



# Consumer Rights Act 2015

## 2015 CHAPTER 15

### PART 2

#### UNFAIR TERMS

*What contracts and notices are covered by this Part?*

#### **61 Contracts and notices covered by this Part**

- (1) This Part applies to a contract between a trader and a consumer.
- (2) This does not include a contract of employment or apprenticeship.
- (3) A contract to which this Part applies is referred to in this Part as a “consumer contract”.
- (4) This Part applies to a notice to the extent that it—
  - (a) relates to rights or obligations as between a trader and a consumer, or
  - (b) purports to exclude or restrict a trader’s liability to a consumer.
- (5) This does not include a notice relating to rights, obligations or liabilities as between an employer and an employee.
- (6) It does not matter for the purposes of subsection (4) whether the notice is expressed to apply to a consumer, as long as it is reasonable to assume it is intended to be seen or heard by a consumer.
- (7) A notice to which this Part applies is referred to in this Part as a “consumer notice”.
- (8) In this section “notice” includes an announcement, whether or not in writing, and any other communication or purported communication.

*What are the general rules about fairness of contract terms and notices?*

## **62 Requirement for contract terms and notices to be fair**

- (1) An unfair term of a consumer contract is not binding on the consumer.
- (2) An unfair consumer notice is not binding on the consumer.
- (3) This does not prevent the consumer from relying on the term or notice if the consumer chooses to do so.
- (4) A term is unfair if, contrary to the requirement of good faith, it causes a significant imbalance in the parties' rights and obligations under the contract to the detriment of the consumer.
- (5) Whether a term is fair is to be determined—
  - (a) taking into account the nature of the subject matter of the contract, and
  - (b) by reference to all the circumstances existing when the term was agreed and to all of the other terms of the contract or of any other contract on which it depends.
- (6) A notice is unfair if, contrary to the requirement of good faith, it causes a significant imbalance in the parties' rights and obligations to the detriment of the consumer.
- (7) Whether a notice is fair is to be determined—
  - (a) taking into account the nature of the subject matter of the notice, and
  - (b) by reference to all the circumstances existing when the rights or obligations to which it relates arose and to the terms of any contract on which it depends.
- (8) This section does not affect the operation of—
  - (a) section 31 (exclusion of liability: goods contracts),
  - (b) section 47 (exclusion of liability: digital content contracts),
  - (c) section 57 (exclusion of liability: services contracts), or
  - (d) section 65 (exclusion of negligence liability).

## **63 Contract terms which may or must be regarded as unfair**

- (1) Part 1 of Schedule 2 contains an indicative and non-exhaustive list of terms of consumer contracts that may be regarded as unfair for the purposes of this Part.
- (2) Part 1 of Schedule 2 is subject to Part 2 of that Schedule; but a term listed in Part 2 of that Schedule may nevertheless be assessed for fairness under section 62 unless section 64 or 73 applies to it.
- (3) The Secretary of State may by order made by statutory instrument amend Schedule 2 so as to add, modify or remove an entry in Part 1 or Part 2 of that Schedule.
- (4) An order under subsection (3) may contain transitional or transitory provision or savings.
- (5) No order may be made under subsection (3) unless a draft of the statutory instrument containing it has been laid before, and approved by a resolution of, each House of Parliament.

(6) A term of a consumer contract must be regarded as unfair if it has the effect that the consumer bears the burden of proof with respect to compliance by a distance supplier or an intermediary with an obligation under any enactment or rule implementing the Distance Marketing Directive.

(7) In subsection (6)—

“the Distance Marketing Directive” means Directive 2002/65/EC of the European Parliament and of the Council of 23 September 2002 concerning the distance marketing of consumer financial services and amending Council Directive 90/619/EEC and Directives 97/7/EC and 98/27/EC;

“distance supplier” means—

- (a) a supplier under a distance contract within the meaning of the Financial Services (Distance Marketing) Regulations 2004 (SI 2004/2095), or
- (b) a supplier of unsolicited financial services within the meaning of regulation 15 of those regulations;

“enactment” includes an enactment contained in subordinate legislation within the meaning of the Interpretation Act 1978;

“intermediary” has the same meaning as in the Financial Services (Distance Marketing) Regulations 2004;

“rule” means a rule made by the Financial Conduct Authority or the Prudential Regulation Authority under the Financial Services and Markets Act 2000 or by a designated professional body within the meaning of section 326(2) of that Act.

#### **64 Exclusion from assessment of fairness**

(1) A term of a consumer contract may not be assessed for fairness under section 62 to the extent that—

- (a) it specifies the main subject matter of the contract, or
- (b) the assessment is of the appropriateness of the price payable under the contract by comparison with the goods, digital content or services supplied under it.

(2) Subsection (1) excludes a term from an assessment under section 62 only if it is transparent and prominent.

(3) A term is transparent for the purposes of this Part if it is expressed in plain and intelligible language and (in the case of a written term) is legible.

(4) A term is prominent for the purposes of this section if it is brought to the consumer’s attention in such a way that an average consumer would be aware of the term.

(5) In subsection (4) “average consumer” means a consumer who is reasonably well-informed, observant and circumspect.

(6) This section does not apply to a term of a contract listed in Part 1 of Schedule 2.

#### **65 Bar on exclusion or restriction of negligence liability**

(1) A trader cannot by a term of a consumer contract or by a consumer notice exclude or restrict liability for death or personal injury resulting from negligence.

(2) Where a term of a consumer contract, or a consumer notice, purports to exclude or restrict a trader’s liability for negligence, a person is not to be taken to have voluntarily

accepted any risk merely because the person agreed to or knew about the term or notice.

- (3) In this section “personal injury” includes any disease and any impairment of physical or mental condition.
- (4) In this section “negligence” means the breach of—
- (a) any obligation to take reasonable care or exercise reasonable skill in the performance of a contract where the obligation arises from an express or implied term of the contract,
  - (b) a common law duty to take reasonable care or exercise reasonable skill,
  - (c) the common duty of care imposed by the Occupiers’ Liability Act 1957 or the Occupiers’ Liability Act (Northern Ireland) 1957, or
  - (d) the duty of reasonable care imposed by section 2(1) of the Occupiers’ Liability (Scotland) Act 1960.
- (5) It is immaterial for the purposes of subsection (4)—
- (a) whether a breach of duty or obligation was inadvertent or intentional, or
  - (b) whether liability for it arises directly or vicariously.
- (6) This section is subject to section 66 (which makes provision about the scope of this section).

## **66 Scope of section 65**

- (1) Section 65 does not apply to—
- (a) any contract so far as it is a contract of insurance, including a contract to pay an annuity on human life, or
  - (b) any contract so far as it relates to the creation or transfer of an interest in land.
- (2) Section 65 does not affect the validity of any discharge or indemnity given by a person in consideration of the receipt by that person of compensation in settlement of any claim the person has.
- (3) Section 65 does not—
- (a) apply to liability which is excluded or discharged as mentioned in section 4(2) (a) (exception to liability to pay damages to relatives) of the Damages (Scotland) Act 2011, or
  - (b) affect the operation of section 5 (discharge of liability to pay damages: exception for mesothelioma) of that Act.
- (4) Section 65 does not apply to the liability of an occupier of premises to a person who obtains access to the premises for recreational purposes if—
- (a) the person suffers loss or damage because of the dangerous state of the premises, and
  - (b) allowing the person access for those purposes is not within the purposes of the occupier’s trade, business, craft or profession.

## **67 Effect of an unfair term on the rest of a contract**

Where a term of a consumer contract is not binding on the consumer as a result of this Part, the contract continues, so far as practicable, to have effect in every other respect.

## **68 Requirement for transparency**

- (1) A trader must ensure that a written term of a consumer contract, or a consumer notice in writing, is transparent.
- (2) A consumer notice is transparent for the purposes of subsection (1) if it is expressed in plain and intelligible language and it is legible.

## **69 Contract terms that may have different meanings**

- (1) If a term in a consumer contract, or a consumer notice, could have different meanings, the meaning that is most favourable to the consumer is to prevail.
- (2) Subsection (1) does not apply to the construction of a term or a notice in proceedings on an application for an injunction or interdict under paragraph 3 of Schedule 3.

*How are the general rules enforced?*

## **70 Enforcement of the law on unfair contract terms**

- (1) Schedule 3 confers functions on the Competition and Markets Authority and other regulators in relation to the enforcement of this Part.
- (2) For provision about the investigatory powers that are available to those regulators for the purposes of that Schedule, see Schedule 5.

*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.

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*Status: This is the original version (as it was originally enacted).*

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- (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.