

# Kluwer Arbitration Blog

## ICCA Edinburgh 2022: Haste Ye Back! Reasons to Return to Scotland

Brandon Malone (Scottish Arbitration Centre) · Monday, September 19th, 2022

After a long, pandemic-induced delay, the [ICCA Congress in Edinburgh](#) is now in full swing. Six and a half long years after winning the bid to host the XXVth ICCA Congress, I had almost forgotten why we, the [Scottish Arbitration Centre](#), had made the bid in the first place, but as the international arbitration community descends upon Edinburgh, it is all coming back to me: we want you to come back, again and again.

With its rich history, beautiful scenery, wonderful food and drink, and warm hospitality, Scotland is a fantastic place to visit (and to live!), but how is it as a place to arbitrate? Here are my top ten reasons to use Scotland as a seat and a venue for arbitration.

### 1. Our Arbitration Law

Our arbitration law is set out in the [Arbitration \(Scotland\) Act 2010](#). It is a very modern arbitration statute, modelled on the Arbitration Act 1996 applicable in England and Wales. Our Act will feel instantly familiar to anyone who knows the 1996 Act, and English authority is frequently referred to when interpreting the equivalent provisions in the Scottish Act. There are a few differences with the 1996 Act. For example, we have opt out confidentiality built into the legislation, and some of the lacunae in the 1996 Act have been addressed in the Scottish Act, but there are no surprises.

### 2. Our Legal Culture

Scotland is generally regarded as a common law jurisdiction, because we have adversarial courts and a system of binding precedent. It is also true to say that our commercial law is very similar and in some places identical to the law of England and Wales. However, that is not the whole picture. The Scots law is best described as a mixed system. The origins of what might be regarded as the modern Scots law (from the late 1400s) are in Romano-Dutch law and the Canon law, and it is still possible to plead Roman law in certain cases. Whilst none of that is likely to affect an arbitration, unless Scots law is chosen as the substantive law of the contract, Scottish legal culture is influenced by civilian systems. A key procedural distinction is that we do not have a duty of disclosure, and we do not have the Anglo American system of document discovery. In many ways, Scotland's legal culture is a natural fit with international arbitration.

### **3. Our Judiciary**

The Court of Session, established in 1532, has an impeccable reputation for probity and fairness. The judges of the Court of Session, known as Senators of the College of Justice, preside over a wide range of cases, with commercial and arbitration related cases being sent to dedicated commercial/arbitration judges. The Court has developed a streamlined system of dealing with arbitration related applications. Since the introduction of the 2010 Act, the approach of the arbitration judges has been one of consistent support for the arbitral process.

### **4. Our Legal Expertise**

It is fair to say that Scots law does not have the same currency as, for example, English law. However, the advantage of this for the Scots lawyer is that in the commercial world we must be familiar with other legal systems as well as our own, and English law in particular. It is a testament to the excellence of Scottish legal training that both the President and Vice President of the UK Supreme Court (Lord Reed and Lord Hodge) are Scottish lawyers.

### **5. Our Openness**

Scotland is an entirely open jurisdiction for arbitration. There is no requirement to have a Scots law qualification to sit as an arbitrator, or represent a party in an arbitration seated in Scotland. Parties are entirely free to appoint their representatives, who may be qualified in any jurisdiction, or none.

### **6. Accessibility and Connectivity and Safety**

There are direct flight to Scotland from airports all over Europe, from the Middle East, from the East coast of the US, and it is easy to reach Scotland from London airports, but also from hub airports like Amsterdam, Istanbul, Qatar and Dubai with connecting flights to Africa, and the far east. Scotland is a safe place, with low crime rates.

### **7. Facilities**

Scotland offers a wide range of venues in which to conduct arbitration: from the hearing rooms of the Scottish Arbitration Centre in central Edinburgh, to the grandeur of the historic hotels in our cities, or indeed the countryside, or the splendour of our time-honoured buildings, like the Signet Library.

### **8. Enforceability**

As part of the UK, Scotland is subject to the New York Convention, and other treaties and agreements governing the recognition and enforcement of foreign arbitration agreements, orders and awards. The situation is no different than it would be for a London seated arbitration.

## 9. Immunity

The Arbitration (Scotland) Act 2010 makes it clear that neither the tribunal, nor any arbitrator is liable for anything done or omitted in performance of the tribunal's functions, and extends that immunity to any clerk, agent, employee or other person assisting the tribunal to perform its functions.

## 10. Our Rules

It is possible to seat an arbitration governed by any set of institutional rules (or none) in Scotland (and indeed we at the Scottish Arbitration Centre encourage you to do so). The Scottish Arbitration Centre has now launched its own [institutional rules](#). These are light touch rules, backed by a state of the art online case management system developed with Opus 2, a legal technology company that has been developing digital solutions for courts and arbitration proceedings for over a decade.

So, in conclusion, Scotland is now *the* place to arbitrate! Come back and see us soon.

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