



Contracts (Rights of Third Parties) Act 1999

1999 CHAPTER 31

2 Variation and rescission of contract

- (1) Subject to the provisions of this section, where a third party has a right under section 1 to enforce a term of the contract, the parties to the contract may not, by agreement, rescind the contract, or vary it in such a way as to extinguish or alter his entitlement under that right, without his consent if—
 - (a) the third party has communicated his assent to the term to the promisor,
 - (b) the promisor is aware that the third party has relied on the term, or
 - (c) the promisor can reasonably be expected to have foreseen that the third party would rely on the term and the third party has in fact relied on it.
- (2) The assent referred to in subsection (1)(a)—
 - (a) may be by words or conduct, and
 - (b) if sent to the promisor by post or other means, shall not be regarded as communicated to the promisor until received by him.
- (3) Subsection (1) is subject to any express term of the contract under which—
 - (a) the parties to the contract may by agreement rescind or vary the contract without the consent of the third party, or
 - (b) the consent of the third party is required in circumstances specified in the contract instead of those set out in subsection (1)(a) to (c).
- (4) Where the consent of a third party is required under subsection (1) or (3), the court or arbitral tribunal may, on the application of the parties to the contract, dispense with his consent if satisfied—
 - (a) that his consent cannot be obtained because his whereabouts cannot reasonably be ascertained, or
 - (b) that he is mentally incapable of giving his consent.
- (5) The court or arbitral tribunal may, on the application of the parties to a contract, dispense with any consent that may be required under subsection (1)(c) if satisfied

Status: This is the original version (as it was originally enacted).

that it cannot reasonably be ascertained whether or not the third party has in fact relied on the term.

- (6) If the court or arbitral tribunal dispenses with a third party's consent, it may impose such conditions as it thinks fit, including a condition requiring the payment of compensation to the third party.
- (7) The jurisdiction conferred on the court by subsections (4) to (6) is exercisable by both the High Court and a county court.