

Institution: University of Stirling
Unit of Assessment: C20 Stirling Law School
Title of case study: Arbitration in Scotland
<p>1. Summary of the impact</p> <p>Professor Fraser Davidson's research underpinned impact on public policy and law-making in Scotland by enriching and informing the development by the Scottish Government and the Scottish Parliament of a new legal framework for commercial dispute resolution under the Arbitration (Scotland) Act 2010 ("the 2010 Act"). This Act has the objective of entirely reforming the Scots law of arbitration and establishing Scotland as a major forum for international commercial arbitration, with resultant economic benefits.</p>
<p>2. Underpinning research</p> <p>The key member of staff is Professor Fraser Davidson, who has been in post at Stirling since 2005.</p> <p>Professor Davidson first developed the argument that Scotland should abandon the United Nations Commission on International Trade Law ("UNCITRAL") Model Law on International Commercial Arbitration in his 2009 Journal of Business Law article (cited at section 3). For reasons of chronology, it should be noted that although the article appeared in issue 1 of the 2009 edition of the JBL, the issue was actually published in late 2008. This underpinning research was written while he was at Stirling and offered critical and very detailed analysis of the state of arbitration law in Scotland and of a draft reform Bill which had been produced by the Scottish Government for discussion. He argued that reforming legislation should take the radical step of withdrawing Scotland from the UNCITRAL model law on arbitration in order to create a new, cutting-edge statutory regime: this could encourage the development of Scotland as a centre for international and UK commercial arbitration and related legal services.</p>
<p>3. References to the research</p> <p>Refereed journal article underpinning the impact case study</p> <p>F. Davidson, "Some Thoughts on the Draft Arbitration (Scotland) Bill" (2009) Journal of Business Law 44-67.</p>
<p>4. Details of the impact</p> <p>Professor Davidson responded to a Scottish Government Consultation Paper in 2008 on the case for significant new legislation on arbitration in Scotland and a draft Arbitration (Scotland) Bill (see section 5, para.1 below for official citation): the consultation process continued until December 2008. During this process, he developed and articulated his view that Scotland should withdraw from the UNCITRAL Model Law in considerable detail in the underpinning research.</p> <p>Professor Davidson was invited to meet the Scottish Government team drafting the Bill (which eventually became the Arbitration (Scotland) Act 2010) both individually and as part of an expert group in late 2008 (see section 5 below). After the consultation process had ended, he was, in May 2009, subsequently part of a group that met the Scottish Government Minister for the Economy to discuss the Bill, and gave oral evidence to the Economy, Energy and Tourism Committee of the Scottish Parliament as part of the formal law-making process by the Parliament (Reference 5.3 below). Professor Davidson's advice to the Scottish Government Bill team and the Minister, and his evidence to the Scottish Parliament was distinctly and materially based on the arguments articulated by him in the underpinning research.</p> <p>As explained above, one of the key decisions for the Scottish Government and Parliament was whether to base the Act around the UNCITRAL Model Law on International Commercial Arbitration or to start with a clean slate. In developing its thinking on its adoption of the latter approach, the</p>

Scottish Government cited Professor Davidson's views. Although the Scottish Government introduced him in its report as the author of the SULI textbook on arbitration, it is important for impact measurement purposes to be aware that Professor Davidson's substantive argument on the key point at issue - which was then expanded upon by the Scottish Government – was first developed by him in his underpinning research. Indeed, this is very clearly evidenced by the fact that the quotation of Professor Davidson in the Scottish Government report set out below is taken directly from p.46 of the underpinning research:

"Professor Fraser Davidson of Stirling University who is the author of the Scottish University Law Institute textbook on arbitration said that the Model Law "does not provide a comprehensive arbitration regime. It is thus much better to look to the example of states such as England which used the Model Law as the basis for the creation of a comprehensive, modern arbitration statute. Little will be lost by Scotland ceasing to be known as a country which has adopted the Model Law. Its adoption has not seen significant numbers of international arbitrations attracted to Scotland." He concluded: "If Scotland is going to attract international arbitrations....being able to boast an effective, comprehensive, modern arbitration statute is going to be more of an incentive than being one of a large number of states across the globe which has adopted the Model Law." (Reference 5.4 below).

Professor Davidson's views, as articulated in the underpinning research, were also cited very prominently and with approval by the Minister when closing the debate on the Bill before the Scottish Parliament on 18 November 2009 (Reference 5.5 below). The Minister said:

"Scots law has tended to feature mainly as an example of how not to do things, but Professor Fraser Davidson has suggested that, with the advent of the bill, the focus has switched to Scotland as a beacon for the future Let us hope that Professor Davidson's words are prophetic and the use of arbitration at home increases markedly as a result of the reforms and modernisation that the bill has introduced. We hope that, as a result, more international arbitration work will be attracted to Scotland and we will see a renaissance of Scottish arbitration. I commend the bill to members."

The provision of specialist evidence by Professor Davidson to the Scottish Government and the Scottish Parliament's Economy and Tourism Committee in connection with the Arbitration (Scotland) Bill was underpinned by his research. As is clear from the above quotations and the sources cited below it impacted on: policy-making by the Scottish Government; the scrutiny and law-making processes of the Scottish Parliament; and the development of a new legal framework to facilitate domestic and international commercial dispute resolution in Scotland. Professor Davidson's research therefore had an impact beyond academia by informing and enriching public policy development and law-making in Scotland.

5. Sources to corroborate the impact

1. F. Davidson, Written response to the 2008 Scottish Government consultation paper on reforming the law of arbitration: <http://www.scotland.gov.uk/Publications/2008/10/28100330/0>
2. Contribution by Professor Davidson to Scottish Government consultation meetings on the Arbitration (Scotland) Bill 2008: <http://www.scotland.gov.uk/Publications/2009/01/73>, para 7 and Annex A para 6
3. Oral evidence by Professor Davidson to the Economy, Energy and Tourism Committee of the Scottish Parliament on 27 May 2009:
<http://archive.scottish.parliament.uk/s3/committees/eet/mop-09/eemop09-0527.htm> and
<http://archive.scottish.parliament.uk/s3/committees/eet/or-09/ee09-1702.htm>
4. Citation of Professor Davidson's views by Scottish Government:
 Annex A to the Scottish Government's Report on the Arbitration (Scotland) Bill 2008, para 6:
<http://www.scotland.gov.uk/Publications/2009/01/73>
5. Citation of Professor Davidson on 18th of November 2009 by the Minister for the Economy in closing the debate on the Arbitration (Scotland) Bill 2008 before the Scottish Parliament:
<http://www.scottish.parliament.uk/parliamentarybusiness/28862.aspx?r=4899&mode=html>