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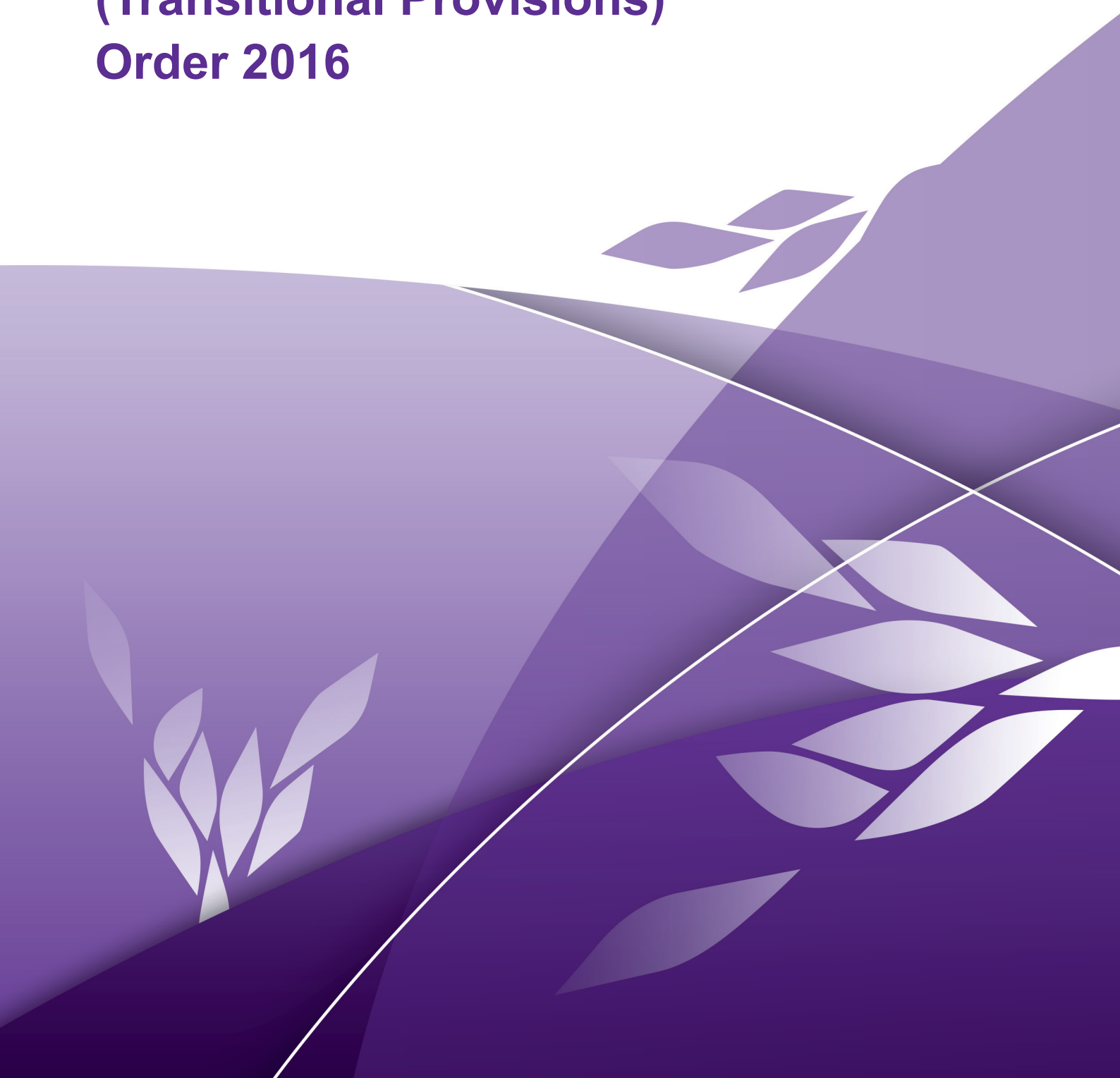
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9th Report, 2016 (Session 5)

Web

Justice Committee

Arbitration (Scotland) Act 2010 (Transitional Provisions) Order 2016



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Contents

Introduction	1
Scrutiny by the Delegated Powers and Law Reform Committee	1
Justice Committee consideration	1
Recommendation	2
Annexe A	3
Written submission from the Scottish Arbitration Centre	3

Justice Committee

Remit: To consider and report on matters falling within the responsibility of the Cabinet Secretary for Justice.



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justicecommittee@parliament.scot



0131 348 5047



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and Unionist Party



Douglas Ross
Scottish Conservative
and Unionist Party



Stewart Stevenson
Scottish National Party

Introduction

1. At its meeting on 29 November 2016 the Committee considered the following instrument—

Arbitration (Scotland) Act 2010 (Transitional Provisions) Order 2016 [draft]

2. The instrument was referred to the Justice Committee as lead committee and was subject to affirmative resolution. The Minister for Community Safety and Legal Affairs, Annabelle Ewing, attended the meeting to give evidence on the instrument and also to move the relevant motion recommending approval of the instrument¹.

Arbitration (Scotland) Act 2010 (Transitional Provisions) Order 2016 [draft]

3. The instrument is made under sections 33(1) and 36(4) of the Arbitration (Scotland) Act 2010. The Order removes 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.

Scrutiny by the Delegated Powers and Law Reform Committee

4. The Delegated Powers and Law Reform Committee considered the draft instrument at its meeting on 15 November 2016 and agreed that it did not need to draw it to the attention of the Parliament on any grounds within its remit.

Justice Committee consideration

5. The Justice Committee considered the draft instrument at its meeting on 29 November 2016, when Annabelle Ewing, Minister for Community Safety and Legal Affairs, attended to give evidence on the instrument.
6. The Committee had received a written submission from the Scottish Arbitration Centre in support of the draft Order. This is included in the Annexe to this report.
7. The Minister explained that the purpose of the draft Order was to remove the ability of parties under an arbitration agreement made prior to 7 June 2010, when section 36 of the Arbitration (Scotland) Act 2010 commenced, to contract out of using the new arbitration law that is provided for by that Act. Ms Ewing confirmed that the new arbitration law would come into effect on 1 January 2017.

8. The Minister also confirmed that responses to a consultation on the draft Order from the Faculty of Advocates, the Law Society of Scotland, the Scottish Arbitration Centre and the Royal Institution of Chartered Surveyors were all supportive of the Order.
9. Ms Ewing moved the motion in the name of Michael Matheson, Cabinet Secretary for Justice: S5M-02509—that the Justice Committee recommends that the Arbitration (Scotland) Act 2010 (Transitional Provisions) Order 2016 [draft] be approved.
10. The motion was agreed to without debate or division.

Recommendation

11. The Justice Committee recommends to the Parliament that it approve the draft instrument.

¹ Scottish Parliament Justice Committee. *Official Report 29 November 2016* Cols 2-4. Available at: <http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=10666&mode=pdf>

Annexe A

Written submission from the Scottish Arbitration Centre

We understand that discussion on ceasing the effect of the transitional provision under section 36(3) of the Arbitration (Scotland) Act 2010 is soon to be considered by the Justice Committee. Therefore, we wanted to write to you to encourage support for this Order.

By way of background, the Scottish Arbitration Centre was established in March 2011, following the passage of the Arbitration (Scotland) Act 2010.

The Centre promotes Scottish arbitration and Scotland as a jurisdictions and venue for domestic and international arbitration in order to increase arbitration and dispute business in Scotland. In addition to our promotional work, we have an annual training day for arbitrators and a popular membership scheme. We have a room hire service for arbitration hearings, mediations and other events. We provide Scotland chapters for international arbitration guides and attend the main international arbitration and law conferences, ensuring Scotland is very much on the international map.

We also have an arbitral appointment service, where our Arbitral Appointments Committee will select an arbitrator for parties when requested. The committee is divided into two sub-committees, a domestic committee dealing with domestic appointments and an international committee dealing with international appointments.

The Centre's energy arbitration project with the Centre for Energy, Petroleum and Mineral Law and Policy at the University of Dundee, the International Centre for Energy Arbitration (ICEA), which was launched by the previous First Minister, published its energy arbitration report last year. The report has been welcomed and commented on by major international law firms and academics, and resulted in an international energy arbitration conference at the Centre last October.

We work with both the Scottish and UK Governments. We receive funding from the Scottish Government, and work with the UK Government on its international promotion of legal and dispute resolution services.

The Centre saw off competition from Copenhagen, Mexico City, Stockholm, St Petersburg, Vancouver and Vienna to win its bid for Edinburgh to host the International Council for Commercial Arbitration (ICCA) Congress 2020. ICCA is a worldwide non-governmental organisation devoted to promoting the use, and improving the processes of arbitration and other forms of international commercial dispute resolution. The ICCA Congress is the world's largest conference devoted to international arbitration. The previous two ICCA congresses, held in Singapore and

Justice Committee

Arbitration (Scotland) Act 2010 (Transitional Provisions) Order 2016, 9th Report, 2016 (Session 5)

Miami, each attracted over 1,000 arbitration professionals. VisitScotland estimate the event is worth over £2 million to the Scottish economy.

The Centre also administers the new Convenor of School Closure Review Panels, a statutory review body. Since 30 March 2015, due to amendments to the Schools (Consultation) (Scotland) Act 2010, school closure proposals called in by the Scottish Ministers are referred to the Convenor of the School Closure Review Panels, who will be required to constitute a School Closure Review Panel from the ten Panel Members to determine the case. The Centre carries out administrative functions to support the Convenor and Panel Members.

The Scottish Arbitration Centre is of the view that all arbitrations should be governed by the Arbitration (Scotland) Act 2010, and that the transitional provision should cease to have effect. Therefore, we hope your committee will support the Arbitration (Scotland) Act 2010 (Transitional Provisions) Order 2016.

Andrew Mackenzie
Chief Executive
25 November 2016

