



Unfair Contract Terms Act 1977

1977 CHAPTER 50

PART II

AMENDMENT OF LAW FOR SCOTLAND

15 Scope of Part II

- (1) This Part of this Act applies only to contracts, is subject to Part III of this Act and does not affect the validity of any discharge or indemnity given by a person in consideration of the receipt by him of compensation in settlement of any claim which he has.
- (2) Subject to subsection (3) below, sections 16 to 18 of this Act apply to any contract only to the extent that the contract—
 - (a) relates to the transfer of the ownership or possession of goods from one person to another (with or without work having been done on them);
 - (b) constitutes a contract of service or apprenticeship ;
 - (c) relates to services of whatever kind, including (without prejudice to the foregoing generality) carriage, deposit and pledge, care and custody, mandate, agency, loan and services relating to the use of land ;
 - (d) relates to the liability of an occupier of land to persons entering upon or using that land ;
 - (e) relates to a grant of any right or permission to enter upon or use land not amounting to an estate or interest in the land.
- (3) Notwithstanding anything in subsection (2) above, sections 16 to 18—
 - (a) do not apply to any contract to the extent that the contract—
 - (i) is a contract of insurance (including a contract to pay an annuity on human life);
 - (ii) relates to the formation, constitution or dissolution of any body corporate or unincorporated association or partnership;
 - (b) apply to—
 - a contract of marine salvage or towage ;
 - a charter party of a ship or hovercraft;

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a contract for the carriage of goods by ship or hovercraft ; or,
 a contract to which subsection (4) below relates,
 only to the extent that—

- (i) both parties deal or hold themselves out as dealing in the course of a business (and then only in so far as the contract purports to exclude or restrict liability for breach of duty in respect of death or personal injury); or
- (ii) the contract is a consumer contract (and then only in favour of the consumer).

- (4) This subsection relates to a contract in pursuance of which goods are carried by ship or hovercraft and which either—
- (a) specifies ship or hovercraft as the means of carriage over part of the journey to be covered ; or
 - (b) makes no provision as to the means of carriage and does not exclude ship or hovercraft as that means,
- in so far as the contract operates for and in relation to the carriage of the goods by that means.

16 Liability for breach of duty

- (1) Where a term of a contract purports to exclude or restrict liability for breach of duty arising in the course of any business or from the occupation of any premises used for business purposes of the occupier, that term—
- (a) shall be void in any case where such exclusion or restriction is in respect of death or personal injury ;
 - (b) shall, in any other case, have no effect if it was not fair and reasonable to incorporate the term in the contract.
- (2) Subsection (1)(a) above does not affect the validity of any discharge and indemnity given by a person, on or in connection with an award to him of compensation for pneumoconiosis attributable to employment in the coal industry, in respect of any further claim arising from his contracting that disease.
- (3) Where under subsection (1) above a term of a contract is void or has no effect, the fact that a person agreed to, or was aware of, the term shall not of itself be sufficient evidence that he knowingly and voluntarily assumed any risk.

17 Control of unreasonable exemptions in consumer or standard form contracts

- (1) Any term of a contract which is a consumer contract or a standard form contract shall have no effect for the purpose of enabling a party to the contract—
- (a) who is in breach of a contractual obligation, to exclude or restrict any liability of his to the consumer or customer in respect of the breach ;
 - (b) in respect of a contractual obligation, to render no performance, or to render a performance substantially different from that which the consumer or customer reasonably expected from the contract;
- if it was not fair and reasonable to incorporate the term in the contract.

- (2) In this section " customer " means a party to a standard form contract who deals on the basis of written standard terms of business of the other party to the contract who himself deals in the course of a business.

18 Unreasonable indemnity clauses in consumer contracts

- (1) Any term of a contract which is a consumer contract shall have no effect for the purpose of making the consumer indemnify another person (whether a party to the contract or not) in respect of liability which that other person may incur as a result of breach of duty or breach of contract, if it was not fair and reasonable to incorporate the term in the contract.
- (2) In this section " liability " means liability arising in the course of any business or from the occupation of any premises used for business purposes of the occupier.

19 " Guarantee " of consumer goods

- (1) This section applies to a guarantee—
- (a) in relation to goods which are of a type ordinarily supplied for private use or consumption ; and
 - (b) which is not a guarantee given by one party to the other party to a contract under or in pursuance of which the ownership or possession of the goods to which the guarantee relates is transferred.
- (2) A term of a guarantee to which this section applies shall be void in so far as it purports to exclude or restrict liability for loss or damage (including death or personal injury)—
- (a) arising from the goods proving defective while—
 - (i) in use otherwise than exclusively for the purposes of a business; or
 - (ii) in the possession of a person for such use; and
 - (b) resulting from the breach of duty of a person concerned in the manufacture or distribution of the goods.
- (3) For the purposes of this section, any document is a guarantee if it contains or purports to contain some promise or assurance (however worded or presented) that defects will be made good by complete or partial replacement, or by repair, monetary compensation or otherwise.

20 Obligations implied by law in sale and hire-purchase contracts

- (1) Any term of a contract which purports to exclude or restrict liability for breach of the obligations arising from—
- (a) section 12 of the Sale of Goods Act 1893 (seller's implied undertakings as to title etc.);
 - (b) section 8 of the Supply of Goods (Implied Terms) Act 1973 (implied terms as to title in hire-purchase agreements),
- shall be void.
- (2) Any term of a contract which purports to exclude or restrict liability for breach of the obligations arising from—

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- (a) section 13, 14 or 15 of the said Act of 1893 (seller's implied undertakings as to conformity of goods with description or sample, or as to their quality or fitness for a particular purpose);
- (b) section 9, 10 or 11 of the said Act of 1973 (the corresponding provisions in relation to hire-purchase),

shall—

- (i) in the case of a consumer contract, be void against the consumer;
- (ii) in any other case, have no effect if it was not fair and reasonable to incorporate the term in the contract.

21 Obligations implied by law in other contracts for the supply of goods

- (1) Any term of a contract to which this section applies purporting to exclude or restrict liability for breach of an obligation—
 - (a) such as is referred to in subsection (3)(a) below—
 - (i) in the case of a consumer contract, shall be void against the consumer, and
 - (ii) in any other case, shall have no effect if it was not fair and reasonable to incorporate the term in the contract;
 - (b) such as is referred to in subsection (3)(b) below, shall have no effect if it was not fair and reasonable to incorporate the term in the contract.
- (2) This section applies to any contract to the extent that it relates to any such matter as is referred to in section 15(2)(a) of this Act, but does not apply to—
 - (a) a contract of sale of goods or a hire-purchase agreement ; or
 - (b) a charterparty of a ship or hovercraft unless it is a consumer contract (and then only in favour of the consumer).
- (3) An obligation referred to in this subsection is an obligation incurred under a contract in the course of a business and arising by implication of law from the nature of the contract which relates—
 - (a) to the correspondence of goods with description or sample, or to the quality or fitness of goods for any particular purpose; or
 - (b) to any right to transfer ownership or possession of goods, or to the enjoyment of quiet possession of goods.
- (4) Nothing in this section applies to the supply of goods on a redemption of trading stamps within the Trading Stamps Act 1964.

22 Consequence of breach

For the avoidance of doubt, where any provision of this Part of this Act requires that the incorporation of a term in a contract must be fair and reasonable for that term to have effect—

- (a) if that requirement is satisfied, the term may be given effect to notwithstanding that the contract has been terminated in consequence of breach of that contract;
- (b) for the term to be given effect to, that requirement must be satisfied even where a party who is entitled to rescind the contract elects not to rescind it.

23 Evasion by means of secondary contract

Any term of any contract shall be void which purports to exclude or restrict, or has the effect of excluding or restricting—

- (a) the exercise, by a party to any other contract, of any right or remedy which arises in respect of that other contract in consequence of breach of duty, or of obligation, liability for which could not by virtue of the provisions of this Part of this Act be excluded or restricted by a term of that other contract;
- (b) the application of the provisions of this Part of this Act in respect of that or any other contract.

24 The " reasonableness " test

- (1) In determining for the purposes of this Part of this Act whether it was fair and reasonable to incorporate a term in a contract, regard shall be had only to the circumstances which were, or ought reasonably to have been, known to or in the contemplation of the parties to the contract at the time the contract was made.
- (2) In determining for the purposes of section 20 or 21 of this Act whether it was fair and reasonable to incorporate a term in a contract, regard shall be had in particular to the matters specified in Schedule 2 to this Act; but this subsection shall not prevent a court or arbiter from holding, in accordance with any rule of law, that a term which purports to exclude or restrict any relevant liability is not a term of the contract.
- (3) Where a term in a contract purports to restrict liability to a specified sum of money, and the question arises for the purposes of this Part of this Act whether it was fair and reasonable to incorporate the term in the contract, then, without prejudice to subsection (2) above, regard shall be had in particular to—
 - (a) the resources which the party seeking to rely on that term could expect to be available to him for the purpose of meeting the liability should it arise;
 - (b) how far it was open to that party to cover himself by insurance.
- (4) The onus of proving that it was fair and reasonable to incorporate a term in a contract shall lie on the party so contending.

25 Interpretation of Part II

- (1) In this Part of this Act—
 - " breach of duty " means the breach—
 - (a) of any obligation, arising from the express or implied terms of a contract, to take reasonable care or exercise reasonable skill in the performance of the contract;
 - (b) of any common law duty to take reasonable care or exercise reasonable skill;
 - (c) of the duty of reasonable care imposed by section 2(1) of the Occupiers' Liability (Scotland) Act 1960;
 - " business " includes a profession and the activities of any government department or local or public authority;
 - " consumer " has the meaning assigned to that expression in the definition in this section of " consumer contract ";
 - " consumer contract " means a contract (not being a contract of sale by auction or competitive tender) in which—

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- (a) one party to the contract deals, and the other party to the contract (" the consumer") does not deal or hold himself out as dealing, in the course of a business, and
- (b) in the case of a contract such as is mentioned in section 15(2)(a) of this Act, the goods are of a type ordinarily supplied for private use or consumption;

and for the purposes of this Part of this Act the onus of proving that a contract is not to be regarded as a consumer contract shall lie on the party so contending ;

" goods " has the same meaning as in the Sale of Goods Act 1893 ;

" hire-purchase agreement " has the same meaning as in section 189(1) of the Consumer Credit Act 1974 ;

" personal injury " includes any disease and any impairment of physical or mental condition.

- (2) In relation to any breach of duty or obligation, it is immaterial for any purpose of this Part of this Act whether the act or omission giving rise to that breach was inadvertent or intentional, or whether liability for it arises directly or vicariously.
- (3) In this Part of this Act, any reference to excluding or restricting any liability includes—
 - (a) making the liability or its enforcement subject to any restrictive or onerous conditions ;
 - (b) excluding or restricting any right or remedy in respect of the liability, or subjecting a person to any prejudice in consequence of his pursuing any such right or remedy;
 - (c) excluding or restricting any rule of evidence or procedure ;
 - (d) excluding or restricting any liability by reference to a notice having contractual effect,but does not include an agreement to submit any question to arbitration.
- (4) In subsection (3)(d) above " notice " includes an announcement, whether or not in writing, and any other communication or pretended communication.
- (5) In sections 15 and 16 and 19 to 21 of this Act, any reference to excluding or restricting liability for breach of an obligation or duty shall include a reference to excluding or restricting the obligation or duty itself.