EXECUTIVE NOTE

THE ARBITRATION (SCOTLAND) ACT 2010 (CONSEQUENTIAL AMENDMENTS) ORDER 2010

2010 No. Draft

The power to make the Arbitration (Scotland) Act 2010 (Consequential Amendments) Order 2010 ("the Order") is conferred by section 32 of the Arbitration (Scotland) Act 2010 ("the Act"). Under section 33(3), it is subject to affirmative procedure.

Policy objectives

The primary objectives of the Arbitration (Scotland) Act 2010 are that it:

- Clarifies and consolidates Scottish arbitration law, filling in gaps where these exist in the previous law;
- Provides a statutory framework for arbitrations which will operate in the absence of agreement to the contrary;
- Ensures fairness and impartiality in the process; and
- Minimises expense and ensures that the process is efficient.

The Scots law approach to arbitration taken in the Act aims to be consistent with that in the rest of the UK under the Arbitration Act 1996 where appropriate.

Section 32 of the Act contains provisions giving the Scottish Ministers power to make orders including power to make any supplementary, incidental, consequential, transitional, transitory or saving provision which Ministers consider appropriate.

The Order provides for minor incidental or consequential amendments to certain existing pieces of legislation which have references to the Arbitration Act 1996 by inserting references to the Arbitration (Scotland) Act 2010.

The provisions being amended relate to dispute resolution procedures in a number of different areas, eg proceedings before referees in pensions disputes or before employment tribunals. Most of the amendments provide that the Arbitration (Scotland) Act 2010 will not apply to such proceedings, two that it will only apply to the extent it is applied by subordinate legislation and the remaining amendment provides that rules may be made which provide the Act will not apply, except as specified.

The enactments being amended relate to reserved matters but they are modifications which are incidental to, or consequential on, provisions in the Act, the subject matter of which is not reserved. In those circumstances the amendments are within the competence of the Scottish Parliament, in accordance with paragraph 3 of Schedule 4 to the Scotland Act 1998.

A further statutory instrument with consequential or incidental amendments, including provisions relating to statutory arbitrations, will be made at a later stage. An order under section 104 of the Scotland Act 1998 will also be laid at Westminster, making a number of amendments to reserved law.

Consultation

A public consultation was carried out on the Arbitration (Scotland) Bill from June to September 2008. The written responses to the consultation have been published on the Scottish Government website.

Responses to the consultation document and of stakeholders at various meetings were overwhelmingly positive towards the Bill and comments mainly related to the detail of how the proposed arbitration rules should work.

The Scotland Office, the Office of the Solicitor to the Advocate General, the Department for Business, Innovation and Skills and other relevant Whitehall Departments have been consulted about this Order which consists of minor and technical consequential amendments.

Regulatory Impact Assessment

A regulatory Impact Assessment was carried out on the draft Bill, but none has been carried out on this Order, since it simply seeks to disapply or apply the provisions of the new Act to proceedings dealing with disputes in a number of different areas, eg employment. .

Financial effects

There will be no financial effects arising from this Order since it consists of minor consequential amendments to existing pieces of legislation. It is possible that users of arbitration services may derive some financial savings from the modernised arbitration regime set out in the 2010 Act through more efficient processes, quicker and thus cheaper arbitrations.

Scottish Government
Justice Directorate
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