



Consumer Rights Act 2015

2015 CHAPTER 15

PART 2

UNFAIR TERMS

Supplementary provisions

71 Duty of court to consider fairness of term

- (1) Subsection (2) applies to proceedings before a court which relate to a term of a consumer contract.
- (2) The court must consider whether the term is fair even if none of the parties to the proceedings has raised that issue or indicated that it intends to raise it.
- (3) But subsection (2) does not apply unless the court considers that it has before it sufficient legal and factual material to enable it to consider the fairness of the term.

72 Application of rules to secondary contracts

- (1) This section applies if a term of a contract (“the secondary contract”) reduces the rights or remedies or increases the obligations of a person under another contract (“the main contract”).
- (2) The term is subject to the provisions of this Part that would apply to the term if it were in the main contract.
- (3) It does not matter for the purposes of this section—
 - (a) whether the parties to the secondary contract are the same as the parties to the main contract, or
 - (b) whether the secondary contract is a consumer contract.
- (4) This section does not apply if the secondary contract is a settlement of a claim arising under the main contract.

73 Disapplication of rules to mandatory terms and notices

- (1) This Part does not apply to a term of a contract, or to a notice, to the extent that it reflects—
 - (a) mandatory statutory or regulatory provisions, or
 - (b) the provisions or principles of an international convention to which the United Kingdom or the EU is a party.
- (2) In subsection (1) “mandatory statutory or regulatory provisions” includes rules which, according to law, apply between the parties on the basis that no other arrangements have been established.

74 Contracts applying law of non-EEA State

- (1) If—
 - (a) the law of a country or territory other than an EEA State is chosen by the parties to be applicable to a consumer contract, but
 - (b) the consumer contract has a close connection with the United Kingdom, this Part applies despite that choice.
- (2) For cases where the law applicable has not been chosen or the law of an EEA State is chosen, see Regulation (EC) No. 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations.

75 Changes to other legislation

Schedule 4 (amendments consequential on this Part) has effect.

76 Interpretation of Part 2

- (1) In this Part—
 - “consumer contract” has the meaning given by section 61(3);
 - “consumer notice” has the meaning given by section 61(7);
 - “transparent” is to be construed in accordance with sections 64(3) and 68(2).
- (2) The following have the same meanings in this Part as they have in Part 1—
 - “trader” (see section 2(2));
 - “consumer” (see section 2(3));
 - “goods” (see section 2(8));
 - “digital content” (see section 2(9)).
- (3) Section 2(4) (trader who claims an individual is not a consumer must prove it) applies in relation to this Part as it applies in relation to Part 1.