



Law Reform (Miscellaneous Provisions) (Scotland) Act 1990

1990 CHAPTER 40

PART IV

MISCELLANEOUS REFORMS

Avoidance of civil liability by non-contractual notice

68 Amendment of Unfair Contract Terms Act 1977.

- (1) The ^{M1}Unfair Contract Terms Act 1977 shall be amended in accordance with this section.
- (2) In section 15(1) (scope of Part II), the words “applies only to contracts,” shall cease to have effect.
- (3) In section 16 (liability for breach of duty)—
 - (a) in subsection (1)—
 - (i) at the beginning there shall be inserted the words “ Subject to subsection (1A) below, ”;
 - (ii) after the word “contract” in the first place where it occurs there shall be inserted “ , or a provision of a notice given to persons generally or to particular persons, ”;
 - (iii) after the word “term” in the second place where it occurs there shall be inserted “ or provision ”; and
 - (iv) at the end of paragraph (b) there shall be inserted the words “ or, as the case may be, if it is not fair and reasonable to allow reliance on the provision ”;
 - (b) after subsection (1) there shall be inserted the following subsection—

“(1A) Nothing in paragraph (b)

Changes to legislation: Law Reform (Miscellaneous Provisions) (Scotland) Act 1990, Section 68 is up to date with all changes known to be in force on or before 08 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

of subsection (1) above shall be taken as implying that a provision of a notice has effect in circumstances where, apart from that paragraph, it would not have effect.”; and

- (c) in subsection (3)—
 - (i) after the word “contract” there shall be inserted “ or a provision of a notice ”; and
 - (ii) after the word “term” in the second place where it occurs there shall be inserted “ or provision ”.

(4) In section 24 (the “reasonableness” test)—

- (a) after subsection (2) there shall be inserted the following subsection—

“(2A) In determining for the purposes of this Part of this Act whether it is fair and reasonable to allow reliance on a provision of a notice (not being a notice having contractual effect), regard shall be had to all the circumstances obtaining when the liability arose or (but for the provision) would have arisen.”;

- (b) in subsection (3)—
 - (i) after the word “contract” in the first place where it occurs there shall be inserted “ or a provision of a notice ”;
 - (ii) after the word “contract” in the second place where it occurs there shall be inserted “ or whether it is fair and reasonable to allow reliance on the provision ”;
 - (iii) after the word “above” there shall be inserted “ in the case of a term in a contract ”; and
 - (iv) in paragraph (a), after the word “term” there shall be inserted “ or provision ”; and
- (c) in subsection (4), after the word “contract” there shall be inserted “ or that it is fair and reasonable to allow reliance on a provision of a notice ”.

(5) In section 25 (interpretation of Part II)—

- (a) in subsection (1), after the definition of “hire-purchase agreement” there shall be inserted—

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

- (b) subsections (3)(d) and (4) shall cease to have effect.

(6) This section shall have effect only in relation to liability for any loss or damage which is suffered on or after the date appointed for its coming into force.

Commencement Information

II S. 68 wholly in force at 1.4.1991 see s. 75 and S.I. 1991/330, art. 4, Sch.

Marginal Citations

M1 1977 c. 50.

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 21A(1)(c) words substituted by [2007 asp 5 Sch. 5 para. 3\(7\)\(a\)\(iii\)](#)
- s. 33(6) inserted by [2007 asp 5 Sch. 5 para. 3\(11\)](#)