



TWENTY
ESSEX

HOW ARE THE LATEST CHANGES TO THE LMAA'S TERMS AND PROCEDURES (2021) IMPACTING ON PRACTICE?

SARA MASTERS QC

BARRISTER AND ARBITRATOR



CHANGES INTRODUCED BY 2021 REVISIONS TO LMAA RULES

- AIMS
- ENTRY INTO FORCE
- APPOINTMENT AND REPLACEMENT OF ARBITRATORS
- VIRTUAL HEARINGS – LMAA GUIDELINES
- WITNESS STATEMENTS
- ELECTRONIC SIGNING OF AWARDS
- LMAA QUESTIONNAIRE
- LMAA SCP AND IP
- DIVERSITY

AIMS

- *“The Committee’s approach has been pragmatic and practical – updating wording to reflect changing procedures (including the increased use of virtual hearings), and to address specific issues which have arisen in recent years, whilst retaining the flexibility and ‘light touch’ approaches which are characteristic of LMAA arbitration”*



ENTRY INTO FORCE

- Applies to arbitrator appointments made on or after 1 May 2021

APPOINTMENT OR REPLACEMENT OF ARBITRATORS

- Paragraph 10 – Panel of 3 – Respondent fails to appoint – Process streamlined whereby Claimant’s appointee becomes sole arbitrator.
- Paragraph 12 – Appointment of replacement arbitrator in case of incapacity etc – President of LMAA now has power to appoint.

VIRTUAL HEARINGS

- Express recognition that virtual hearings here to stay and not just during the pandemic.
- LMAA has issued detailed Guidelines for the Conduct of Virtual and Semi-Virtual Hearings – Described by the LMAA as “an important initiative”.
 - *“Participants should take steps in advance so as to avoid or at least minimise disruptions that can interfere with the smooth-running of the hearing (such as barking dogs)”*

VIRTUAL HEARINGS

- What are the limits on virtual hearings? Should there be any?
 - Interlocutory and procedural hearings
 - Duration
 - Hearings with witnesses
 - Impact of different time zones

- Wholly virtual v hybrid hearings
 - Equality of arms issues

- Impact of green or sustainable arbitration

WITNESS STATEMENTS

- 2021 Terms introduce some (but not all) of the recent English Court reforms.
- Witness statements should:
 - “ideally” be in the witness’s own words
 - only contain evidence as to matters of fact which need to be proved by the evidence of the witness in relation to one or more issues of fact to be decided;
 - only contain evidence as to matters of fact of which the witness has personal knowledge or recollection; and
 - never be used to argue a case.

(LMAA Terms 2021, Fourth Schedule, paragraph 2)

WITNESS STATEMENTS

- Significant differences from English Court regime remain for the moment:
 - No requirement to list documents used to refresh memory
 - No confirmation of compliance
 - Sanctions for non-compliance?

E-SIGNATURES

- Paragraph 24 – Awards may be signed electronically or in counterparts, unless otherwise agreed.
- Concerns about enforcement of electronically signed award?
 - Parties required to inform the Tribunal prior to the issue of the award that they would like original hand-written signatures
 - NB – Guidelines suggest that Tribunals should still produce hand-signed awards, where possible, so these can be made available if required subsequently.



COSTS

- LMAA Questionnaire requires more detailed breakdown of a party's costs.
- No costs budgeting (unlike Court) but Tribunal has power to cap costs.



ICP and SCP 2021

- No change to monetary limits – US\$ 400,000 and US\$ 100,000 although open to parties to agree a higher limit.
- Some minor procedural tweaks



DIVERSITY

- “He” replaced with “he/she” or a gender neutral option throughout the new rules.

CONCLUSION

- *“If it ain’t broken, don’t fix it”.*
- LMAA’s response to the world-wide disruption caused by COVID 19 rapid, pro-active and effective.
- 2021 Terms reflect and build on this approach:
 - Recognition that a number of the changes in practice imposed by COVID 19 are here to stay;
 - Other changes, including those responsive to increasing judicial involvement in case management but sensitive to the particular characteristics of maritime arbitration.



TWENTY
ESSEX

LONDON

20 EssexStreet
London WC2R 3AL

T +44 (0)20 7842 1200

F +44 (0)207842 1270

E enquiries@twentyessex.com

W twentyessex.com

SINGAPORE

Maxwell ChambersSuites
#02-03

28 Maxwell Road

Singapore 069120

T +65 62257230

F +65 62249462

E singapore@twentyessex.com

W twentyessex.com