

# EU Consumer Law Acquis Compendium

Legislation

United Kingdom (UK) Nr. 14



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**Full name and/or number of the statute (in original language):**

Unfair Contract Terms Act 1977

**Translation of the name:**

Unfair Contract Terms Act 1977

**Reference in Official Journal (if appropriate):**

**Date of coming into force:**

**Subsequent amendments:**

Amended by the Regulatory Reform (Trading Stamps) Order 2005, (SI 2005/871), as of 6.4.2005

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**Text:**

Unfair Contract Terms Act 1977

6 Sale and hire-purchase

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

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

(b) section 8 of the 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) section 13, 14 or 15 of the 1979 Act (seller'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.

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(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.

### 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.

(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 references 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 (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.

### 12 "Dealing as 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

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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.

(1A) But if the first party mentioned in subsection (1) is an individual paragraph (c) of that subsection must be ignored.

(2) But the buyer is not in any circumstances to be regarded as dealing as consumer if

(a) he is an individual and the goods are second hand goods sold at public auction at which individuals have the opportunity of attending the sale in person;

(b) if he is not an individual and the goods are sold by auction or by competitive tender.

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

### 20 Obligations implied by law in sale and hire-purchase contracts

(1) Any term of a contract which purports to exclude or restrict liability for breach of the obligations arising from--

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

(b) section 8 of the Supply of Goods (Implied Terms) Act 1973 (implied terms as to title in hire-purchase agreements), shall be void.

(2) Any term of a contract which purports to exclude or restrict liability for breach of the obligations arising from--

(a) section 13, 14 or 15 of the said Act of 1979 (seller'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 said Act of 1973 (the corresponding provisions in relation to hire-purchase), shall--

(i) in the case of a consumer contract, be void against the consumer;

(ii) in any other case, have no effect if it was not fair and reasonable to incorporate the term in the contract.

### 21 Obligations implied by law in other contracts for the supply of goods

(1) Any term of a contract to which this section applies purporting to exclude or restrict liability for breach of an obligation--

(a) such as is referred to in subsection (3)(a) below--

(i) in the case of a consumer contract, shall be void against the consumer, and

(ii) in any other case, shall have no effect if it was not fair and reasonable to incorporate the term in the contract;

(b) such as is referred to in subsection (3)(b) below, shall have no effect if it was not fair and reasonable to incorporate the term in the contract.

(2) This section applies to any contract to the extent that it relates to any such matter as is referred to in section 15(2)(a) of this Act, but does not apply to--

(a) a contract of sale of goods or a hire-purchase agreement; or

(b) a charter party of a ship or hovercraft unless it is a consumer contract (and then only in favour of the consumer).

(3) An obligation referred to in this subsection is an obligation incurred under a contract in the course of a business and arising by implication of law from the nature of the contract which relates--

(a) to the correspondence of goods with description or sample, or to the quality or fitness of goods for any particular purpose; or

(b) to any right to transfer ownership or possession of goods, or to the enjoyment of quiet possession of goods.

(3A) Notwithstanding anything in the foregoing provisions of this section, any term of a contract which purports to exclude or restrict liability for breach of the obligations arising under section 11B of the Supply of

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Goods and Services Act 1982 (implied terms about title, freedom from encumbrances and quiet possession in certain contracts for the transfer of property in goods) shall be void.

(4) Nothing in this section applies to the supply of goods on a redemption of trading stamps within the Trading Stamps Act 1964...

### 25 Interpretation of Part II

(1) In this Part of this Act--

"breach of duty" 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;

(c) of the duty of reasonable care imposed by section 2(1) of the Occupiers' Liability (Scotland) Act 1960;

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

"consumer" has the meaning assigned to that expression in the definition in this section of "consumer contract";

"consumer contract" means, subject to subsections (1A) and (1B) below, a contract ... in which--

(a) one party to the contract deals, and the other party to the contract ("the consumer") does not deal or hold himself out as dealing, in the course of a business, and

(b) in the case of a contract such as is mentioned in section 15(2)(a) of this Act, the goods are of a type ordinarily supplied for private use or consumption;

and for the purposes of this Part of this Act the onus of proving that a contract is not to be regarded as a consumer contract shall lie on the party so contending;

"goods" has the same meaning as in the Sale of Goods Act 1979;

"hire-purchase agreement" has the same meaning as in section 189(1) of the Consumer Credit Act 1974;

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

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

(1A) Where the consumer is an individual, paragraph (b) in the definition of "consumer con-

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tract" in subsection (1) must be disregarded.

(1B) The expression of "consumer contract" does not include a contract in which -

(a) the buyer is an individual and the goods are second hand goods sold by public auction at which individuals have the opportunity of attending in person; or

(b) the buyer is not an individual and the goods are sold by auction or competitive tender.

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

(3) In this Part of this Act, any reference to excluding or restricting any liability includes--

(a) making the liability or its enforcement subject to any 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 any rule of evidence or procedure;

(d) . . .

but does not include an agreement to submit any question to arbitration.

(4) . . .

(5) In sections 15 and 16 and 19 to 21 of this Act, any reference to excluding or restricting liability for breach of an obligation or duty shall include a reference to excluding or restricting the obligation or duty itself.

### 26 International supply contracts

(1) The limits imposed by this Act on the extent to which a person may exclude or restrict liability by reference to a contract term do not apply to liability arising under such a contract as is described in subsection (3) below.

(2) The terms of such a contract are not subject to any requirement of reasonableness under section 3 or 4: and nothing in Part II of this Act shall require the incorporation of the terms of such a contract to be fair and reasonable for them to have effect.

(3) Subject to subsection (4), that description of contract is one whose characteristics are the following--

(a) either it is a contract of sale of goods or it is one under or in pursuance of which the pos-

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session or ownership of goods passes; and

(b) it is made by parties whose places of business (or, if they have none, habitual residences) are in the territories of different States (the Channel Islands and the Isle of Man being treated for this purpose as different States from the United Kingdom).

(4) A contract falls within subsection (3) above only if either--

(a) the goods in question are, at the time of the conclusion of the contract, in the course of carriage, or will be carried, from the territory of one State to the territory of another; or

(b) the acts constituting the offer and acceptance have been done in the territories of different States; or

(c) the contract provides for the goods to be delivered to the territory of a State other than that within whose territory those acts were done.

#### 27 Choice of law clauses

(1) Where the law applicable to a contract is the law of any part of the United Kingdom only by choice of the parties (and apart from that choice would be the law of some country outside the United Kingdom) sections 2 to 7 and 16 to 21 of this Act do not operate as part of the law applicable to the contract.

(2) This Act has effect notwithstanding any contract term which applies or purports to apply the law of some country outside the United Kingdom, where (either or both)--

(a) the term appears to the court, or arbitrator or arbiter to have been imposed wholly or mainly for the purpose of enabling the party imposing it to evade the operation of this Act; or

(b) in the making of the contract one of the parties dealt as consumer, and he was then habitually resident in the United Kingdom, and the essential steps necessary for the making of the contract were taken there, whether by him or by others on his behalf.

(3) In the application of subsection (2) above to Scotland, for paragraph (b) there shall be substituted--

"(b) the contract is a consumer contract as defined in Part II of this Act, and the consumer at the date when the contract was made was habitually resident in the United Kingdom, and the essential steps necessary for the making of the contract were taken there, whether by him or by others on his behalf."