



# 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.)

### <sup>F1</sup>12 “Dealing as a consumer”.

#### Textual Amendments

**F1** S. 12 omitted (1.10.2015 for specified purposes, 1.10.2016 in so far as not already in force) by virtue of [Consumer Rights Act 2015 \(c. 15\)](#), s. 100(5), [Sch. 4 para. 11](#); S.I. 2015/1630, arts. 3(g), 4(c) (with art. 6(1)(2))

### 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;

and (to that extent) sections 2 [<sup>F2</sup>, 6 and] 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.

#### Textual Amendments

**F2** Words in s. 13(1) substituted (1.10.2015 for specified purposes, 1.10.2016 in so far as not already in force) by [Consumer Rights Act 2015 \(c. 15\)](#), s. 100(5), [Sch. 4 para. 12](#); S.I. 2015/1630, arts. 3(g), 4(c) (with art. 6(1)(2))

### 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;

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[<sup>F3</sup>“consumer contract” has the same meaning as in the Consumer Rights Act 2015 (see section 61);]

[<sup>F3</sup>“consumer notice” has the same meaning as in the Consumer Rights Act 2015 (see section 61);]

“goods” has the same meaning as in [<sup>F4</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 in s. 14 inserted (1.10.2015 for specified purposes, 1.10.2016 in so far as not already in force) by Consumer Rights Act 2015 (c. 15), s. 100(5), **Sch. 4 para. 13**; S.I. 2015/1630, arts. 3(g), 4(c) (with art. 6(1)(2))

**F4** 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

**Status:**

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**Changes to legislation:**

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