



# Unfair Contract Terms Act 1977

## 1977 CHAPTER 50

### PART II

#### AMENDMENT OF LAW FOR SCOTLAND

#### 24 The “reasonableness” test.

- (1) In determining for the purposes of this Part of this Act whether it was fair and reasonable to incorporate a term in a contract, regard shall be had only to the circumstances which were, or ought reasonably to have been, known to or in the contemplation of the parties to the contract at the time the contract was made.
- (2) In determining for the purposes of section 20 or 21 of this Act whether it was fair and reasonable to incorporate a term in a contract, regard shall be had in particular to the matters specified in Schedule 2 to this Act; but this subsection shall not prevent a court or arbiter 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.
- [<sup>F1</sup>(2A) In determining for the purposes of this Part of this Act whether it is fair and reasonable to allow reliance on a provision of a notice (not being a notice having contractual effect), regard shall be had to all the circumstances obtaining when the liability arose or (but for the provision) would have arisen.]
- (3) Where a term in a contract [<sup>F2</sup>or a provision of a notice] purports to restrict liability to a specified sum of money, and the question arises for the purposes of this Part of this Act whether it was fair and reasonable to incorporate the term in the contract [<sup>F2</sup>or whether it is fair and reasonable to allow reliance on the provision], then, without prejudice to subsection (2) above [<sup>F2</sup>in the case of a term in a contract], regard shall be had in particular to—
  - (a) the resources which the party seeking to rely on that term [<sup>F2</sup>or provision] could expect to be available to him for the purpose of meeting the liability should it arise;
  - (b) how far it was open to that party to cover himself by insurance.

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*Changes to legislation:* There are currently no known outstanding effects for the Unfair Contract Terms Act 1977, Section 24. (See end of Document for details)

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- (4) The onus of proving that it was fair and reasonable to incorporate a term in a contract [<sup>F3</sup>or that it is fair and reasonable to allow reliance on a provision of a notice] shall lie on the party so contending.

**Textual Amendments**

- F1** S. 24(2A) inserted (1.4.1991) by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 76:2), **s. 68(4)(a)(6)**; S.I. 1991/330, **art. 4**, Schedule
- F2** Words in s. 24(3) inserted (1.4.1991) by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 76:2), **s. 68(4)(b)(6)**; S.I. 1991/330, **art. 4**, Schedule
- F3** Words in s. 24(4) inserted (1.4.1991) by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 76:2), **s. 68(4)(c)(6)**; S.I. 1991/330, **art. 4**, Schedule

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There are currently no known outstanding effects for the Unfair Contract Terms Act 1977, Section 24.