Unfair Contract Terms Act 1977

1977 CHAPTER 50

PART I

AMENDMENT OF LAW FOR ENGLAND AND WALES AND NORTHERN IRELAND

Modifications etc. (not altering text)

C1 Pt. I applied (3.1.1995): by 1973 c. 13, **s. 11A** (as inserted (3.1.1995) by 1994 c. 35, ss. 7, 8(2)(3), **Sch. 2 para. 4(6)**); by 1979 c. 54, **s. 61(5A)** (as inserted (3.1.1995) by 1994 c. 35, ss. 7, 8(2)(3), **Sch. 2 para. 5(9)(c)**); by 1982 c. 29, **s. 18(3)** (as inserted (3.1.1995) by 1994 c. 35, ss. 7, 8(2)(3), **Sch. 2 para. 6(10)**)

Introductory

1 Scope of Part I.

(1) For the purposes of this Part of this Act, "negligence" means the breach—

(a) of any obligation, arising from the express or implied terms of a contract, to take reasonable care or exercise reasonable skill in the performance of the contract;

(b) of any common law duty to take reasonable care or exercise reasonable skill (but not any stricter duty);

(c) of the common duty of care imposed by the [M1] Occupiers' Liability Act 1957 or the [M2] Occupiers' Liability Act (Northern Ireland) 1957.

(2) This Part of this Act is subject to Part III; and in relation to contracts, the operation of sections 2 to 4 and 7 is subject to the exceptions made by Schedule 1.

(3) In the case of both contract and tort, sections 2 to 7 apply (except where the contrary is stated in section 6(4)) only to business liability, that is liability for breach of obligations or duties arising—

(a) from things done or to be done by a person in the course of a business (whether his own business or another's); or

(b) from the occupation of premises used for business purposes of the occupier;

and references to liability are to be read accordingly **[**[F1]but liability of an occupier of premises for breach of an obligation or duty towards a person obtaining access to the premises for recreational or educational purposes, being liability for loss or damage suffered by reason of the dangerous state of the premises, is not a business liability of the occupier unless granting that person such access for the purposes concerned falls within the business purposes of the occupier**]**.

(4) In relation to any breach of duty or obligation, it is,immaterial for any purpose of this Part of this Act whether the breach was inadvertent or intentional, or whether liability for it arises directly or vicariously.

Textual Amendments

F1 Words added by Occupiers' Liability Act 1984 (c. 3, SIF 122:2), **s. 2** (E.W.) and by the Occupiers' Liability (Northern Ireland) Order 1987 S.I. 1987/1280 (N.I.15), **art 4**

Marginal Citations

M1 1957 c. 31

M2 1957 c. 25 (N.I.)

Avoidence of liability for negligence, breach of contract, etc.

2 Negligence liability.

(1) A person cannot by reference to any contract term or to a notice given to persons generally or to particular persons exclude or restrict his liability for death or personal injury resulting from negligence.

(2) In the case of other loss or damage, a person cannot so exclude or restrict his liability for negligence except in so far as the term or notice satisfies the requirement of reasonableness.

(3) Where a contract term or notice purports to exclude or restrict liability for negligence a person's agreement to or awareness of it is not of itself to be taken as indicating his voluntary acceptance of any risk.

Modifications etc. (not altering text)

C2 S. 2(2) excluded (11.11.1999, but subject to s. 10(3)of the amending Act, does not apply in relation to a contract referred to in s. 10(2)) by 1999 c. 31, **ss. 7(2)**, 10(2)(3)

3 Liability arising in contract.

(1) This section applies as between contracting parties where one of them deals as consumer or on the other's written standard terms of business.

(2) As against that party, the other cannot by reference to any contract term—

(a) when himself in breach of contract, exclude or restrict any liability of his in respect of the breach; or

(b) claim to be entitled—

(i) to render a contractual performance substantially different from that which was reasonably expected of him, or

(ii) in respect of the whole or any part of his contractual obligation, to render no performance at all,

except in so far as (in any of the cases mentioned above in this subsection) the contract term satisfies the requirement of reasonableness.

Modifications etc. (not altering text)

C3 S. 3(2)(b) extended (1.11.1998 and 1.7.1999 in relation to certain contracts and 7.8.2002 insofar as not then in force) by 1998 c. 20, s. 14(2) (with s. 12); S.I. 1998/2479, arts. 2,3; S.I. 1999/1816, art. 3(1); S.I. 2002/1673, **art. 2**

4 Unreasonable indemnity clauses.

(1) A person dealing as consumer cannot by reference to any contract term be made to indemnify another person (whether a party to the contract or not) in respect of liability that may be incurred by the other for negligence or breach of contract, except in so far as the contract term satisfies the requirement of reasonableness.

(2) This section applies whether the liability in question—

(a) is directly that of the person to be indemnified or is incurred by him vicariously;

(b) is to the person dealing as consumer or to someone else.

Liability arising from sale or supply of goods

5 "Guarantee" of consumer goods.

(1) In the case of goods of a type ordinarily supplied for private use or consumption, where loss or damage—

(a) arises from the goods proving defective while in consumer use; and

(b) results from the negligence of a person concerned in the manufacture or distribution of the goods,

liability for the loss or damage cannot be excluded or restricted by reference to any contract term or notice contained in or operating by reference to a guarantee of the goods.

(2) For these purposes—

(a) goods are to be regarded as "in consumer use" when a person is using them, or has them in his possession for use, otherwise than exclusively for the purposes of a business; and

(b) anything in writing is a guarantee if it contains or purports to contain some promise or assurance (however worded or presented) that defects will be made good by complete or partial replacement, or by repair, monetary compensation or otherwise.

(3) This section does not apply as between the parties to a contract under or in pursuance of which possession or ownership of the goods passed.

Status: *Point in time view as at 01/02/1991.*
Changes to legislation: *There are currently no known outstanding effects for the Unfair Contract Terms Act 1977, PART I . (See end of Document for details)*

6 Sale and hire purchase.

(1) Liability for breach of the obligations arising from—

(a) **[**[F2]section 12 of the Sale of Goods Act 1979**]**(seller's implied undertakings as to title, etc.);

(b) section 8 of the [M3] Supply of Goods (Implied Terms) Act 1973 (the corresponding thing in relation to hire-purchase),

cannot be excluded or restricted by reference to any contract term.

(2) As against a person dealing as consumer, liability for breach of the obligations arising from—

(a) **[**[F3]section 13, 14, or 15 of the 1979 Act**]**(sellers's implied undertakings as to conformity of goods with description or sample, or as to their quality or fitness for a particular purpose);

(b) section 9, 10 or 11 of the 1973 Act (the corresponding things in relation to hire-purchase),

cannot be excluded or restricted by reference to any contract term.

(3) As against a person dealing otherwise than as consumer, the liability specified in subsection (2) above can be excluded or restricted by reference to a contract term, but only in so far as the term satisfies the requirement of reasonableness.

(4) The liabilities referred to in this section are not only the business liabilities defined by section 1(3), but include those arising under any contract of sale of goods or hire-purchase agreement.

Textual Amendments

F2 Words substituted by Sale of Goods Act 1979 (c. 54, SIF 109:1), ss. 62, 63, **Sch. 2 para. 19**(*a*)

F3 Words substituted by Sale of Goods Act 1979 (c. 54, SIF 109:1), ss. 62, 63, **Sch. 2 para. 19**(*b*)

Marginal Citations

M3 1973 c. 13.

7 Miscellaneous contracts under which goods pass.

(1) Where the possession or ownership of goods passes under or in pursuance of a contract not governed by the law of sale of goods or hire-purchase, subsections (2) to (4) below apply as regards the effect (if any) to be given to contract terms excluding or restricting liability for breach of obligation arising by implication of law from the nature of the contract.

(2) As against a person dealing as consumer, liability in respect of the goods' correspondence with description or sample, or their quality or fitness for any particular purpose, cannot be excluded or restricted by reference to any such term.

(3) As against a person dealing otherwise than as consumer, that liability can be excluded or restricted by reference to such a term, but only in so far as the term satisfies the requirement of reasonableness.

[[F4](3A) Liability for breach of the obligations arising under section 2 of the Supply of Goods and Services Act 1982 (implied terms about title etc. in certain contracts for the transfer

of the property in goods) cannot be excluded or restricted by reference to any such term.**]**

(4) Liability in respect of—

(a) the right to transfer ownership of the goods, or give possession; or

(b) the assurance of quiet possession to a person taking goods in pursuance of the contract,

cannot **[**[F5](in a case to which subsection (3A) above does not apply)**]**, be excluded or restricted by reference to any such term except in so far as the term satisfies the requirement of reasonableness.

(5) This section does not apply in the case of goods passing on a redemption of trading stamps within the [M4] Trading Stamps Act 1964 or the [M5] Trading Stamps Act (Northern Ireland) 1965.

Textual Amendments

F4 S. 7(3A) inserted by Supply of Goods and Services Act 1982 (c. 29, SIF 109:1), **ss. 17(2)**, 20(5)

F5 Words inserted by Supply of Goods and Services Act 1982 (c. 29, SIF 109:1), **ss. 17(3)**, 20(5)

Marginal Citations

M4 1964 c. 71

M5 1965 c. 6 (N.I.)

Other provisions about contracts

8 [X1] Misrepresentation.

(1) In the [M6] Misrepresentation Act 1967, the following is substituted for section 3—

"**3 Avoidance of provision excluding liability for misrepresentation.**

If a contract contains a term which would exclude or restrict—

(a) any liability to which a party to a contract may be subject by reason of any misrepresentation made by him before the contract was made; or

(b) any remedy available to another party to the contract by reason of such a misrepresentation,

that term shall be of no effect except in so far as it satisfies the requirement of reasonableness as stated in section 11(1) of the Unfair Contract Terms Act 1977; and it is for those claiming that the term satisfies that requirement to show that it does.".

(2) The same section is substituted for section 3 of the [M7] Misrepresentation Act (Northern Ireland) 1967.

Editorial Information

X1 The text of s. 8 is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

Status: *Point in time view as at 01/02/1991.*
Changes to legislation: *There are currently no known outstanding effects for the Unfair Contract Terms Act 1977, PART I . (See end of Document for details)*

Marginal Citations

M6 1967 c. 7

M7 1967 c. 14 (N.I.)

9 Effect of breach.

(1) Where for reliance upon it a contract term has to satisfy the requirement of reasonableness, it may be found to do so and be given effect accordingly notwithstanding that the contract has been terminated either by breach or by a party electing to treat it as repudiated.

(2) Where on a breach the contract is nevertheless affirmed by a party entitled to treat it as repudiated, this does not of itself exclude the requirement of reasonableness in relation to any contract term.

10 Evasion by means of secondary contract.

A person is not bound by any contract term prejudicing or taking away rights of his which arise under, or in connection with the performance of, another contract, so far as those rights extend to the enforcement of another's liability which this Part of this Act prevents that other from excluding or restricting.

Explanatory provisions

11 The "reasonableness" test.

(1) In relation to a contract term, the requirement of reasonableness for the purposes of this Part of this Act, section 3 of the [M8] Misrepresentation Act 1967 and section 3 of the [M9] Misrepresentation Act (Northern Ireland) 1967 is that the term shall have been a fair and reasonable one to be included having regard to the circumstances which were, or ought reasonably to have been, known to or in the contemplation of the parties when the contract was made.

(2) In determining for the purposes of section 6 or 7 above whether a contract term satisfies the requirement of reasonableness, regard shall be had in particular to the matters specified in Schedule 2 to this Act; but this subsection does not prevent the court or arbitrator 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.

(3) In relation to a notice (not being a notice having contractual effect), the requirement of reasonableness under this Act is that it should be fair and reasonable to allow reliance on it, having regard to all the circumstances obtaining when the liability arose or (but for the notice) would have arisen.

(4) Where by reference to a contract term or notice a person seeks to restrict liability to a specified sum of money, and the question arises (under this or any other Act) whether the term or notice satisfies the requirement of reasonableness, regard shall be had in particular (but without prejudice to subsection (2) above in the case of contract terms) to—

(a) the resources which he could expect to be available to him for the purpose of meeting the liability should it arise; and

(b) how far it was open to him to cover himself by insurance.

(5) It is for those claiming that a contract term or notice satisfies the requirement of reasonableness to show that it does.

Marginal Citations

M8 1967 c. 7

M9 1967 c. 14(N.I.)

12 "Dealing as a consumer".

(1) A party to a contract "deals as consumer" in relation to another party 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 does make 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 this Act, the goods passing under or in pursuance of the contract are of a type ordinarily supplied for private use or consumption.

(2) But on a sale by auction or by competitive tender the buyer is not in any circumstances to be regarded as dealing as consumer.

(3) Subject to this, it is for those claiming that a party does not deal as consumer to show that he does not.

13 Varieties of exemption clause.

(1) To the extent that this Part of this Act prevents the exclusion or restriction of any liability it also prevents—

(a) making the liability or its enforcement subject to restrictive or onerous conditions;

(b) excluding or restricting any right or remedy in respect of the liability, or subjecting a person to any prejudice in consequence of his pursuing any such right or remedy;

(c) excluding or restricting rules of evidence or procedure;

and (to that extent) sections 2 and 5 to 7 also prevent excluding or restricting liability by reference to terms and notices which exclude or restrict the relevant obligation or duty.

(2) But an agreement in writing to submit present or future differences to arbitration is not to be treated under this Part of this Act as excluding or restricting any liability.

14 Interpretation of Part I.

In this Part of this Act—

"business" includes a profession and the activities of any government department or local or public authority;

"goods"has the same meaning as in **[**[F6]the Sale of Goods Act 1979**]**;

"hire-purchase agreement" has the same meaning as in the [M10] Consumer Credit Act 1974;

"negligence" has the meaning given by section 1(1);

"notice" includes an announcement, whether or not in writing, and any other communication or pretended communication; and

"personal injury" includes any disease and any impairment of physical or mental condition.

Textual Amendments

F6 Words substituted by Sale of Goods Act 1979 (c. 54, SIF 109:1), ss. 62, 63, **Sch. 2 para. 20**

Marginal Citations

M10 1974 c. 39

Status:
Point in time view as at 01/02/1991.

Changes to legislation:
There are currently no known outstanding effects for the Unfair Contract Terms Act 1977, PART I .