



# Contract (Third Party Rights) (Scotland) Act 2017

## 2017 asp 5

### **6 Protection of third party's entitlement after undertaking relied on**

- (1) Subsection (2) applies (subject to subsections (3) and (4)) where—
- (a) a person has a third-party right to enforce or otherwise invoke an undertaking contained in a contract,
  - (b) the person has done something, or refrained from doing something, in reliance on the undertaking,
  - (c) doing or (as the case may be) refraining from doing the thing has affected the person's position to a material extent,
  - (d) either—
    - (i) the contracting parties acquiesced in the person doing or (as the case may be) refraining from doing the thing, or
    - (ii) the person's doing or (as the case may be) refraining from doing the thing in reliance on the undertaking could reasonably have been foreseen by the contracting parties, and
  - (e) subsequent to the person doing or (as the case may be) refraining from doing the thing mentioned in paragraph (b), the undertaking has been cancelled or modified.
- (2) Where the person is enforcing or otherwise invoking the undertaking by virtue of having the third-party right, no account is to be taken of the cancellation or modification of the undertaking if the person's position would be adversely affected to a material extent were the undertaking treated as having been cancelled or (as the case may be) modified.
- (3) Subsection (2) does not apply in relation to the cancellation or modification of the undertaking if—
- (a) the contract provides—
    - (i) that the contracting parties are entitled to cancel or (as the case may be) modify the undertaking, and
    - (ii) that their entitlement to do so will not be affected by the person doing, or refraining from doing, something in reliance on the undertaking, and

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**Changes to legislation:** There are currently no known outstanding effects for the Contract (Third Party Rights) (Scotland) Act 2017, Section 6. (See end of Document for details)

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- (b) the person knew or ought to have known about that provision of the contract before the person did, or refrained from doing, the thing mentioned in subsection (1)(b).
- (4) Subsection (2) does not apply in relation to the cancellation or modification of the undertaking if the person has given assent to it.
- (5) In legal proceedings, a person seeking to enforce or otherwise invoke an undertaking by virtue of having a third-party right to do so may not plead that a contracting party—
  - (a) is personally barred from cancelling or modifying the undertaking, or
  - (b) has waived any right to cancel or modify the undertaking.

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**Commencement Information**

**II** S. 6 in force at 26.2.2018 by S.S.I. 2018/8, reg. 2

**Changes to legislation:**

There are currently no known outstanding effects for the Contract (Third Party Rights) (Scotland) Act 2017, Section 6.