



Consumer Rights Act 2015

2015 CHAPTER 15

PART 2

UNFAIR TERMS

What contracts and notices are covered by this Part?

61 Contracts and notices covered by this Part

- (1) This Part applies to a contract between a trader and a consumer.
- (2) This does not include a contract of employment or apprenticeship.
- (3) A contract to which this Part applies is referred to in this Part as a “consumer contract”.
- (4) This Part applies to a notice to the extent that it—
 - (a) relates to rights or obligations as between a trader and a consumer, or
 - (b) purports to exclude or restrict a trader's liability to a consumer.
- (5) This does not include a notice relating to rights, obligations or liabilities as between an employer and an employee.
- (6) It does not matter for the purposes of subsection (4) whether the notice is expressed to apply to a consumer, as long as it is reasonable to assume it is intended to be seen or heard by a consumer.
- (7) A notice to which this Part applies is referred to in this Part as a “consumer notice”.
- (8) In this section “notice” includes an announcement, whether or not in writing, and any other communication or purported communication.

Commencement Information

11 S. 61 in force at 1.10.2015 by S.I. 2015/1630, art. 3(c) (with art. 6(1))

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Changes to legislation: There are currently no known outstanding effects for the Consumer Rights Act 2015, PART 2. (See end of Document for details)

What are the general rules about fairness of contract terms and notices?

62 Requirement for contract terms and notices to be fair

- (1) An unfair term of a consumer contract is not binding on the consumer.
- (2) An unfair consumer notice is not binding on the consumer.
- (3) This does not prevent the consumer from relying on the term or notice if the consumer chooses to do so.
- (4) A term is unfair if, contrary to the requirement of good faith, it causes a significant imbalance in the parties' rights and obligations under the contract to the detriment of the consumer.
- (5) Whether a term is fair is to be determined—
 - (a) taking into account the nature of the subject matter of the contract, and
 - (b) by reference to all the circumstances existing when the term was agreed and to all of the other terms of the contract or of any other contract on which it depends.
- (6) A notice is unfair if, contrary to the requirement of good faith, it causes a significant imbalance in the parties' rights and obligations to the detriment of the consumer.
- (7) Whether a notice is fair is to be determined—
 - (a) taking into account the nature of the subject matter of the notice, and
 - (b) by reference to all the circumstances existing when the rights or obligations to which it relates arose and to the terms of any contract on which it depends.
- (8) This section does not affect the operation of—
 - (a) section 31 (exclusion of liability: goods contracts),
 - (b) section 47 (exclusion of liability: digital content contracts),
 - (c) section 57 (exclusion of liability: services contracts), or
 - (d) section 65 (exclusion of negligence liability).

Commencement Information

I2 S. 62 in force at 1.10.2015 by S.I. 2015/1630, art. 3(c) (with art. 6(1))

63 Contract terms which may or must be regarded as unfair

- (1) Part 1 of Schedule 2 contains an indicative and non-exhaustive list of terms of consumer contracts that may be regarded as unfair for the purposes of this Part.
- (2) Part 1 of Schedule 2 is subject to Part 2 of that Schedule; but a term listed in Part 2 of that Schedule may nevertheless be assessed for fairness under section 62 unless section 64 or 73 applies to it.
- (3) The Secretary of State may by order made by statutory instrument amend Schedule 2 so as to add, modify or remove an entry in Part 1 or Part 2 of that Schedule.
- (4) An order under subsection (3) may contain transitional or transitory provision or savings.

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- (5) No order may be made under subsection (3) unless a draft of the statutory instrument containing it has been laid before, and approved by a resolution of, each House of Parliament.
- (6) A term of a consumer contract must be regarded as unfair if it has the effect that the consumer bears the burden of proof with respect to compliance by a distance supplier or an intermediary with an obligation under any enactment or rule implementing the Distance Marketing Directive.
- (7) In subsection (6)—
- “the Distance Marketing Directive” means Directive [2002/65/EC](#) of the European Parliament and of the Council of 23 September 2002 concerning the distance marketing of consumer financial services and amending Council Directive [90/619/EEC](#) and Directives [97/7/EC](#) and [98/27/EC](#);
- “distance supplier” means—
- (a) a supplier under a distance contract within the meaning of the Financial Services (Distance Marketing) Regulations 2004 (SI 2004/2095), or
- (b) a supplier of unsolicited financial services within the meaning of regulation 15 of those regulations;
- “enactment” includes an enactment contained in subordinate legislation within the meaning of the Interpretation Act 1978;
- “intermediary” has the same meaning as in the Financial Services (Distance Marketing) Regulations 2004;
- “rule” means a rule made by the Financial Conduct Authority or the Prudential Regulation Authority under the Financial Services and Markets Act 2000 or by a designated professional body within the meaning of section 326(2) of that Act.

Commencement Information

I3 S. 63 in force at 1.10.2015 by S.I. 2015/1630, art. 3(c) (with art. 6(1))

64 Exclusion from assessment of fairness

- (1) A term of a consumer contract may not be assessed for fairness under section 62 to the extent that—
- (a) it specifies the main subject matter of the contract, or
- (b) the assessment is of the appropriateness of the price payable under the contract by comparison with the goods, digital content or services supplied under it.
- (2) Subsection (1) excludes a term from an assessment under section 62 only if it is transparent and prominent.
- (3) A term is transparent for the purposes of this Part if it is expressed in plain and intelligible language and (in the case of a written term) is legible.
- (4) A term is prominent for the purposes of this section if it is brought to the consumer's attention in such a way that an average consumer would be aware of the term.
- (5) In subsection (4) “average consumer” means a consumer who is reasonably well-informed, observant and circumspect.

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(6) This section does not apply to a term of a contract listed in Part 1 of Schedule 2.

Commencement Information

I4 S. 64 in force at 1.10.2015 by S.I. 2015/1630, art. 3(c) (with art. 6(1))

65 Bar on exclusion or restriction of negligence liability

- (1) A trader cannot by a term of a consumer contract or by a consumer notice exclude or restrict liability for death or personal injury resulting from negligence.
- (2) Where a term of a consumer contract, or a consumer notice, purports to exclude or restrict a trader's liability for negligence, a person is not to be taken to have voluntarily accepted any risk merely because the person agreed to or knew about the term or notice.
- (3) In this section “personal injury” includes any disease and any impairment of physical or mental condition.
- (4) In this section “negligence” means the breach of—
 - (a) any obligation to take reasonable care or exercise reasonable skill in the performance of a contract where the obligation arises from an express or implied term of the contract,
 - (b) a common law duty to take reasonable care or exercise reasonable skill,
 - (c) the common duty of care imposed by the Occupiers' Liability Act 1957 or the Occupiers' Liability Act (Northern Ireland) 1957, or
 - (d) the duty of reasonable care imposed by section 2(1) of the Occupiers' Liability (Scotland) Act 1960.
- (5) It is immaterial for the purposes of subsection (4)—
 - (a) whether a breach of duty or obligation was inadvertent or intentional, or
 - (b) whether liability for it arises directly or vicariously.
- (6) This section is subject to section 66 (which makes provision about the scope of this section).

Commencement Information

I5 S. 65 in force at 1.10.2015 by S.I. 2015/1630, art. 3(c) (with art. 6(1))

66 Scope of section 65

- (1) Section 65 does not apply to—
 - (a) any contract so far as it is a contract of insurance, including a contract to pay an annuity on human life, or
 - (b) any contract so far as it relates to the creation or transfer of an interest in land.
- (2) Section 65 does not affect the validity of any discharge or indemnity given by a person in consideration of the receipt by that person of compensation in settlement of any claim the person has.

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- (3) Section 65 does not—
- (a) apply to liability which is excluded or discharged as mentioned in section 4(2) (a) (exception to liability to pay damages to relatives) of the Damages (Scotland) Act 2011, or
 - (b) affect the operation of section 5 (discharge of liability to pay damages: exception for mesothelioma) of that Act.
- (4) Section 65 does not apply to the liability of an occupier of premises to a person who obtains access to the premises for recreational purposes if—
- (a) the person suffers loss or damage because of the dangerous state of the premises, and
 - (b) allowing the person access for those purposes is not within the purposes of the occupier's trade, business, craft or profession.

Commencement Information

16 S. 66 in force at 1.10.2015 by S.I. 2015/1630, art. 3(c) (with art. 6(1))

67 Effect of an unfair term on the rest of a contract

Where a term of a consumer contract is not binding on the consumer as a result of this Part, the contract continues, so far as practicable, to have effect in every other respect.

Commencement Information

17 S. 67 in force at 1.10.2015 by S.I. 2015/1630, art. 3(c) (with art. 6(1))

68 Requirement for transparency

- (1) A trader must ensure that a written term of a consumer contract, or a consumer notice in writing, is transparent.
- (2) A consumer notice is transparent for the purposes of subsection (1) if it is expressed in plain and intelligible language and it is legible.

Commencement Information

18 S. 68 in force at 1.10.2015 by S.I. 2015/1630, art. 3(c) (with art. 6(1))

69 Contract terms that may have different meanings

- (1) If a term in a consumer contract, or a consumer notice, could have different meanings, the meaning that is most favourable to the consumer is to prevail.
- (2) Subsection (1) does not apply to the construction of a term or a notice in proceedings on an application for an injunction or interdict under paragraph 3 of Schedule 3.

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Commencement Information

I9 S. 69 in force at 1.10.2015 by S.I. 2015/1630, art. 3(c) (with art. 6(1))

How are the general rules enforced?

70 Enforcement of the law on unfair contract terms

- (1) Schedule 3 confers functions on the Competition and Markets Authority and other regulators in relation to the enforcement of this Part.
- (2) For provision about the investigatory powers that are available to those regulators for the purposes of that Schedule, see Schedule 5.

Commencement Information

I10 S. 70 in force at 1.10.2015 by S.I. 2015/1630, art. 3(c) (with art. 6(1))

Supplementary provisions

71 Duty of court to consider fairness of term

- (1) Subsection (2) applies to proceedings before a court which relate to a term of a consumer contract.
- (2) The court must consider whether the term is fair even if none of the parties to the proceedings has raised that issue or indicated that it intends to raise it.
- (3) But subsection (2) does not apply unless the court considers that it has before it sufficient legal and factual material to enable it to consider the fairness of the term.

Commencement Information

I11 S. 71 in force at 1.10.2015 by S.I. 2015/1630, art. 3(c) (with art. 6(1))

72 Application of rules to secondary contracts

- (1) This section applies if a term of a contract (“the secondary contract”) reduces the rights or remedies or increases the obligations of a person under another contract (“the main contract”).
- (2) The term is subject to the provisions of this Part that would apply to the term if it were in the main contract.
- (3) It does not matter for the purposes of this section—
 - (a) whether the parties to the secondary contract are the same as the parties to the main contract, or
 - (b) whether the secondary contract is a consumer contract.

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- (4) This section does not apply if the secondary contract is a settlement of a claim arising under the main contract.

Commencement Information

I12 S. 72 in force at 1.10.2015 by S.I. 2015/1630, art. 3(c) (with art. 6(1))

73 Disapplication of rules to mandatory terms and notices

- (1) This Part does not apply to a term of a contract, or to a notice, to the extent that it reflects—
- (a) mandatory statutory or regulatory provisions, or
 - (b) the provisions or principles of an international convention to which the United Kingdom or the EU is a party.
- (2) In subsection (1) “mandatory statutory or regulatory provisions” includes rules which, according to law, apply between the parties on the basis that no other arrangements have been established.

Commencement Information

I13 S. 73 in force at 1.10.2015 by S.I. 2015/1630, art. 3(c) (with art. 6(1))

74 Contracts applying law of non-EEA State

- (1) If—
- (a) the law of a country or territory other than an EEA State is chosen by the parties to be applicable to a consumer contract, but
 - (b) the consumer contract has a close connection with the United Kingdom,
- this Part applies despite that choice.
- (2) For cases where the law applicable has not been chosen or the law of an EEA State is chosen, see Regulation (EC) No. 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations.

Commencement Information

I14 S. 74 in force at 1.10.2015 by S.I. 2015/1630, art. 3(c) (with art. 6(1))

75 Changes to other legislation

Schedule 4 (amendments consequential on this Part) has effect.

Commencement Information

I15 S. 75 in force at 1.10.2015 by S.I. 2015/1630, art. 3(c) (with art. 6(1))

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76 Interpretation of Part 2

(1) In this Part—

“consumer contract” has the meaning given by section 61(3);

“consumer notice” has the meaning given by section 61(7);

“transparent” is to be construed in accordance with sections 64(3) and 68(2).

(2) The following have the same meanings in this Part as they have in Part 1—

“trader” (see section 2(2));

“consumer” (see section 2(3));

“goods” (see section 2(8));

“digital content” (see section 2(9)).

(3) Section 2(4) (trader who claims an individual is not a consumer must prove it) applies in relation to this Part as it applies in relation to Part 1.

Commencement Information

I16 S. 76 in force at 1.10.2015 by S.I. 2015/1630, art. 3(c) (with art. 6(1))

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