

SCHEDULES

SCHEDULE 1

Section 1.

MODIFICATION OF ACT FOR CERTAIN CONTRACTS

Preliminary

- 1 (1) This Schedule modifies this Act as it applies to contracts of sale of goods made on certain dates.
- (2) In this Schedule references to sections are to those of this Act and references to contracts are to contracts of sale of goods.
- (3) Nothing in this Schedule affects a contract made before 1 January 1894.

Section 11: condition treated as warranty

- 2 In relation to a contract made before 22 April 1967 or (in the application of this Act to Northern Ireland) 28 July 1967, in section 11(4) after " or part of them," insert " or where the contract is for specific goods, the property in which has passed to the buyer, ".

Section 12: implied terms about title etc.

- 3 In relation to a contract made before 18 May 1973 substitute the following for section 12: —

“12 Implied terms about title, etc.

In a contract of sale, unless the circumstances of the contract are such as to show a different intention, there is—

- (a) an implied condition on the part of the seller that in the case of a sale he has a right to sell the goods, and in the case of an agreement to sell he will have such a right at the time when the property is to pass ;
- (b) an implied warranty that the buyer will have and enjoy quiet possession of the goods ;
- (c) an implied warranty that the goods will be free from any charge or encumbrance in favour of any third party, not declared or known to the buyer before or at the time when the contract is made.”

Section 13: sale by description

- 4 In relation to a contract made before 18 May 1973, omit section 13(3).

Status: This is the original version (as it was originally enacted).

Section 14: quality or fitness (i)

5 In relation to a contract made on or after 18 May 1973 and before the appointed day, substitute the following for section 14: —

“14 Implied terms about quality or fitness.

- (1) Except as provided by this section and section 15 below and subject to any other enactment, there is no implied condition or warranty about the quality or fitness for any particular purpose of goods supplied under a contract of sale.
- (2) Where the seller sells goods in the course of a business, there is an implied condition that the goods supplied under the contract are of merchantable quality, except that there is no such condition—
 - (a) as regards defects specifically drawn to the buyer's attention before the contract is made ; or
 - (b) if the buyer examines the goods before the contract is made, as regards defects which that examination ought to reveal.
- (3) Where the seller sells goods in the course of a business and the buyer, expressly or by implication, makes known to the seller any particular purpose for which the goods are being bought, there is an implied condition that the goods supplied under the contract are reasonably fit for that purpose, whether or not that is a purpose for which such goods are commonly supplied, except where the circumstances show that the buyer does not rely, or that it is unreasonable for him to rely, on the seller's skill or judgment.
- (4) An implied condition or warranty about quality or fitness for a particular purpose may be annexed to a contract of sale by usage.
- (5) The preceding provisions of this section apply to a sale by a person who in the course of a business is acting as agent for another as they apply to a sale by a principal in the course of a business, except where that other is not selling in the course of a business and either the buyer knows that fact or reasonable steps are taken to bring it to the notice of the buyer before the contract is made.
- (6) Goods of any kind are of merchantable quality within the meaning of subsection (2) above if they are as fit for the purpose or purposes for which goods of that kind are commonly bought as it is reasonable to expect having regard to any description applied to them, the price (if relevant) and all the other relevant circumstances.
- (7) In the application of subsection (3) above to an agreement for the sale of goods under which the purchase price or part of it is payable by instalments any reference to the seller includes a reference to the person by whom any antecedent negotiations are conducted; and section 58(3) and (5) of the Hire-Purchase Act 1965, section 54(3) and (5) of the Hire-Purchase (Scotland) Act 1965 and section 65(3) and (5) of the Hire-Purchase Act (Northern Ireland) 1966 (meaning of antecedent negotiations and related expressions) apply in relation to this subsection as in relation to each of those Acts, but as if a reference to any such agreement were included in the references in subsection (3) of each of those sections to the agreements there mentioned.”

Section 14: quality or fitness (ii)

6 In relation to a contract made before 18 May 1973 substitute the following for section 14:—

“14 Implied terms about quality or fitness.

- (1) Subject to this and any other Act, there is no implied condition or warranty about the quality or fitness for any particular purpose of goods supplied under a contract of sale.
- (2) Where the buyer, expressly or by implication, makes known to the seller the particular purpose for which the goods are required, so as to show that the buyer relies on the seller's skill or judgment, and the goods are of a description which it is in the course of the seller's business to supply (whether he is the manufacturer or not), there is an implied condition that the goods will be reasonably fit for such purpose, except that in the case of a contract for the sale of a specified article under its patent or other trade name there is no implied condition as to its fitness for any particular purpose.
- (3) Where goods are bought by description from a seller who deals in goods of that description (whether he is the manufacturer or not), there is an implied condition that the goods will be of merchantable quality ; but if the buyer has examined the goods, there is no implied condition as regards defects which such examination ought to have revealed.
- (4) An implied condition or warranty about quality or fitness for a particular purpose may be annexed by the usage of trade.
- (5) An express condition or warranty does not negative a condition or warranty implied by this Act unless inconsistent with it”

Section 15: sale by sample

7 In relation to a contract made before 18 May 1973, omit section 15(3).

Section 22: market overt

8 In relation to a contract under which goods were sold before 1 January 1968 or (in the application of this Act to Northern Ireland) 29 August 1967, add the following paragraph at the end of section 22(1):—

“Nothing in this subsection affects the law relating to the sale of horses.”

Section 25: buyer in possession

9 In relation to a contract under which a person buys or agrees to buy goods and which is made before the appointed day, omit section 25(2).

Section 35: acceptance

10 In relation to a contract made before 22 April 1967 or (in the application of this Act to Northern Ireland) 28 July 1967, in section 35(1) omit " (except where section 34 above otherwise provides) ".

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

Section 55: exclusion of implied terms (i)

11 In relation to a contract made on or after 18 May 1973 and before 1 February 1978 substitute the following for section 55: —

“55 Exclusion of implied terms.

- (1) Where a right, duty or liability would arise under a contract of sale of goods by implication of law, it may be negated or varied by express agreement, or by the course of dealing between the parties, or by such usage as binds both parties to the contract, but the preceding provision has effect subject to the following provisions of this section.
- (2) An express condition or warranty does not negative a condition or warranty implied by this Act unless inconsistent with it.
- (3) In the case of a contract of sale of goods, any term of that or any other contract exempting from all or any of the provisions of section 12 above is void.
- (4) In the case of a contract of sale of goods, any term of that or any other contract exempting from all or any of the provisions of section 13, 14 or 15 above is void in the case of a consumer sale and is, in any other case, not enforceable to the extent that it is shown that it would not be fair or reasonable to allow reliance on the term.
- (5) In determining for the purposes of subsection (4) above whether or not reliance on any such term would be fair or reasonable regard shall be had to all the circumstances of the case and in particular to the following matters—
 - (a) the strength of the bargaining positions of the seller and buyer relative to each other, taking into account, among other things, the availability of suitable alternative products and sources of supply ;
 - (b) whether the buyer received an inducement to agree to the term or in accepting it had an opportunity of buying the goods or suitable alternatives without it from any source of supply;
 - (c) whether the buyer knew or ought reasonably to have known of the existence and extent of the term (having regard, among other things, to any custom of the trade and any previous course of dealing between the parties) ;
 - (d) where the term exempts from all or any of the provisions of section 13, 14 or 15 above if some condition is not complied with, whether it was reasonable at the time of the contract to expect that compliance with that condition would be practicable;
 - (e) whether the goods were manufactured, processed, or adapted to the special order of the buyer.
- (6) Subsection (5) above does not prevent the court from holding, in accordance with any rule of law, that a term which purports to exclude or restrict any of the provisions of section 13, 14 or 15 above is not a term of the contract.
- (7) In this section " consumer sale " means a sale of goods (other than a sale by auction or by competitive tender) by a seller in the course of a business where the goods—
 - (a) are of a type ordinarily bought for private use or consumption ; and

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

- (b) are sold to a person who does not buy or hold himself out as buying them in the course of a business.
- (8) The onus of proving that a sale falls to be treated for the purposes of this section as not being a consumer sale lies on the party so contending.
- (9) Any reference in this section to a term exempting from all or any of the provisions of any section of this Act is a reference to a term which purports to exclude or restrict, or has the effect of excluding or restricting the operation of all or any of the provisions of that section, or the exercise of a right conferred by any provision of that section, or any liability of the seller for breach of a condition or warranty implied by any provision of that section.
- (10) It is hereby declared that any reference in this section to a term of a contract includes a reference to a term which although not contained in a contract is incorporated in the contract by another term of the contract.
- (11) Nothing in this section prevents the parties to a contract for the international sale of goods from negating or varying any right, duty or liability which would otherwise arise by implication of law under sections 12 to 15 above.
- (12) In subsection (11) above "contract for the international sale of goods " means a contract of sale of goods 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) and in the case of which one of the following conditions is satisfied:—
 - (a) the contract involves the sale of goods which 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 effected in the territories of different States ; or
 - (c) delivery of the goods is to be made in the territory of a State other than that within whose territory the acts constituting the offer and the acceptance have been effected.”

Section 55: exclusion of implied terms (ii)

- 12 In relation to a contract made before 18 May 1973 substitute the following for section 55:—

“55 Exclusion of implied terms.

Where a right, duty or liability would arise under a contract of sale by implication of law, it may be negated or varied by express agreement, or by the course of dealing between the parties, or by such usage as binds both parties to the contract.”

Section 56: conflict of laws

- 13 (1) in relation to a contract made on or after 18 May 1973 and before 1 February 1978 substitute for section 56 the section set out in sub-paragraph (3) below.

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

- (2) In relation to a contract made otherwise than as mentioned in sub-paragraph (1) above, ignore section 56 and this paragraph.
- (3) The section mentioned in sub-paragraph (1) above is as follows: —

“56 Conflict of laws.

- (1) Where the proper law of a contract for the sale of goods would, apart from a term that it should be the law of some other country or a term to the like effect, be the law of any part of the United Kingdom, or where any such contract contains a term which purports to substitute, or has the effect of substituting, provisions of the law of some other country for all or any of the provisions of sections 12 to 15 and 55 above, those sections shall, notwithstanding that term but subject to subsection (2) below, apply to the contract.
- (2) Nothing in subsection (1) above prevents the parties to a contract for the international sale of goods from negating or varying any right, duty or liability which would otherwise arise by implication of law under sections 12 to 15 above.
- (3) In subsection (2) above "contract for the international sale of goods " means a contract of sale of goods 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) and in the case of which one of the following conditions is satisfied: —
- (a) the contract involves the sale of goods which 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 effected in the territories of different States ; or
 - (c) delivery of the goods is to be made in the territory of a State other than that within whose territory the acts constituting the offer and the acceptance have been effected.”

Section 61(1): definition of " business " (i)

- 14 In relation to a contract made on or after 18 May 1973 and before 1 February 1978, in the definition of "business" in section 61(1) for " or local or public authority " substitute " , local authority or statutory undertaker ".

Section 61(1): definition of " business " (ii)

- 15 In relation to a contract made before 18 May 1973 omit the definition of " business " in section 61(1).