POLICY NOTE

THE ARBITRATION (SCOTLAND) ACT 2010 (TRANSITIONAL PROVISIONS) ORDER 2016

SSI 2016/XXX

The above instrument was made in exercise of the powers conferred by section 33(1)(b) and 36(4) of the Arbitration (Scotland) Act 2010. The instrument is subject to affirmative procedure.

Policy Objectives

The purpose of this instrument is to remove the ability of parties under an arbitration agreement made prior to the commencement of section 36 of the Arbitration (Scotland) Act 2010 to contract out of using the new arbitration law provided for by the 2010 Act. The instrument will not affect arbitrations under such agreements where the arbitration has commenced before the coming into force of the Order.

The instrument seeks to implement the intentions of the 2010 Act which is to provide a statutory default framework for arbitrations to operate in the absence of agreement to the contrary, ensuring a fair and impartial process, with the intention that anyone in Scotland, or seeking to do business in Scotland, should be able to access the principles and rules governing the law of arbitration in Scotland.

Section 36(3) of the Act made transitional provision providing that the legislation does not apply to an arbitration arising under an arbitration agreement made before the commencement of that section if the arbitrating parties agree not to use it.

Essentially this provision gave arbitrating parties the ability to opt to use the pre-existing arbitration law over the new law provided for in the 2010 Act. The pre-existing law was therefore saved for those pre-commencement agreements where the parties chose to contract out of the Act.

The Act provides that Scottish Ministers may be order remove this opt-out ability after a suitable period, falling as least 5 years after commencement of section 36.

As the Act is now over 5 years old, the Scottish Government is proposing to remove the ability of parties to contract out of using the new arbitration law.

Consultation

The Scottish Ministers have published the draft instrument and considered representations made to them about it. Those with an interest in the law of arbitration have been consulted, as provided for in the 2010 Act.

Impact Assessment

The instrument has no equality issues and no discriminatory or significant impact, directly or indirectly, on the protected characteristics.

Financial Effects

The instrument has no financial effects on the Scottish Government, local government or any other public body and places no additional burden on business.

Scottish Government
Justice Directorate

November 2016