



HL Bill 7 of 2023–24

## Arbitration Bill [HL]

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Arbitration is a form of dispute resolution that enables opposing parties to resolve a disagreement privately through a third party rather than going to court. The Law Commission has estimated that the arbitration industry could be worth at least £2.5bn to the UK economy each year, although its true value may be much higher. London is a leading centre for the settlement of international disputes in particular.

The [Arbitration Bill \[HL\]](#) would amend the Arbitration Act 1996, the principal legislation governing arbitrations in England and Wales and in Northern Ireland. The changes provided for in the bill would implement recommendations from the Law Commission following consultation with the sector. In particular, the bill seeks to:

- codify a duty on arbitrators to disclose potential conflicts of interest
- strengthen arbitrator immunity to ensure that arbitrators can continue to act in a way which is robustly impartial
- introduce the capacity for arbitrators to dispose summarily of issues that have no real prospect of success
- strengthen court orders in support of arbitral proceedings to ensure that arbitral proceedings and the orders of arbitrators are fully effective





- clarify the applicable law governing international arbitration agreements

The bill also seeks to make minor changes including around making appeals available from an application to stay, or halt, legal proceedings; simplifying preliminary applications to court on questions of jurisdiction and points of law; and clarifying time limits for challenging awards.

The bill is a Law Commission bill and different procedures can apply to such bills. The House of Lords has agreed to commit the bill to a second reading committee, which is expected to debate the bill on 19 December 2023. The bill may then be committed to a special public bill committee for further scrutiny.



# I. What is arbitration?

Arbitration is a form of dispute resolution that enables opposing parties to resolve a disagreement privately through a third party rather than going to court.<sup>1</sup> It can be used in a wide range of domestic and international settings, from family law and rent reviews through to international commercial disputes and investor claims against states. The third party may be an appointed arbitrator or panel of arbitrators acting as an arbitral tribunal.<sup>2</sup>

The Law Commission of England and Wales (hereafter the Law Commission) has noted that arbitration is a major area of activity in the UK. It has estimated that the industry, centred around London, could be worth at least £2.5bn to the UK economy each year, although this may be a significant underestimate.<sup>3</sup>

The Arbitration Act 1996 regulates arbitration in England and Wales and in Northern Ireland.<sup>4</sup> Separate legislation passed by the Scottish Parliament regulates arbitration in Scotland.<sup>5</sup>

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<sup>1</sup> Law Commission, '[Review of the Arbitration Act 1996: Final report and bill](#)', 6 September 2023, HC 1787 of session 2022–23, p 1; and '[Improvements recommended to Arbitration Act 1996 to ensure UK position as international arbitration leader](#)', 6 September 2023.

<sup>2</sup> Prime Minister's Office, '[The King's Speech 2023: Background briefing notes](#)', 7 November 2023, p 34.

<sup>3</sup> In a consultation paper published in September 2022, the Law Commission used published caseload figures and unpublished caseload estimates to estimate there were at least 5,000 domestic and international arbitrations in England and Wales every year, potentially worth at least £2.5bn to the UK economy: Law Commission, '[Review of the Arbitration Act 1996: A consultation paper](#)', 22 September 2022, p 1.

<sup>4</sup> [Explanatory notes](#), p 3.

<sup>5</sup> The Arbitration (Scotland) Act 2010 regulates arbitration in Scotland: Chartered Institute of Arbitrators, '[Arbitration in Scotland](#)', accessed 22 November 2023.



## 2. Why has the government introduced the bill?

The bill would amend the Arbitration Act 1996 as it applies in England and Wales—and in Northern Ireland subject to devolved consent—following recommendations by the Law Commission. The government agreed with all of the Law Commission’s recommendations and the bill would bring these into effect.

### 2.1 Law Commission law reform programme consultation

The Law Commission is a statutory independent body with a remit to keep the law of England and Wales under review and make systemic recommendations for consideration by Parliament.<sup>6</sup> It may also recommend changes to codify the law, eliminate anomalies, repeal obsolete and unnecessary enactments and/or reduce the number of separate statutes.

In March 2021 the Law Commission proposed a review of the Arbitration Act 1996 in the light of 25 years having elapsed since that legislation was passed by Parliament.<sup>7</sup> The proposal formed part of a consultation on the commission’s 14th programme of law reform, which was open until the end of July 2021. The commission said the aim of any review would be to “maintain the attractiveness” of England and Wales as a destination for dispute resolution and the “pre-eminence of English law as a choice of law” for arbitration proceedings.

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<sup>6</sup> Law Commission, ‘[About us](#)’, accessed 22 November 2023.

<sup>7</sup> Ministry of Justice, ‘[Law Commission: 14th programme of law reform](#)’, 24 March 2021. See also: Law Commission, ‘[Generating ideas for the Law Commission’s 14th programme of law reform](#)’, 24 March 2021; and ‘[Ideas for law reform](#)’, 24 March 2021.



In November 2021 the commission announced that it would review the 1996 act following the earlier law reform programme consultation.<sup>8</sup> Commenting at the time, Law Commissioner for Commercial and Common Law Professor Sarah Green said:

The quality of the Arbitration Act 1996 has helped London become a leading seat for international arbitrations, however, there are some aspects of the act which could be improved in light of modern arbitration practices.

The Law Commission's work will enhance the experience for those who choose to arbitrate in England and Wales and maintain English law as the gold standard in international arbitrations.

The commission said it would launch its review during the first quarter of 2022 and aim to publish a consultation paper in late 2022. There were subsequently two rounds of consultation before the commission published its final report. These are summarised below.

## **2.2 First Law Commission consultation: September 2022**

In September 2022, in line with the schedule announced almost a year earlier, the commission published an initial consultation paper on the 1996 act.<sup>9</sup> The paper said the commission had spoken with a wide range of stakeholders and conducted its own research into the provisions of the 1996 act. It also said the commission had concluded

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<sup>8</sup> Law Commission, '[Law Commission to review the Arbitration Act 1996](#)', 30 November 2021.

<sup>9</sup> Law Commission, '[Review of the Arbitration Act 1996: A consultation paper](#)', 22 September 2022. See also: Law Commission, '[Review of the Arbitration Act 1996: Summary of consultation paper](#)', 22 September 2022.



the act “still works very well and there is no need for extensive reform”. However, it added that in support of modernising the act the commission had provisionally proposed amendments in certain specific areas.<sup>10</sup>

To this end the consultation document included a number of proposals aimed at improving the act to make it as “effective and responsive as possible”. This was particularly the case in the light of recent reforms by competing jurisdictions, for example in Sweden and Dubai.<sup>11</sup> The proposals included measures to “improve the efficiency of cases, give further protections to arbitrators, grant extra provisions to the courts to support cases, and refine the process for challenging an arbitrator and their decisions”. In other areas, including provisions on confidentiality and impartiality, the commission proposed no changes on the grounds that the law was already effective and proportionate.

Speaking at the time, Professor Green said the commission’s proposals had been “designed to ensure that arbitration law is efficient, effective and responsive to modern developments”. She said that by “making further improvements, we can help the UK to consolidate its status as a global centre for international dispute resolution”.

The commission published a compilation of the responses received in December 2022.<sup>12</sup>

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<sup>10</sup> Law Commission, [‘Review of the Arbitration Act 1996: A consultation paper’](#), 22 September 2022, p 1.

<sup>11</sup> Law Commission, [‘New reforms to ensure UK retains position as a leader in international arbitration’](#), 22 September 2022.

<sup>12</sup> Law Commission, [‘Review of the Arbitration Act 1996: Responses to the first consultation paper’](#), 15 December 2022.



## 2.3 Second Law Commission consultation: March 2023

The commission published a second consultation paper in March 2023.<sup>13</sup> In it, the commission noted that around 118 consultees had responded to the first consultation. Those responding included individual practitioners, academics, specialist bodies, and major domestic and international firms and institutions, some representing thousands of people.<sup>14</sup>

The second consultation revisited two issues considered in the first consultation, around challenges to awards on the basis that a tribunal lacked jurisdiction and discrimination in arbitral appointments. It also sought views on proposals concerning the “proper law of the arbitration agreement”, or which law should govern an arbitration agreement where the parties make no explicit choice within the arbitration agreement itself. These had been developed following suggestions received in the earlier consultation exercise and would mean a change from the current common law position.<sup>15</sup>

The commission published a compilation of the responses received in May 2023.<sup>16</sup>

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<sup>13</sup> Law Commission, [‘Review of the Arbitration Act 1996: Second consultation paper’](#), 27 March 2023. See also: Law Commission, [‘Review of the Arbitration Act 1996: Second consultation paper summary’](#), 27 March 2023.

<sup>14</sup> Law Commission, [‘Review of the Arbitration Act 1996: Second consultation paper’](#), 27 March 2023, p 1.

<sup>15</sup> As above, pp 1–2.

<sup>16</sup> Law Commission, [‘Review of the Arbitration Act 1996: Responses to second consultation paper’](#), 22 May 2023.



## 2.4 Final report and draft bill

The commission published its final report in September 2023.<sup>17</sup> Drawing on responses to both consultations the commission made 19 proposals for changes to the 1996 act, together with the text of a draft bill to give effect to its recommendations.

The commission reiterated its earlier conclusion, that the central tenets of the 1996 act continued to function well, remained valid and that the consensus among consultation respondents was that “root and branch reform is not needed or wanted”.<sup>18</sup> However, the commission argued that its proposals, limited to a “few major initiatives, and a very small number of minor corrections”, would help ensure the 1996 act remained fit for purpose and “bring greater clarity and certainty to the law”.

The “major initiatives” proposed included:

- **codifying the law on arbitrators’ duty to disclose conflicts of interest** and retaining current duties on impartiality to maintain the integrity of arbitration as a system of dispute resolution

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<sup>17</sup> Law Commission, ‘[Review of the Arbitration Act 1996: Final report and bill](#)’, 6 September 2023, HC 1787 of session 2022–23. See also: Law Commission, ‘[Review of the Arbitration Act 1996: Summary of final report](#)’, 6 September 2023; and ‘[Improvements recommended to Arbitration Act 1996 to ensure UK position as international arbitration leader](#)’, 6 September 2023.

<sup>18</sup> Law Commission, ‘[Review of the Arbitration Act 1996: Final report and bill](#)’, 6 September 2023, HC 1787 of session 2022–23, p 5.





- **strengthening arbitrators' immunity** to ensure arbitrator neutrality and robust decision-making
- **introducing provisions for arbitrators to summarily dismiss legal claims that lack merit** to allow for the efficient and fair resolution of disputes
- **clarifying the power of the courts** to support arbitration proceedings and emergency arbitrators
- **improving the framework for challenging arbitrators' decisions** on the basis that the arbitrators lacked jurisdiction
- **creating new rules for deciding which laws govern an arbitration agreement** to introduce simplicity and encourage the application of the law of England and Wales<sup>19</sup>

The commission also recommended minor corrections related to:

- making appeals available from an application to stay, or halt, legal proceedings
- simplifying preliminary applications to court on jurisdiction and points of law
- clarifying time limits for challenging awards
- repealing unused provisions on domestic arbitration agreements

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<sup>19</sup> Law Commission, '[Improvements recommended to Arbitration Act 1996 to ensure UK position as international arbitration leader](#)', 6 September 2023.



## 2.5 Reaction to the proposals

The General Council of the Bar of England and Wales, commonly known as the Bar Council, expressed support for the proposals having earlier made consultation submissions. Chair of the Bar Council Nick Vineall KC said:

We welcome the Law Commission's characteristically careful and balanced review of the Arbitration Act [1996], and we support the proposals for reform which it makes. It is extremely important that the government finds parliamentary time for the short bill which the Law Commission proposes.

London has a well-deserved reputation as the foremost centre for international arbitration. It is important to legislate to make the modest changes to the arbitration regime which the Law Commission has recommended in order to maintain and enhance that reputation.<sup>20</sup>

The Chartered Institute of Arbitrators also welcomed the proposed changes, the majority of which it said were in line with recommendations it had made following input from its membership.<sup>21</sup> Chief Executive Officer Catherine Dixon said it was a “sign of the Arbitration Act 1996's strength and value that only specific changes to ensure that act remains current have been recommended as opposed to an overhaul”.

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<sup>20</sup> Bar Council, [‘Reforming the Arbitration Act 1996: Bar Council comment’](#), 6 September 2023.

<sup>21</sup> Chartered Institute of Arbitrators, [‘UK Law Commission publishes final report on Arbitration Act review’](#), 13 September 2023.



Speaking on behalf of the government at the time of the final report's publication, Lord Bellamy, parliamentary under secretary of state at the Ministry of Justice, said:

Arbitration is a vital measure to help people and businesses resolve disputes swiftly and effectively, without the expense of going through court proceedings. This process must be underpinned by effective laws, and we will respond to the Law Commission's report shortly so we can maintain the UK's reputation as a world leader in resolving legal disputes.<sup>22</sup>

## 2.6 Government bill

In the November 2023 King's Speech, the government undertook to introduce an Arbitration Bill in the new parliamentary session.<sup>23</sup> It indicated the bill would modernise the law on arbitration as recommended by the Law Commission. It added the bill would apply in England and Wales, and in Northern Ireland subject to the agreement of the Northern Ireland Department of Justice.

In briefing notes published to accompany the King's Speech, the government argued it was "vital to modernise our arbitration framework to respond to competition from abroad and maintain our competitive edge". It added that competing jurisdictions had "updated their legislation more recently: Singapore in 2023, Hong Kong in 2022, and Sweden and Dubai in 2018". It also noted that in 2021,

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<sup>22</sup> Law Commission, '[Improvements recommended to Arbitration Act 1996 to ensure UK position as international arbitration leader](#)', 6 September 2023.

<sup>23</sup> Prime Minister's Office, '[The King's Speech 2023: Background briefing notes](#)', 7 November 2023, pp 34–6.



Singapore ranked equal first to London as preferred choice of seat for the first time according to research from Queen Mary University.<sup>24</sup>

The government introduced the Arbitration Bill [HL] in the House of Lords on 21 November 2023.<sup>25</sup> It published [explanatory notes](#) and a [delegated powers memorandum](#) to accompany the bill. It later published an [impact assessment](#), a [human rights memorandum](#) and a [factsheet](#) setting out more detail on the bill's aims and expected impact.<sup>26</sup>

The bill's explanatory notes state that the government accepted all of the commission's recommendations.<sup>27</sup> They further confirmed the bill implemented the “major initiatives” and “minor corrections” detailed above. The text of the government bill differed only slightly from the Law Commission's draft bill as a result of technical drafting changes.

Law Commission bills may be subject to special procedures in the House of Lords, including being committed to a second reading committee and a special public bill committee for further scrutiny.<sup>28</sup> On 4 December 2023 the House agreed to commit the bill to a second reading committee.<sup>29</sup> The committee, in which all members eligible to sit may participate, will function like a grand committee. The committee is expected to debate the bill on 19 December 2023 and

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<sup>24</sup> For further information, see: Queen Mary University of London, '[International arbitration survey 2021: Adapting arbitration to a changing world](#)', accessed 30 November 2023.

<sup>25</sup> [HL Hansard, 21 November 2023, col 671](#).

<sup>26</sup> Ministry of Justice, '[Arbitration Bill](#)', 22 November 2023.

<sup>27</sup> [Explanatory notes](#), p 3.

<sup>28</sup> House of Lords, '[Companion to the standing orders and guide to the proceedings of the House of Lords](#)', 26 July 2023, [para 8.49](#) and [paras 8.119–25](#).

<sup>29</sup> [HL Hansard, 4 December 2023, col 1284](#).



the debate will have no formal time limit.<sup>30</sup> The second reading motion is then expected to be taken without debate in the chamber at a later date, before a special public bill committee undertakes further scrutiny and reports back to the House as a whole.

### 3. What would the bill do?

The bill would give effect to the recommendations of the Law Commission to reform the Arbitration Act 1996 as it applies in England and Wales, and in Northern Ireland subject to devolved consent. It comprises 18 clauses.

**Clause 1** would replace the common law in *Enka v Chubb* (2020) with a statutory rule on the law applicable to arbitration agreements.<sup>31</sup> This would mean the law governing an arbitration agreement would be the law expressly chosen by the parties to an agreement, or default to be the law of the chosen seat. This would occur regardless of where the arbitration is seated. For example, where an arbitration is seated in England and Wales, then by default the agreement to arbitrate would be governed by the law of England and Wales. An exception would be made if the parties expressly agreed a different law to govern the arbitration agreement. At present, following the case above, it is common for an arbitration to be seated in England and Wales but for the arbitration agreement to be governed by a foreign law.

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<sup>30</sup> Government Whips' Office, '[Speakers' lists for debates: Week beginning 18 December 2023](#)', accessed 30 November 2023.

<sup>31</sup> [Explanatory notes](#), p 5. See also: [Enka v Chubb \[2020\] UKSC 38](#).



**Clauses 2 to 4** concern arbitrators and arbitrator tribunals.<sup>32</sup>

Clause 2 would codify the general duty of disclosure on arbitrators as articulated by the Supreme Court in its decision in *Halliburton v Chubb* (2020).<sup>33</sup> This would apply prior to the arbitrator's appointment and would be a continuing duty which also applied after their appointment. Parties would not be able to dispense with this duty. Clause 3 would provide that an arbitrator would not be liable for the costs of an application to court for their removal unless the arbitrator has acted in bad faith. This would reverse current case law which has held that an arbitrator can be liable for such costs.

Clause 4 would provide that an arbitrator will no longer be liable for resignation unless the resignation is shown by a complainant to be unreasonable. The commission did not propose a list of when a resignation might be unreasonable. Instead it said this would vary according to the circumstances, and was a "matter best left open, to be decided (if necessary) by the courts, case by case".<sup>34</sup>

**Clauses 5 and 6** concern the jurisdiction of tribunals.<sup>35</sup> At present, under the 1996 act, an arbitral tribunal has jurisdiction if there is a valid arbitration agreement, if the tribunal is properly constituted, and in respect of matters which have been submitted to arbitration in accordance with the arbitration agreement. However, a participating party may object that the arbitral tribunal lacks jurisdiction. The explanatory notes explain:

The tribunal itself is usually empowered to decide, in the first instance, whether it has jurisdiction (by section 30). The court can be asked to rule on whether the tribunal has jurisdiction,

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<sup>32</sup> [Explanatory notes](#), p 6.

<sup>33</sup> [Halliburton v Chubb \[2020\] UKSC 48](#).

<sup>34</sup> Law Commission, '[Review of the Arbitration Act 1996: Final report and bill](#)', 6 September 2023, HC 1787 of session 2022–23, p 47.

<sup>35</sup> [Explanatory notes](#), pp 6–7.



including as follows. One way is to wait until the tribunal has issued a ruling, and then challenge that ruling under section 67, which allows a challenge to an arbitral award on the basis that the tribunal lacked jurisdiction. Another way is by invoking section 32, which allows the court to decide whether the tribunal has jurisdiction as a preliminary point. Sections 32 and 67 have different requirements.

Clause 5 would amend the 1996 act to make it clear that the mechanism to allow a court to decide whether a tribunal has jurisdiction as a preliminary point (section 32) can only be invoked instead of a tribunal ruling on its jurisdiction. If a tribunal had already ruled, then any challenge would have to be brought through section 67. Meanwhile clause 6 would provide that an arbitration tribunal could award the costs of arbitration proceedings up until the point at which arbitration proceedings came to an end if a court ruled that a tribunal had no jurisdiction.

**Clauses 7 to 9** concern arbitral proceedings and powers of the court.<sup>36</sup> Clause 7 would confer an express power on arbitrators to make an award on a summary basis to dispose of an issue where an arbitrating party has no real prospect of succeeding on that issue. Clause 8 would align the powers of emergency arbitrators with those of normal arbitrators when an arbitrating party failed to comply with an order. Clause 9 would align the position in arbitration proceedings with the position in court proceedings so that certain court orders were available against third parties, as well as give third parties full rights of appeal.

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<sup>36</sup> [Explanatory notes](#), pp 7–8.



**Clauses 10 to 12** concern powers of the court in relation to the award.<sup>37</sup> Clause 10 would align the remedies available when a court ruled that a tribunal did not have jurisdiction with those available when awards are successfully challenged for serious irregularity or appealed on a point of law. Clause 11 would provide that, where an application is made under section 67 of the 1996 act by a party who took part in the arbitration proceedings, that relates to an objection on which the tribunal has already ruled, then there would generally be no full rehearing before the court. The Ministry of Justice has said rehearings can cause delay, increase costs, and lead to unfairness.<sup>38</sup> Specifically, the clause means rules of court will be able to provide that there should be no new grounds of objection, and no new evidence, before the court, unless it was not reasonably possible to put these before the tribunal; and evidence should not be reheard by the court, unless necessary in the interests of justice. Meanwhile clause 12 would clarify when the current time limit of 28 days for court applications to challenge arbitral awards would run. This would be after any arbitral appeal or any application to correct the award or issue an additional award. In any other case, the time limit begins to run from the date of the award.

**Clauses 13 to 15** concern miscellaneous minor amendments.<sup>39</sup> Clause 13 would amend the 1996 act to expressly state that a right of appeal is available against court decisions on staying, or halting, legal proceedings. This would be consistent with the decision of the House of Lords in *Inco Europe v First Choice Distribution* (2000), which assumed that an ability to appeal was intended. Clause 14 would amend two sections of the 1996 act regarding requirements to be met for court to consider applications. Specifically, sections governing applications to the court for rulings on jurisdiction and preliminary

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<sup>37</sup> As above, pp 8–9.

<sup>38</sup> [Delegated powers memorandum](#), p 2.

<sup>39</sup> [Explanatory notes](#), p 9.





points of law arising in the arbitration, respectively, would be amended so that an application would require either the agreement of the parties or the permission of the tribunal. Clause 15 would repeal provisions relating to domestic arbitration that have not been brought into force.

**Clauses 16 to 18** concern the bill's extent, commencement and short title respectively. These clauses would come into force on the bill receiving royal assent. Clauses 1 to 15 would be brought into force by regulations. Only one of these, to bring clause 11 into force, would be subject to parliament procedure.<sup>40</sup> In this case the regulations would be subject to the negative procedure, meaning they would come into effect when ministers signed them into law and would only cease to have effect if either House objected within a set time period.<sup>41</sup> The remaining powers would enable ministers to commence the act and make transitional or saving provision in connection with the coming into force of any provision of the act, as required. As is standard, these regulations would not be subject to parliamentary procedure.

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<sup>40</sup> [Delegated powers memorandum](#), pp 1–2.

<sup>41</sup> UK Parliament, [‘Statutory instruments: Made negative’](#), accessed 22 November 2023.



## 4. Read more

- Ministry of Justice, '[Modernised laws to secure UK as world leader in dispute resolution](#)', 22 November 2023; and '[Arbitration Bill](#)', 22 November 2023
- Law Commission, '[Review of the Arbitration Act 1996](#)', accessed 22 November 2023; '[Review of the Arbitration Act 1996: Final report and bill](#)', 6 September 2023, HC 1787 of session 2022–23; '[Review of the Arbitration Act 1996: Summary of final report](#)', 6 September 2023; and '[Improvements recommended to Arbitration Act 1996 to ensure UK position as international arbitration leader](#)', 6 September 2023

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