



# Consumer Arbitration Agreements Act 1988

## 1988 CHAPTER 21

An Act to extend to consumers certain rights as regards agreements to refer future differences to arbitration and for purposes connected therewith. [28th June 1988]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

*England, Wales and Northern Ireland*

### **1 Arbitration agreements**

- (1) Where a person (referred to in section 4 below as “the consumer”) enters into a contract as a consumer, an agreement that future differences arising between parties to the contract are to be referred to arbitration cannot be enforced against him in respect of any cause of action so arising to which this section applies except—
  - (a) with his written consent signified after the differences in question have arisen; or
  - (b) where he has submitted to arbitration in pursuance of the agreement, whether in respect of those or any other differences; or
  - (c) where the court makes an order under section 4 below in respect of that cause of action.
- (2) This section applies to a cause of action—
  - (a) if proceedings in respect of it would be within the jurisdiction of a county court; or
  - (b) if it satisfies such other conditions as may be prescribed for the purposes of this paragraph in an order under section 5 below.

- (3) Neither section 4(1) of the Arbitration Act 1950 nor section 4 of the Arbitration Act (Northern Ireland) 1937 (which provide for the staying of court proceedings where an arbitration agreement is in force) shall apply to an arbitration agreement to the extent that it cannot be enforced by virtue of this section.

## **2 Exclusions**

Section 1 above does not affect—

- (a) the enforcement of an arbitration agreement to which section 1 of the Arbitration Act 1975 applies, that is, an arbitration agreement other than a domestic arbitration agreement within the meaning of that section;
- (b) the resolution of differences arising under any contract so far as it is, by virtue of section 1(2) of, and Schedule 1 to, the Unfair Contract Terms Act 1977 (“the Act of 1977”), excluded from the operation of section 2, 3, 4 or 7 of that Act.

## **3 Contracting “as a consumer”**

- (1) For the purposes of section 1 above a person enters into a contract “as a consumer” if—
- (a) he neither makes the contract in the course of a business nor holds himself out as doing so; and
  - (b) the other party makes the contract in the course of a business; and
  - (c) in the case of a contract governed by the law of sale of goods or hire-purchase, or by section 7 of the Act of 1977, the goods passing under or in pursuance of the contract are of a type ordinarily supplied for private use or consumption;
- but on a sale by auction or by competitive tender the buyer is not in any circumstances to be regarded as entering into the contract as a consumer.
- (2) In subsection (1) above—
- “business” includes a profession and the activities of any government department, Northern Ireland department or local or public authority; and
  - “goods” has the same meaning as in the Sale of Goods Act 1979.
- (3) It is for those claiming that a person entered into a contract otherwise than as a consumer to show that he did so.

## **4 Power of court to disapply section 1 where no detriment to consumer**

- (1) The High Court or a county court may, on an application made after the differences in question have arisen, order that a cause of action to which this section applies shall be treated as one to which section 1 above does not apply.
- (2) Before making an order under this section the court must be satisfied that it is not detrimental to the interests of the consumer for the differences in question to be referred to arbitration in pursuance of the arbitration agreement instead of being determined by proceedings before a court.
- (3) In determining for the purposes of subsection (2) above whether a reference to arbitration is or is not detrimental to the interests of the consumer, the court shall have regard to all factors appearing to be relevant, including, in particular, the availability of legal aid and the relative amount of any expense which may result to him—

- (a) if the differences in question are referred to arbitration in pursuance of the arbitration agreement; and
  - (b) if they are determined by proceedings before a court.
- (4) This section applies to a cause of action—
- (a) if proceedings in respect of it would be within the jurisdiction of a county court and would not fall within the small claims limit; or
  - (b) if it satisfies the conditions referred to in section 1(2)(b) above and the order under section 5 below prescribing the conditions in question provides for this section to apply to causes of action which satisfy them.
- (5) For the purposes of subsection (4)(a) above proceedings “fall within the small claims limit”—
- (a) in England and Wales, if in a county court they would stand referred to arbitration (without any order of the court) under rules made by virtue of section 64(1)(a) of the County Courts Act 1984;
  - (b) in Northern Ireland, if in a county court the action would be dealt with by way of arbitration by a circuit registrar by virtue of Article 30(3) of the County Courts (Northern Ireland) Order 1980.
- (6) Where the consumer submits to arbitration in consequence of an order under this section, he shall not be regarded for the purposes of section 1(1)(b) above as submitting to arbitration in pursuance of the agreement there mentioned.

## **5 Orders adding to the causes of action to which section 1 applies**

- (1) Orders under this section may prescribe the conditions referred to in section 1(2)(b) above; and any such order may provide that section 4 above shall apply to a cause of action which satisfies the conditions so prescribed.
- (2) Orders under this section may make different provision for different cases and for different purposes.
- (3) The power to make orders under this section for England and Wales shall be exercisable by statutory instrument made by the Secretary of State with the concurrence of the Lord Chancellor; but no such order shall be made unless a draft of it has been laid before, and approved by resolution of, each House of Parliament.
- (4) The power to make orders under this section for Northern Ireland shall be exercisable by the Department of Economic Development for Northern Ireland with the concurrence of the Lord Chancellor; and any such order—
  - (a) shall be a statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979; and
  - (b) shall be subject to affirmative resolution, within the meaning of section 41(4) of the Interpretation Act (Northern Ireland) 1954.

### *Scotland*

## **6 Arbitration agreements: Scotland**

- (1) In the case of a consumer contract to which, by virtue of subsections (2) to (4) of section 15 of the Act of 1977 (scope of Part II of that Act), sections 16 to 18 of that Act apply, an agreement to refer future differences arising out of the contract to arbitration

cannot, if it is a domestic arbitration agreement, be enforced against the consumer in respect of a relevant difference so arising except—

- (a) with his written consent given after that difference has arisen; or
  - (b) where, subject to subsection (2) below, he has submitted to arbitration in pursuance of the agreement (whether or not the arbitration was in respect of that difference); or
  - (c) by virtue of an order under section 7 below in respect of that difference.
- (2) In determining for the purposes of subsection (1)(b) above whether the consumer has submitted to arbitration, any arbitration which takes place in consequence of an order of the court under section 7 below shall be disregarded.

## **7 Power of court to disapply section 6 where no detriment to consumer**

- (1) Subject to subsection (4) below, the Court of Session or the sheriff (“the court”) may, on an application made after a relevant difference has arisen, order that section 6 above shall not apply as respects that difference.
- (2) No such order shall be made unless the court is satisfied that it would not be detrimental to the interests of the consumer were the difference to be referred to arbitration in pursuance of the arbitration agreement.
- (3) In determining for the purposes of subsection (2) above whether there would be any detriment to the consumer’s interests, the court shall have regard to all factors appearing to be relevant, including, in particular, the availability of legal aid and the relative amounts of any expenses which he might incur—
  - (a) if the difference is referred to arbitration; and
  - (b) if it is determined by proceedings before a court.
- (4) No order shall be made under subsection (1) above where, if (disregarding the arbitration agreement) the difference were to be resolved by civil proceedings in the sheriff court, the form of summary cause process to be used for the purposes of those proceedings would be that of a small claim.

## **8 Construction of sections 6 and 7**

- (1) In sections 6 and 7 above “consumer” and “consumer contract” have the meanings assigned to those expressions by section 25(1) of the Act of 1977 and “domestic arbitration agreement” has the same meaning as in section 1 of the Arbitration Act 1975.
- (2) For the purposes of sections 6 and 7 above a difference is “relevant” where, if (disregarding the arbitration agreement) it were to be resolved by civil proceedings in the sheriff court—
  - (a) the form of process to be used for the purposes of those proceedings would be that of a summary cause; or
  - (b) the proceedings would come within such description of proceedings as may, by order, be specified by the Secretary of State for the purposes of this paragraph.
- (3) The power to make an order under paragraph (b) of subsection (2) above shall be exercisable by statutory instrument made with the concurrence of the Lord Advocate;

but no order shall be so made unless a draft has been laid before, and approved by resolution of, each House of Parliament.

*Supplementary*

**9 Short title, commencement, interpretation and extent**

- (1) This Act may be cited as the Consumer Arbitration Agreements Act 1988.
- (2) This Act shall have effect in relation to contracts made on or after such day as the Secretary of State may by order made by statutory instrument appoint; and different days may be so appointed for different provisions and different purposes.
- (3) In this Act “the Act of 1977” means the Unfair Contract Terms Act 1977.
- (4) Sections 1 to 5 above do not extend to Scotland, sections 6 to 8 extend to Scotland only, and this Act, apart from sections 6 to 8, extends to Northern Ireland.