing which the tribunal requested the party to attend a reasonable period in advance of the hearing, or
    - (ii) to produce any document or other evidence requested by the tribunal, and
  - (b) the tribunal considers that there is no good reason for the failure, the tribunal may proceed with the arbitration, and make its award, on the basis of the evidence (if any) before it.

**Rule 39 Failure to comply with tribunal direction or arbitration agreement D**

39. (1) Where a party fails to comply with -
- (a) any direction made by the tribunal, or
  - (b) any obligation imposed by –
    - (i) the arbitration agreement,
    - (ii) these rules (in so far as they apply), or
    - (iii) any other agreement by the parties relating to conduct of the arbitration, the tribunal may order the party to so comply.
- (2) Where a party fails to comply with an order made under this rule, the tribunal may do any of the following -
- (a) direct that the party is not entitled to rely on any allegation or material which was the subject-matter of the order,



- (b) draw adverse inferences from the non-compliance,
- (c) proceed with the arbitration and make its award,
- (d) make such provisional award (including an award on expenses) as it considers appropriate in consequence of the non-compliance.

**Rule 40          Consolidation of proceedings D**

40.    (1) Parties may agree -
- (a) to consolidate the arbitration with another arbitration, or
  - (b) to hold concurrent hearings.
- (2) But the tribunal may not order such consolidation, or the holding of concurrent hearings, on its own initiative.

## PART 05.

### Powers of Court in Relation to Arbitral Proceedings

#### **Rule 41 Referral of point of law D**

41. The Outer House may, on an application by any party, determine any point of Scots law arising in the arbitration.

#### **Rule 42 Point of law referral: procedure etc. M**

42. (1) This rule applies only where an application is made under rule 41.
- (2) Such an application is valid only if -
- (a) the parties have agreed that it may be made, or
  - (b) the tribunal has consented to it being made and the court is satisfied
    - (i) that determining the question is likely to produce substantial savings in expenses,
    - (ii) that the application was made without delay, and
    - (iii) that there is a good reason why the question should be determined by the court.
- (3) The tribunal may continue with the arbitration pending determination of the application.
- (4) The Outer House's determination of the question is final (as is any decision by the Outer House as to whether an application is valid).

#### **Rule 43 Variation of time limits set by parties D**

43. The court may, on an application by the tribunal or any party, vary any time limit relating to the arbitration which is imposed -
- (a) in the arbitration agreement, or
  - (b) by virtue of any other agreement between the parties.

#### **Rule 44 Time limit variation: procedure etc. M**

44. (1) This rule applies only where an application for variation of time limit is made under rule 43.
- (2) Such a variation may be made only if the court is satisfied -
- (a) that no arbitral process for varying the time limit is available, and
  - (b) that someone would suffer a substantial injustice if no variation was made.

- (3) It is for the court to determine the extent of any variation.
- (4) The tribunal may continue with the arbitration pending determination of an application.
- (5) The court's decision on whether to make a variation (and, if so, on the extent of the variation) is final.

**Rule 45            Court's power to order attendance of witnesses and disclosure of evidence M**

45. (1) The court may, on an application by the tribunal or any party, order any person -
- (a) to attend a hearing for the purposes of giving evidence to the tribunal, or
  - (b) to disclose documents or other material evidence to the tribunal.
- (2) But the court may not order a person to give any evidence, or to disclose anything, which the person would be entitled to refuse to give or disclose in civil proceedings.
- (3) The tribunal may continue with the arbitration pending determination of an application.
- (4) The court's decision on whether to make an order is final.

**Rule 46            Court's other powers in relation to arbitration D**

46. (1) The court has the same power in an arbitration as it has in civil proceedings -
- (a) to appoint a person to safeguard the interests of any party lacking capacity,
  - (b) to order the sale of any property in dispute in the arbitration,
  - (c) to make an order securing any amount in dispute in the arbitration,
  - (d) to make an order under section 1 of the Administration of Justice (Scotland) Act 1972 (c. 59),
  - (e) to grant warrant for arrestment or inhibition,
  - (f) to grant interdict (or interim interdict), or
  - (g) to grant any other interim or permanent order.
- (2) But the court may take such action only -
- (a) on an application by any party, and
  - (b) if the arbitration has begun -

- (i) with the consent of the tribunal, or
  - (ii) where the court is satisfied that the case is one of urgency.
- (3) The tribunal may continue with the arbitration pending determination of the application.
- (4) This rule applies -
  - (a) to arbitrations which have begun,
  - (b) where the court is satisfied -
    - (i) that a dispute has arisen or might arise, and
    - (ii) that an arbitration agreement provides that such a dispute is to be resolved by arbitration.
- (5) This rule does not affect -
  - (a) any other powers which the court has under any enactment or rule of law in relation to arbitrations, or
  - (b) the tribunal's powers.

## PART 06.

### Awards

#### **Rule 47 Rules applicable to the substance of the dispute D**

47. (1) (a) The tribunal must decide the dispute in accordance with the principles of Scots law
- (b) notwithstanding that only a court could make awards of financial provision and that only on divorce, by remitting the case to arbitration, the tribunal will have the power to make
- (i) awards of financial provision as would be open to a court on granting decree of divorce; and
- (ii) such additional awards as the parties may agree that the tribunal should have the power to make.
- (c) the tribunal shall have the power to make awards incorporating the remedies set out in Section 49 hereof.
- (2) The tribunal shall have the power to make any award on the issues in dispute incorporating, without prejudice to the foregoing generality, the remedies set out in Rule 49 hereof.

#### **Rule 48 Power to award payment and damages M**

48. (1) The tribunal's award may order the payment of a sum of money (including a sum in respect of damages).
- (2) Such a sum must be specified -
- (a) in any currency agreed by the parties, or
- (b) the absence of such agreement, in such currency as the tribunal considers appropriate.

#### **Rule 49 Other remedies available to tribunal D**

49. The tribunal's award may -
- (a) be of a declaratory nature,
- (b) order a party to do or refrain from doing something (including ordering the performance of a contractual obligation), or
- (c) order the rectification or reduction of any deed or other document (other than a decree of court) to the extent permitted by the law governing the deed or document,
- (d) require the parties to take all steps necessary to implement any provision contained in the tribunal's award.

- (e) require the parties to discharge succession rights including prior and legal rights under the Succession (Scotland) Act 1964 or any statutory successor thereof,
- (f) require the parties to surrender occupancy rights under the Matrimonial Homes (Family Protection) (Scotland) Act 1981 (as amended) in any heritable property owned or occupied by the parties or either of them or to regulate occupancy rights between the parties under the said Act as the tribunal deems appropriate,
- (g) make a property transfer order in relation to any heritable or moveable corporeal or incorporeal property,
- (h) grant an order regulating the parties' respective liabilities of the debts of either or both of the parties.
- (i) determine any issues relevant to the exercise of Parental Rights and Responsibilities falling within Part I of the Children (Scotland) Act 1995.

**Rule 50            Interest M**

50. (1) The tribunal's award may order that interest is to be paid on –
- (a) the whole or part of any amount which the award orders to be paid (or which is payable in consequence of a declaratory award), in respect of any period up to the date of the award,
  - (b) the whole or part of any amount which is-
    - (i) claimed in the arbitration and outstanding when the arbitration began, but
    - (ii) paid before the tribunal made its award, in respect of any period up to the date of payment,
  - (c) the outstanding amount of any amounts awarded (including any award of arbitration expenses or pre-award interest under paragraph (a) or (b)) in respect of any period from the date of the award up to the date of payment.
- (2) An award ordering payment of interest may, in particular, specify -
- (a) the interest rate,
  - (b) the period for which interest is payable (including any rests which the tribunal considers appropriate).
- (3) An award may make different interest provision in respect of different amounts.
- (4) Interest is to be calculated -
- (a) in the manner agreed by the parties, or
  - (b) failing such agreement, in such manner as the tribunal determines.
- (5) This rule does not affect any other power of the tribunal to award interest.

**Rule 51 Form of award D**

51. (1) The tribunal's award must be signed by all arbitrators or all those assenting to the award.
- (2) The tribunal's award must state -
- (a) the seat of the arbitration,
  - (b) when the award is made and when it takes effect,
  - (c) the tribunal's reasons for the award, and
  - (d) whether any previous provisional or part award has been made (and the extent to which any previous provisional award is superseded or confirmed).
- (3) The tribunal's award is made by delivering it to each of the parties in accordance with rule 83.

**Rule 52 Award treated as made in Scotland D**

52. An award is to be treated as having been made in Scotland even if it is signed at, or delivered to or from, a place outwith Scotland.

**Rule 53 Provisional awards D**

53. The tribunal may make a provisional award granting any relief on a provisional basis which it has the power to grant permanently.

**Rule 54 Part awards M**

54. (1) The tribunal may make more than one award at different times on different aspects of the matters to be determined.
- (2) A "part award" is an award which decides some (but not all) of the matters which the tribunal is to decide in the arbitration.
- (3) A part award must specify the matters to which it relates.

**Rule 54A Interim Awards**

The Tribunal may make any interim order which due regard to the interests of the parties may require.

**Rule 55 Draft awards D**

55. Before making an award, the tribunal -
- (a) may send a draft of its proposed award to the parties, and

- (b) if it does so, must consider any representations from the parties about the draft which the tribunal receives by such time as it specifies.

**Rule 56 Power to withhold award on non-payment of fees or expenses M**

- 56. (1) The tribunal may refuse to deliver or send its award to the parties if any fees and expenses for which they are liable under rule 60 have not been paid in full.
- (2) Where the tribunal so refuses, the court may (on an application by any party) order -
  - (a) that the tribunal must deliver the award on the applicant paying into the court an amount equal to the fees and expenses demanded (or such lesser amount as may be specified in the order),
  - (b) that the amount paid into the court is to be used to pay the fees and expenses which the court determines as being properly payable, and
  - (c) that the balance (if any) of the amount paid into the court is to be repaid to the applicant.
- (3) The court may make such an order only if the applicant has exhausted any available arbitral process of appeal or review of the amount of the fees and expenses demanded.
- (4) The court's decision on an application under this rule is final.

**Rule 57 Arbitration to end on last award or early settlement D**

- 57. (1) An arbitration ends when the last award to be made in the arbitration is made (and no claim, including any claim for expenses or interest, is outstanding).
- (2) But this does not prevent the tribunal from ending the arbitration before then under rule 20(3) or 37(1).
- (3) The parties may end the arbitration at any time by notifying the tribunal that they have settled the dispute.
- (4) On the request of the parties, the tribunal may make an award reflecting the terms of the settlement and these rules (except for rule 51(2)(c) and Part 8) apply to such an award as they apply to any other award.
- (5) The fact that the arbitration has ended does not affect the operation of these rules (in so far as they apply) in relation to matters connected with the arbitration.



## **Rule 58            Correcting an award D**

58. (1) The tribunal may correct an award so as to-
- (a) correct a clerical, typographical or other error in the award arising by virtue of accident or omission, or
  - (b) clarify or remove any ambiguity in the award.
- (2) The tribunal may make such a correction -
- (a) on its own initiative, or
  - (b) on an application by any party.
- (3) A party making an application under this rule must send a copy of the application to the other party at the same time as the application is made.
- (4) Such an application is valid only if made -
- (a) within 28 days of the award concerned, or
  - (b) by such later date as the tribunal, the Outer House or the sheriff may, on an application by the party, specify (with any determination by the Outer House or the sheriff being final).
- (5) The tribunal must, before deciding whether to correct an award, give -
- (a) where the tribunal proposed the correction, each of the parties,
  - (b) where a party application is made, the other party, a reasonable opportunity to make representations about the proposed correction.
- (6) A correction may be made under this rule only -
- (a) where the tribunal proposed the correction, within 28 days of the award concerned being made, or
  - (b) where a party application is made, within 28 days of the application being made.
- (7) Where a correction affects -
- (a) another part of the corrected award, or
  - (b) any other award made by the tribunal (relating to the substance of the dispute, expenses, interest or any other matter), the tribunal may make such consequential correction of that other part or award as it considers appropriate.
- (8) A corrected award is to be treated as if it was made in its corrected form on the day the award was made.

## PART 07.

### Arbitration Expenses

#### **Rule 59 Arbitration expenses D**

59. "Arbitration expenses" means -
- (a) the arbitrators' fees and expenses for which the parties are liable under rule 60,
  - (b) any expenses incurred by the tribunal when conducting the arbitration for which the parties are liable under rule 60,
  - (c) the parties' legal and other expenses, and
  - (d) the fees and expenses of-
    - (i) any arbitral appointments referee, and
    - (ii) any other third party to whom the parties give powers in relation to the arbitration, for which the parties are liable under rule 60.

#### **Rule 60 Arbitrators' fees and expenses M**

60. (1) The parties are severally liable to pay to the arbitrators -
- (a) the arbitrators' fees and expenses, including -
    - (i) the arbitrators' fees for conducting the arbitration,
    - (ii) expenses incurred personally by the arbitrators when conducting the arbitration, and
  - (b) expenses incurred by the tribunal when conducting the arbitration, including-
    - (i) the fees and expenses of any clerk, agent, employee or other person appointed by the tribunal to assist it in conducting the arbitration,
    - (ii) the fees and expenses of any expert from whom the tribunal obtains an opinion,
    - (iii) any expenses in respect of meeting and hearing facilities, and
    - (iv) any expenses incurred in determining recoverable arbitration expenses.
- (2) The parties are also severally liable to pay the fees and expenses of-
- (a) any arbitral appointments referee, and
  - (b) any other third party to whom the parties give powers in relation to the arbitration.
- (3) The amount of fees and expenses payable under this rule and the payment terms are-
- (a) to be agreed by the parties and the arbitrators or, as the case may be, the arbitral appointments referee or other third party, or

- (b) failing such agreement, to be determined by the Auditor of the Court of Session.
- (4) Unless the Auditor of the Court of Session decides otherwise-
  - (a) the amount of any fee is to be determined by the Auditor on the basis of a reasonable commercial rate of charge, and
  - (b) the amount of any expenses is to be determined by the Auditor on the basis that a reasonable amount is to be allowed in respect of all reasonably incurred expenses.
- (5) The Auditor of the Court of Session may, when determining the amount of fees and expenses, order the repayment of any fees or expenses already paid which the Auditor considers excessive (and such an order has effect as if it was made by the court).
- (6) This rule does not affect-
  - (a) the parties' liability as between themselves for fees and expenses covered by this rule (see rules 62 and 65), or
  - (b) the Outer House's power to make an order under rule 16 (order relating to expenses in cases of arbitrator's resignation or removal).

**Rule 61 Recoverable arbitration expenses D**

61. (1) The following arbitration expenses are recoverable-
- (a) the arbitrators' fees and expenses for which the parties are liable under rule 60,
  - (b) any expenses incurred by the tribunal when conducting the arbitration for which the parties are liable under rule 60, and
  - (c) the fees and expenses of any arbitral appointments referee (or any other third party to whom the parties give powers in relation to the arbitration) for which the parties are liable under rule 60.
- (2) It is for the tribunal to-
- (a) determine the amount of the other arbitration expenses which are recoverable, or
  - (b) arrange for the Auditor of the Court of Session to determine that amount.
- (3) Unless the tribunal or, as the case may be, the Auditor decides otherwise-
- (a) the amount of the other arbitration expenses which are recoverable must be determined on the basis that a reasonable amount is to be allowed in respect of all reasonably incurred expenses, and

- (b) any doubt as to whether expenses were reasonably incurred or are reasonable in amount is to be resolved in favour of the person liable to pay the expenses.

**Rule 62 Liability for recoverable arbitration expenses D**

62. (1) The tribunal may make an award allocating the parties' liability between themselves for the recoverable arbitration expenses (or any part of those expenses).
- (2) Until such an award is made (or where the tribunal chooses not to make such an award) in respect of recoverable arbitration expenses (or any part of them), the parties are, as between themselves, each liable-
- (a) for an equal share of any such expenses for which the parties are liable under rule 60, and
  - (b) for their own legal and other expenses.
- (3) This rule does not affect-
- (a) the parties' several liability for fees and expenses under rule 60, or
  - (b) the liability of any party to any other third party.

**Rule 63 Ban on pre-dispute agreements about liability for arbitration expenses M**

63. Any agreement allocating the parties' liability between themselves for any or all of the arbitration expenses has no effect if entered into before the dispute being arbitrated has arisen.

**Rule 64 Caution for expenses D**

64. (1) The tribunal may-
- (a) order a party making a claim to provide caution for the recoverable arbitration expenses or any part of them, and
  - (b) if that order is not complied with, make an award dismissing any claim made by that party.
- (2) But such an order may not be made only on the ground that the party-
- (a) is an individual who ordinarily resides outwith the United Kingdom, or
  - (b) is a body which is-
    - (i) incorporated or formed under the law of a country outwith the United Kingdom, or
    - (ii) managed or controlled from outwith the United Kingdom.

**Rule 65            Limitation of recoverable arbitration expenses D**

65.    (1) A provisional or part award may cap a party's liability for the recoverable arbitration expenses at an amount specified in the award.
- (2) But an award imposing such a cap must be made sufficiently in advance of the expenses to which the cap relates being incurred, or the taking of any steps in the arbitration which may be affected by the cap, for the parties to take account of it.

**Rule 66            Awards on recoverable arbitration expenses D**

66.    An expenses award (under rule 62 or 65) may be made together with or separately from an award on the substance of the dispute (and these rules apply in relation to an expenses award as they apply to an award on the substance of the dispute).

## PART 08.

### Challenging Awards

#### **Rule 67      Challenging an award: substantive jurisdiction M**

67. (1) A party may appeal to the Outer House against the tribunal’s award on the ground that the tribunal did not have jurisdiction to make the award (a “jurisdictional appeal”).
- (2) The Outer House may decide a jurisdictional appeal by-
- (a) confirming the award,
  - (b) varying the award (or part of it), or
  - (c) setting aside the award (or part of it).
- (3) Any variation by the Outer House has effect as part of the tribunal’s award.
- (4) An appeal may be made to the Inner House against the Outer House’s decision on a jurisdictional appeal (but only with the leave of the Outer House).
- (5) Leave may be given by the Outer House only where it considers-
- (a) that the proposed appeal would raise an important point of principle or practice, or
  - (b) that there is another compelling reason for the Inner House to consider the appeal.
- (6) The Outer House’s decision on whether to grant such leave is final.
- (7) The Inner House’s decision on such an appeal is final.

#### **Rule 68      Challenging an award: serious irregularity M**

68. (1) A party may appeal to the Outer House against the tribunal’s award on the ground of serious irregularity (a “serious irregularity appeal”).
- (2) “Serious irregularity” means an irregularity of any of the following kinds which has caused, or will cause, substantial injustice to the appellant-
- (a) the tribunal failing to conduct the arbitration in accordance with-
    - (i) the arbitration agreement,
    - (ii) these rules (in so far as they apply), or
    - (iii) any other agreement by the parties relating to conduct of the arbitration,

- (b) the tribunal acting outwith its powers (other than by exceeding its jurisdiction),
  - (c) the tribunal failing to deal with all the issues that were put to it,
  - (d) any arbitral appointments referee or other third party to whom the parties give powers in relation to the arbitration acting outwith powers,
  - (e) uncertainty or ambiguity as to the award's effect,
  - (f) the award being-
    - (i) contrary to public policy, or
    - (ii) obtained by fraud or in a way which is contrary to public policy,
  - (g) an arbitrator having not been impartial and independent,
  - (h) an arbitrator having not treated the parties fairly,
  - (i) an arbitrator having been incapable of acting as an arbitrator in the arbitration (or there being justifiable doubts about an arbitrator's ability to so act),
  - (j) an arbitrator not having a qualification which the parties agreed (before the arbitrator's appointment) that the arbitrator must have, or
  - (k) any other irregularity in the conduct of the arbitration or in the award which is admitted by-
    - (i) the tribunal, or
    - (ii) any arbitral appointments referee or other third party to whom the parties give powers in relation to the arbitration.
- (3) The Outer House may decide a serious irregularity appeal by-
- (a) confirming the award,
  - (b) ordering the tribunal to reconsider the award (or part of it), or
  - (c) if it considers reconsideration inappropriate, setting aside the award (or part of it).
- (4) Where the Outer House decides a serious irregularity appeal (otherwise than by confirming the award) on the ground-
- (a) that the tribunal failed to conduct the arbitration in accordance with-
    - (i) the arbitration agreement,
    - (ii) these rules (in so far as they apply), or
    - (iii) any other agreement by the parties relating to conduct of the arbitration,
  - (b) that an arbitrator has not been impartial and independent, or
  - (c) that an arbitrator has not treated the parties fairly, it may also make such order as it thinks fit about any arbitrator's entitlement (if any) to fees and expenses (and such an order may provide for the repayment of fees or expenses already paid to the arbitrator).

- (5) An appeal may be made to the Inner House against the Outer House’s decision on a serious irregularity appeal (but only with the leave of the Outer House).
- (6) Leave may be given by the Outer House only where it considers-
  - (a) that the proposed appeal would raise an important point of principle or practice, or
  - (b) that there is another compelling reason for the Inner House to consider the appeal.
- (7) The Outer House’s decision on whether to grant such leave is final.
- (8) The Inner House’s decision on such an appeal is final.

**Rule 69            Challenging an award: legal error D**

- 69. (1) A party may appeal to the Outer House against the tribunal’s award on the ground that the tribunal erred on a point of Scots law (a “legal error appeal”).
- (2) An agreement between the parties to disapply rule 51(2)(c) by dispensing with the tribunal’s duty to state its reasons for its award is to be treated as an agreement to exclude the court’s jurisdiction to consider a legal error appeal.

**Rule 70            Legal error appeals: procedure etc. M**

- 70. (1) This rule applies only where rule 69 applies.
- (2) A legal error appeal may be made only-
  - (a) with the agreement of the parties, or
  - (b) with the leave of the Outer House.
- (3) Leave to make a legal error appeal may be given only if the Outer House is satisfied-
  - (a) that deciding the point will substantially affect a party’s rights,
  - (b) that the tribunal was asked to decide the point, and
  - (c) that, on the basis of the findings of fact in the award (including any facts which the tribunal treated as established for the purpose of deciding the point), the tribunal’s decision on the point-
    - (i) was obviously wrong, or
    - (ii) where the court considers the point to be of general importance, is open to serious doubt.



- (4) An application for leave is valid only if it-
  - (a) identifies the point of law concerned, and
  - (b) states why the applicant considers that leave should be granted.
- (5) The Outer House must determine an application for leave without a hearing (unless satisfied that a hearing is required).
- (6) The Outer House's determination of an application for leave is final.
- (7) Any leave to appeal expires 7 days after it is granted (and so any legal error appeal made after then is accordingly invalid unless made with the agreement of the parties).
- (8) The Outer House may decide a legal error appeal by-
  - (a) confirming the award,
  - (b) ordering the tribunal to reconsider the award (or part of it), or
  - (c) if it considers reconsideration inappropriate, setting aside the award (or part of it).
- (9) An appeal may be made to the Inner House against the Outer House's decision on a legal error appeal (but only with the leave of the Outer House).
- (10) Leave may be given by the Outer House only where it considers-
  - (a) that the proposed appeal would raise an important point of principle or practice, or
  - (b) that there is another compelling reason for the Inner House to consider the appeal.
- (11) The Outer House's decision on whether to grant such leave is final.
- (12) The Inner House's decision on such an appeal is final.

**Rule 71            Challenging an award: supplementary M**

71. (1) This rule applies to-
  - (a) jurisdictional appeals,
  - (b) serious irregularity appeals, and
  - (c) where rule 69 applies to the arbitration, legal error appeals, and references to "appeal" are to be construed accordingly.
- (2) An appeal is competent only if the appellant has exhausted any available arbitral process of appeal or review (including any recourse available under rule 58).
- (3) No appeal may be made against a provisional award.

- (4) An appeal must be made no later than 28 days after the later of the following dates-
  - (a) the date on which the award being appealed against is made,
  - (b) if the award is subject to a process of correction under rule 58, the date on which the tribunal decides whether to correct the award, or
  - (c) if there has been an arbitral process of appeal or review, the date on which the appellant was notified of the result of that process. A legal error appeal is to be treated as having being made for the purposes of this rule if an application for leave is made.
- (5) An application for leave to appeal against the Outer House's decision on an appeal must be made no later than 28 days after the date on which the decision is made (and any such leave expires 7 days after it is granted).
- (6) An appellant must give notice of an appeal to the other party and the tribunal.
- (7) The tribunal may continue with the arbitration pending determination of an appeal against a part award.
- (8) The Outer House (or the Inner House in the case of an appeal against the Outer House's decision) may-
  - (a) order the tribunal to state its reasons for the award being appealed in sufficient detail to enable the Outer House (or Inner House) to deal with the appeal properly, and
  - (b) make any other order it thinks fit with respect to any additional expenses arising from that order.
- (9) Where the Outer House (or the Inner House in the case of an appeal against the Outer House's decision) decides an appeal by setting aside the award (or any part of it), it may also order that any provision in an arbitration agreement which prevents the bringing of legal proceedings in relation to the subject-matter of the award (or that part of it) is void.
- (10) The Outer House (or the Inner House in the case of an appeal against the Outer House's decision) may-
  - (a) order an appellant (or an applicant for leave to appeal) to provide security for the expenses of the appeal (or application), and
  - (b) dismiss the appeal (or application) if the order is not complied with.
- (11) But such an order may not be made only on the ground that the appellant (or applicant)-

- (a) is an individual who ordinarily resides outwith the United Kingdom, or
  - (b) is a body which is-
    - (i) incorporated or formed under the law of a country outwith the United Kingdom, or
    - (ii) managed or controlled from outwith the United Kingdom.
- (12) The Outer House (or the Inner House in the case of an appeal against the Outer House's decision) may-
- (a) order that any amount due under an award being appealed (or any associated provisional award) must be paid into court or otherwise secured pending its decision on the appeal (or the application for leave to appeal), and
  - (b) dismiss the appeal (or application) if the order is not complied with.
- (13) An appeal to the Inner House against any decision of the Outer House under this rule may be made only with the leave of the Outer House.
- (14) An application for leave to appeal against such a decision must be made no later than 28 days after the date on which the decision is made (and any such leave expires 7 days after it is granted).
- (15) Leave may be given by the Outer House only where it considers-
- (a) that the proposed appeal would raise an important point of principle or practice, or
  - (b) that there is another compelling reason for the Inner House to consider the appeal.
- (16) The Outer House's decision on whether to grant such leave is final.
- (17) A decision of the Inner House under this rule (including any decision on an appeal against a decision by the Outer House) is final.

**Rule 72            Reconsideration by tribunal M**

72. (1) Where the Outer House or, as the case may be, the Inner House decides a serious irregularity appeal or a legal error appeal by ordering the tribunal to reconsider its award (or any part of it), the tribunal must make a new award in respect of the matter concerned (or confirm its original award) by no later than-
- (a) in the case of a decision by the Outer House-
    - (i) where the decision is appealed, the day falling 3 months after the appeal (or, as the case may be, the application for leave to appeal) is dismissed or abandoned,

- (ii) where the decision is not appealed, the day falling 3 months after the decision is made, or
    - (iii) such other day as the Outer House may specify,
  - (b) in the case of a decision by the Inner House-
    - (i) the day falling 3 months after the decision is made, or
    - (ii) such other day as the Inner House may specify.
- (2) These rules apply in relation to the new award as they apply in relation to the appealed award.

## PART 09.

### Miscellaneous

#### **Rule 73 Immunity of tribunal etc. M**

73. (1) Neither the tribunal nor any arbitrator is liable for anything done or omitted in the performance, or purported performance, of the tribunal's functions.
- (2) This rule does not apply-
- (a) if the act or omission is shown to have been in bad faith, or
  - (b) to any liability arising from an arbitrator's resignation (but see rule 16(1)(c)).
- (3) This rule applies to any clerk, agent, employee or other person assisting the tribunal to perform its functions as it applies to the tribunal.

#### **Rule 74 Immunity of appointing arbitral institution etc. M**

74. (1) An arbitral appointments referee, or other third party who the parties ask to appoint or nominate an arbitrator, is not liable-
- (a) for anything done or omitted in the performance, or purported performance, of that function (unless the act or omission is shown to have been in bad faith), or
  - (b) for the acts or omissions of-
    - (i) any arbitrator whom it nominates or appoints, or
    - (ii) the tribunal of which such an arbitrator forms part (or any clerk, agent or employee of that tribunal).
- (2) This rule applies to an arbitral appointments referee's, or other third party's, agents and employees as it applies to the referee or other third party.

#### **Rule 75 Immunity of experts, witnesses and legal representatives M**

75. Every person who participates in an arbitration as an expert, witness or legal representative has the same immunity in respect of acts or omissions as the person would have if the arbitration were civil proceedings.

#### **Rule 76 Loss of right to object M**

76. (1) A party who participates in an arbitration without making a timely objection on the ground-
- (a) that an arbitrator is ineligible to act as an arbitrator,

- (b) that an arbitrator is not impartial and independent,
  - (c) that an arbitrator has not treated the parties fairly,
  - (d) that the tribunal does not have jurisdiction,
  - (e) that the arbitration has not been conducted in accordance with-
    - (i) the arbitration agreement,
    - (ii) these rules (in so far as they apply), or
    - (iii) any other agreement by the parties relating to conduct of the arbitration,
  - (f) that the arbitration has been affected by any other serious irregularity, may not raise the objection later before the tribunal or the court.
- (2) An objection is timeous if it is made-
- (a) as soon as reasonably practicable after the circumstances giving rise to the ground for objection first arose,
  - (b) by such later date as may be allowed by-
    - (i) the arbitration agreement,
    - (ii) these rules (in so far as they apply),
    - (iii) the other party, or
  - (c) where the tribunal considers that circumstances justify a later objection, by such later date as it may allow.
- (3) This rule does not apply where the party shows that it did not object timeously because it-
- (a) did not know of the ground for objection, and
  - (b) could not with reasonable diligence have discovered that ground.
- (4) This rule does not allow a party to raise an objection which it is barred from raising for any reason other than failure to object timeously.

**Rule 77 Independence of arbitrator M**

77. For the purposes of these rules, an arbitrator is not independent in relation to an arbitration if-
- (a) the arbitrator's relationship with any party,
  - (b) the arbitrator's financial or other commercial interests, or
  - (c) anything else, gives rise to justifiable doubts as to the arbitrator's impartiality.

**Rule 78 Consideration where arbitrator judged not to be impartial and independent D**

78. (1) This rule applies where-
- (a) an arbitrator is removed by the Outer House under rule 12 on the ground that the arbitrator is not impartial and independent,

- (b) the tribunal is dismissed by the Outer House under rule 13 on the ground that it has failed to comply with its duty to be impartial and independent, or
  - (c) the tribunal's award (or any part of it) is returned to the tribunal for reconsideration, or is set aside, on either of those grounds (see rule 68).
- (2) Where this rule applies, the Outer House must have particular regard to whether an arbitrator has complied with rule 8 when it is considering whether to make an order under rule 16(1) or 68(4) about-
- (a) the arbitrator's entitlement (if any) to fees or expenses,
  - (b) repaying fees or expenses already paid to the arbitrator.

**Rule 79          Death of arbitrator M**

79. An arbitrator's authority is personal and ceases on death.

**Rule 80          Death of party D**

80. (1) An arbitration agreement is not discharged by the death of a party and may be enforced by or against the executor or other representative of that party.
- (2) This rule does not affect the operation of any law by virtue of which a substantive right or obligation is extinguished by death.

**Rule 81          Unfair treatment D**

81. A tribunal (or arbitrator) who treats any party unfairly is, for the purposes of these rules, to be deemed not to have treated the parties fairly.

**Rule 82          Rules applicable to umpires M**

82. (1) The following rules apply in relation to an umpire appointed under rule 30 (or otherwise with the agreement of the parties) as they apply in relation to an arbitrator or, as the case may be, the tribunal-
- rule 4
  - rule 8
  - rules 10 to 14
  - rule 24
  - rule 26
  - rules 59, 60 and 61(1)
  - rule 68
  - rule 73
  - rules 76 to 79

- (2) But the parties are, in so far as those rules are not mandatory rules, free to modify or disapply the way in which those rules would otherwise apply to an umpire.

**Rule 83            Formal communications D**

83. (1) A “formal communication” means any application, award, consent, direction, notice, objection, order, reference, request, requirement or waiver made or given or any document served-
  - (a) in pursuance of an arbitration agreement,
  - (b) for the purposes of these rules (in so far as they apply), or
  - (c) otherwise in relation to an arbitration.
- (2) A formal communication must be in writing.
- (3) A formal communication is made, given or served if it is-
  - (a) hand delivered to the person concerned,
  - (b) sent to the person concerned by first class post in a properly addressed envelope or package-
    - (i) in the case of an individual, to the individual’s principal place of business or usual or last known abode,
    - (ii) in the case of a body corporate, to the body’s registered or principal office, or
    - (iii) in either case, to any postal address designated for the purpose by the intended recipient (such designation to be made by giving notice to the person giving or serving the formal communication), or
  - (c) sent to the person concerned in some other way (including by email, fax or other electronic means) which the sender reasonably considers likely to cause it to be delivered on the same or next day.
- (4) A formal communication which is sent by email, fax or other electronic means is to be treated as being in writing only if it is legible and capable of being used for subsequent reference.
- (5) A formal communication is, unless the contrary is proved, to be treated as having been made, given or served-
  - (a) where hand delivered, on the day of delivery,
  - (b) where posted, on the day on which it would be delivered in the ordinary course of post, or
  - (c) where sent in any other way described above, on the day after it is sent.
- (6) The tribunal may determine that a formal communication-
  - (a) is to be delivered in such other manner as it may direct, or



- (b) need not be delivered, but it may do so only if satisfied that it is not reasonably practicable for the formal communication to be made, given or served in accordance with this rule (or, as the case may be, with any contrary agreement between the parties).
- (7) This rule does not apply in relation to any application, order, notice, document or other thing which is made, given or served in or for the purposes of legal proceedings.

**Rule 84            Periods of time D**

84. Periods of time are to be calculated for the purposes of an arbitration as follows-
- (a) where any act requires to be done within a specified period after or from a specified date or event, the period begins immediately after that date or, as the case may be, the date of that event, and
  - (b) where the period is a period of 7 days or less, the following days are to be ignored-
    - (i) Saturdays and Sundays, and
    - (ii) any public holidays in the place where the act concerned is to be done.

## Index

The words and other expressions listed in the following index are defined or otherwise explained for the purposes of these rules by the provisions indicated in the index. All references are to the Arbitration (Scotland) Act 2010.

Expression	Interpretation provision
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arbitration	section 2
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## Schedule 2 (Introduced by Section 29)

### REPEALS

#### Enactment

Arbitration (Scotland) Act 1894 (c. 13)

Arbitration Act 1950 (c. 27)

Administration of Justice (Scotland) Act 1972 (c. 59)

Arbitration Act 1975 (c. 3)

Law Reform (Miscellaneous Provisions) (Scotland) Act 1980 (c. 55)

Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40)

#### Extent of repeal

The whole Act

The whole Act

Section 3

The whole Act

Section 17

Section 66  
Schedule 7