



# Unfair Contract Terms Act 1977

## 1977 CHAPTER 50

### PART I

#### AMENDMENT OF LAW FOR ENGLAND AND WALES AND NORTHERN IRELAND

##### *Explanatory provisions*

#### **11 The “reasonableness” test.**

- (1) In relation to a contract term, the requirement of reasonableness for the purposes of this Part of this Act, section 3 of the <sup>M1</sup> Misrepresentation Act 1967 and section 3 of the <sup>M2</sup> Misrepresentation Act (Northern Ireland) 1967 is that the term shall have been a fair and reasonable one to be included having regard to the circumstances which were, or ought reasonably to have been, known to or in the contemplation of the parties when the contract was made.
- (2) In determining for the purposes of section 6 or 7 above whether a contract term satisfies the requirement of reasonableness, regard shall be had in particular to the matters specified in Schedule 2 to this Act; but this subsection does not prevent the court or arbitrator 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) In relation to a notice (not being a notice having contractual effect), the requirement of reasonableness under this Act is that it should be fair and reasonable to allow reliance on it, having regard to all the circumstances obtaining when the liability arose or (but for the notice) would have arisen.
- (4) Where by reference to a contract term or notice a person seeks to restrict liability to a specified sum of money, and the question arises (under this or any other Act) whether the term or notice satisfies the requirement of reasonableness, regard shall be had in particular (but without prejudice to subsection (2) above in the case of contract terms) to—
  - (a) the resources which he could expect to be available to him for the purpose of meeting the liability should it arise; and

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(b) how far it was open to him to cover himself by insurance.

(5) It is for those claiming that a contract term or notice satisfies the requirement of reasonableness to show that it does.

#### Marginal Citations

**M1** 1967 c. 7

**M2** 1967 c. 14(N.I.)

## 12 “Dealing as a consumer”.

- (1) A party to a contract “deals as consumer” in relation to another party if—
- (a) he neither makes the contract in the course of a business nor holds himself out as doing so; and
  - (b) the other party does make the contract in the course of a business; and
  - (c) in the case of a contract governed by the law of sale of goods or hire-purchase, or by section 7 of this Act, the goods passing under or in pursuance of the contract are of a type ordinarily supplied for private use or consumption.

[<sup>F1</sup>(1A) But if the first party mentioned in subsection (1) is an individual paragraph (c) of that subsection must be ignored.]

- [<sup>F2</sup>(2) But the buyer is not in any circumstances to be regarded as dealing as consumer—
- (a) if he is an individual and the goods are second hand goods sold at public auction at which individuals have the opportunity of attending the sale in person;
  - (b) if he is not an individual and the goods are sold by auction or by competitive tender.]

(3) Subject to this, it is for those claiming that a party does not deal as consumer to show that he does not.

#### Textual Amendments

**F1** S. 12(1A) inserted (31.3.2003) by The Sale and Supply of Goods to [Consumers Regulations 2002 \(S.I. 2002/3045\)](#), [reg. 14\(2\)](#)

**F2** S. 12(2) substituted (31.3.2003) by The Sale and Supply of Goods to [Consumers Regulations 2002 \(S.I. 2002/3045\)](#), [reg. 14\(3\)](#)

## 13 Varieties of exemption clause.

- (1) To the extent that this Part of this Act prevents the exclusion or restriction of any liability it also prevents—
- (a) making the liability or its enforcement subject to 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 rules of evidence or procedure;

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and (to that extent) sections 2 and 5 to 7 also prevent excluding or restricting liability by reference to terms and notices which exclude or restrict the relevant obligation or duty.

- (2) But an agreement in writing to submit present or future differences to arbitration is not to be treated under this Part of this Act as excluding or restricting any liability.

## 14 Interpretation of Part I.

In this Part of this Act—

“business” includes a profession and the activities of any government department or local or public authority;

“goods” has the same meaning as in [<sup>F3</sup>the Sale of Goods Act 1979];

“hire-purchase agreement” has the same meaning as in the <sup>M3</sup> Consumer Credit Act 1974;

“negligence” has the meaning given by section 1(1);

“notice” includes an announcement, whether or not in writing, and any other communication or pretended communication; and

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

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### Textual Amendments

**F3** Words substituted by [Sale of Goods Act 1979 \(c. 54, SIF 109:1\)](#), ss. 62, 63, [Sch. 2 para. 20](#)

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### Marginal Citations

**M3** [1974 c. 39](#)

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