

CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

EXPLANATORY NOTES

COMMENTARY

Section 7: Supplementary provisions relating to third party

28. *Subsection (1)* ensures that the Act does not affect any existing right or remedy of the third party and allows for the judicial development of a third party's rights.
29. *Subsection (2)* prevents a third party from invoking section 2(2) of the Unfair Contract Terms Act 1977 to contest the validity of a term excluding or limiting the promisor's liability under the Act to the third party for negligently caused loss or damage (other than personal injury or death). Section 2(2) of the 1977 Act (in which "other loss or damage" means loss or damage other than death or personal injury), states-

"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".

30. *Subsection (3)*, which applies the standard limitation periods for actions for breach of contract to actions by third parties under the Act, refers to sections 5 and 8(1) of the Limitation Act 1980. Section 5 states-

"An action founded on simple contract shall not be brought after the expiration of six years from the date on which the cause of action accrued".

Section 8(1) states-

"An action upon a specialty shall not be brought after the expiration of twelve years from the date on which the cause of action accrued".

31. *Subsection (4)* ensures that those references in the Act to the position "if the third party had been a party to the contract" are not to be interpreted as meaning that the third party should be treated as a party to the contract for the purposes of any other enactment. One example is section 3 of the Unfair Contract Terms Act 1977 which applies "as between contracting parties where one of them deals as a consumer or on the other's written standard terms of business". This subsection makes it clear that nothing in sections 1(5) or 3(4) or 3(6) means that "contracting parties" in section 3 of the 1977 Act includes a third party with a right under section 1 of this Act.
32. Nothing in subsection (4), nor anything in [paragraphs 13.1-13.8](#) of the Law Commission's Report (*Privity of Contract: Contracts for the Benefits of Third Parties*, Law Com. Report No. 242), is intended to have any bearing on the interpretation of Article 17 of the Brussels Convention (on jurisdiction agreements). This is given effect to in the United Kingdom by the Civil Jurisdiction and Judgments Act 1982. The question of whether a third party given a procedural right to enforce a jurisdiction agreement under section 1 of this Act falls within Article 17, or whether a third party with a substantive right under section 1, subject to a jurisdiction clause, is "bound" by

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

that clause under Article 17 (applying a conditional benefit analysis) is a matter for the European Court of Justice. Relevant decisions of the ECJ include *Gerling v il Tesoro* [1983] ECR 2503 and *Tilly Russ* [1984] ECR 2417.