

These notes refer to the Contracts (Rights of Third Parties) Act 1999 (c.31) which received Royal Assent on 11 November 1999

CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

EXPLANATORY NOTES

COMMENTARY

Section 2: Variation and rescission of contract

12. *Subsection (1)* provides that, where a third party has a right under section 1, the contracting parties may not, by agreement, rescind or vary the contract in a way which affects the third party's right without his consent. This section uses the term variation in its legal sense to mean a variation of the terms of an agreement by further agreement between the parties to the original agreement. It does not, for example, affect the terms of a construction contract which allow one of the parties to that contract unilaterally to alter, or "vary", the details of the work; such a variation is not to the contract but only to the work.
13. *Subsection (3)* provides that subsection (1) is subject to an express term of the contract, that the contract can by agreement be rescinded or varied without the third party's consent or that the third party's consent is to be required in specified circumstances different to those which are set out in subsection (1).
14. *Subsections (4) and (5)* give the court or arbitral tribunal the power to dispense with the requirement for the third party's consent where it cannot be obtained because his whereabouts are unknown or he is mentally incapable of giving his consent or where it cannot reasonably be ascertained whether he has in fact relied on the contractual term.