

## SCHEDULES

### SCHEDULE 2

Section 7.

#### MINOR AND CONSEQUENTIAL AMENDMENTS

##### *The Trading Stamps Act 1964 (c. 71)*

- 1 (1) Section 4 of the Trading Stamps Act 1964 (terms to be implied on redemption of trading stamps) is amended as follows.
- (2) In subsection (1)(a) and (b) for “warranty” there is substituted “term” and for subsection (1)(c) there is substituted—
- “ (c) an implied term that the goods are of satisfactory quality.”
- (3) For subsections (2) and (3) there is substituted—
- “ (2) For the purposes of paragraph (c) of subsection (1) of this section, goods are of satisfactory quality if they meet the standard that a reasonable person would regard as satisfactory, taking account of any description of the goods and all the other relevant circumstances.
- (2A) For the purposes of that paragraph, the quality of goods includes their state and condition and the following (among others) are in appropriate cases aspects of the quality of goods—
- (a) fitness for all the purposes for which goods of the kind in question are commonly supplied,
- (b) appearance and finish,
- (c) freedom from minor defects,
- (d) safety, and
- (e) durability.
- (2B) The term implied by that paragraph does not extend to any matter making the quality of goods unsatisfactory—
- (a) which is specifically drawn to the attention of the person obtaining the goods before or at the time of redemption, or
- (b) where that person examines the goods before or at the time of redemption, which that examination ought to reveal.
- (3) As regards England and Wales, the terms implied by subsection (1) of this section are warranties.”

##### *The Trading Stamps Act (Northern Ireland) 1965 (c. 6 (N.I.))*

- 2 (1) Section 4 of the Trading Stamps Act (Northern Ireland) 1965 (warranties to be implied on redemption of trading stamps) is amended as follows.
- (2) For subsection (1)(c) there is substituted—
- “ (c) an implied warranty that the goods are of satisfactory quality.”

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(3) For subsection (2) there is substituted—

“(2) For the purposes of paragraph (c) of subsection (1), goods are of satisfactory quality if they meet the standard that a reasonable person would regard as satisfactory, taking account of any description of the goods and all the other relevant circumstances.

(3) For the purposes of that paragraph, the quality of goods includes their state and condition and the following (among others) are in appropriate cases aspects of the quality of goods—

- (a) fitness for all the purposes for which goods of the kind in question are commonly supplied,
- (b) appearance and finish,
- (c) freedom from minor defects,
- (d) safety, and
- (e) durability.

(4) The warranty implied by that paragraph does not extend to any matter making the quality of goods unsatisfactory—

- (a) which is specifically drawn to the attention of the person obtaining the goods before or at the time of redemption, or
- (b) where that person examines the goods before or at the time of redemption, which that examination ought to reveal.”

*The Uniform Laws on International Sales Act 1967 (c. 45)*

3 In section 1 of the Uniform Laws on International Sales Act 1967 (application of Uniform Law on the International Sale of Goods) in subsection (4)(c) for “12 to 15” there is substituted “12 to 15B”.

*The Supply of Goods (Implied Terms) Act 1973 (c. 13)*

4 (1) The Supply of Goods (Implied Terms) Act 1973 is amended as follows.

(2) In section 8 (implied terms as to title)—

- (a) for “condition” (in subsection (1)(a)) and for “warranty” (in subsections (1)(b), (2)(a) and (2)(b)) there is substituted “term”; and
- (b) at the end of that section there is inserted—

“(3) As regards England and Wales and Northern Ireland, the term implied by subsection (1)(a) above is a condition and the terms implied by subsections (1)(b), (2)(a) and (2)(b) above are warranties.”

(3) In section 9 (bailing or hiring by description)—

- (a) in subsection (1) for “condition” there is substituted “term”; and
- (b) after that subsection there is inserted—

“(1A) As regards England and Wales and Northern Ireland, the term implied by subsection (1) above is a condition.”

(4) In section 10 (implied undertakings as to quality or fitness)—

- (a) for subsection (2) there is substituted—

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“(2) Where the creditor bails or hires goods under a hire purchase agreement in the course of a business, there is an implied term that the goods supplied under the agreement are of satisfactory quality.

(2A) For the purposes of this Act, goods are of satisfactory quality if they meet the standard that a reasonable person would regard as satisfactory, taking account of any description of the goods, the price (if relevant) and all the other relevant circumstances.

(2B) For the purposes of this Act, the quality of goods includes their state and condition and the following (among others) are in appropriate cases aspects of the quality of goods—

- (a) fitness for all the purposes for which goods of the kind in question are commonly supplied,
- (b) appearance and finish,
- (c) freedom from minor defects,
- (d) safety, and
- (e) durability.

(2C) The term implied by subsection (2) above does not extend to any matter making the quality of goods unsatisfactory—

- (a) which is specifically drawn to the attention of the person to whom the goods are bailed or hired before the agreement is made,
  - (b) where that person examines the goods before the agreement is made, which that examination ought to reveal, or
  - (c) where the goods are bailed or hired by reference to a sample, which would have been apparent on a reasonable examination of the sample”;
- (b) for “condition or warranty” (in subsections (1) and (4)) and for “condition” (in subsection (3)) there is substituted “term”; and
- (c) after subsection (6) there is inserted—

“(7) As regards England and Wales and Northern Ireland, the terms implied by subsections (2) and (3) above are conditions.”

(5) In section 11 (samples)—

- (a) at the beginning there is inserted “(1)”;
- (b) for “condition” there is substituted “term”;
- (c) in paragraph (c) for “rendering them unmerchantable” there is substituted “making their quality unsatisfactory”; and
- (d) at the end there is inserted—

“(2) As regards England and Wales and Northern Ireland, the term implied by subsection (1) above is a condition.”

(6) After that section there is inserted the following section—

**“11A Modification of remedies for breach of statutory condition in non-consumer cases.**

(1) Where in the case of a hire purchase agreement—

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- (a) the person to whom goods are bailed would, apart from this subsection, have the right to reject them by reason of a breach on the part of the creditor of a term implied by section 9, 10 or 11(1) (a) or (c) above, but
- (b) the breach is so slight that it would be unreasonable for him to reject them,

then, if the person to whom the goods are bailed does not deal as consumer, the breach is not to be treated as a breach of condition but may be treated as a breach of warranty.

- (2) This section applies unless a contrary intention appears in, or is to be implied from, the agreement.
  - (3) It is for the creditor to show—
    - (a) that a breach fell within subsection (1)(b) above, and
    - (b) that the person to whom the goods were bailed did not deal as consumer.
  - (4) The references in this section to dealing as consumer are to be construed in accordance with Part I of the Unfair Contract Terms Act 1977.
  - (5) This section does not apply to Scotland.”
- (7) For section 12 (exclusion of implied terms and conditions) there is substituted the following section—

**“12 Exclusion of implied terms.**

An express term does not negative a term implied by this Act unless inconsistent with it.”

- (8) After section 12 there is inserted the following section—

**“12A Remedies for breach of hire-purchase agreement as respects Scotland.**

- (1) Where in a hire-purchase agreement the creditor is in breach of any term of the agreement (express or implied), the person to whom the goods are hired shall be entitled—
  - (a) to claim damages, and
  - (b) if the breach is material, to reject any goods delivered under the agreement and treat it as repudiated.
- (2) Where a hire-purchase agreement is a consumer contract, then, for the purposes of subsection (1) above, breach by the creditor of any term (express or implied)—
  - (a) as to the quality of the goods or their fitness for a purpose,
  - (b) if the goods are, or are to be, hired by description, that the goods will correspond with the description,
  - (c) if the goods are, or are to be, hired by reference to a sample, that the bulk will correspond with the sample in quality,
 shall be deemed to be a material breach.

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(3) In subsection (2) above “consumer contract” has the same meaning as in section 25(1) of the Unfair Contract Terms Act 1977; and for the purposes of that subsection the onus of proving that a hire-purchase agreement is not to be regarded as a consumer contract shall lie on the creditor.

(4) This section applies to Scotland only.”

(9) In section 15 (supplementary)—

- (a) in subsection (1), the words from ““condition” and “warranty”” to “material to the agreement” are omitted;
- (b) subsection (2) is omitted; and
- (c) in subsection (4), for “condition or warranty” there is substituted “term”.

*The Sale of Goods Act 1979 (c. 54)*

5 (1) The Sale of Goods Act 1979 is amended as follows.

(2) In section 11 (when condition to be treated as warranty)—

(a) for subsection (1) there is substituted —

“(1) This section does not apply to Scotland.”; and

(b) subsection (5) is omitted.

(3) In section 12 (implied terms about title etc.)—

(a) for “condition” (in subsection (1)) and for “warranty” (in subsections (2), (4) and (5)) there is substituted “term”; and

(b) after subsection (5) there is inserted—

“(5A) As regards England and Wales and Northern Ireland, the term implied by subsection (1) above is a condition and the terms implied by subsections (2), (4) and (5) above are warranties.”

(4) In section 13 (sale by description)—

(a) in subsection (1) for “condition” there is substituted “term”; and

(b) after that subsection there is inserted—

“(1A) As regards England and Wales and Northern Ireland, the term implied by subsection (1) above is a condition.”

(5) In section 14 (implied terms about quality or fitness)—

(a) for “condition or warranty” (in subsections (1) and (4)) and for “condition” (in subsection (3)) there is substituted “term”; and

(b) for subsection (6) there is substituted—

“(6) As regards England and Wales and Northern Ireland, the terms implied by subsections (2) and (3) above are conditions.”

(6) In section 15 (sale by sample)—

(a) in subsection (2), for “condition” there is substituted “term” and paragraph (b) is omitted; and

(b) for subsection (3) there is substituted—

“(3) As regards England and Wales and Northern Ireland, the term implied by subsection (2) above is a condition.”

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- (7) In section 53 (remedy for breach of warranty) for subsection (5) there is substituted—
- “(5) This section does not apply to Scotland.”
- (8) In section 55 (exclusion of implied terms) in subsection (2) for “condition or warranty” (in both places) there is substituted “term”.
- (9) In section 61 (interpretation)—
- (a) in subsection (1)—
- (i) after the definition of “buyer” there is inserted—
- ““consumer contract” has the same meaning as in section 25(1) of the Unfair Contract Terms Act 1977; and for the purposes of this Act the onus of proving that a contract is not to be regarded as a consumer contract shall lie on the seller”; and
- (ii) the definition of “quality” is omitted;
- (b) subsection (2) is omitted; and
- (c) after subsection (5) there is inserted—
- “(5A) References in this Act to dealing as consumer are to be construed in accordance with Part I of the Unfair Contract Terms Act 1977; and, for the purposes of this Act, it is for a seller claiming that the buyer does not deal as consumer to show that he does not.”
- (10) For the heading “*Conditions and warranties*” that precedes sections 10 to 14 there is substituted the heading “*Implied terms etc.*”.

*The Supply of Goods and Services Act 1982 (c. 29)*

- 6 (1) The Supply of Goods and Services Act 1982 is amended as follows.
- (2) In section 1 (the contracts concerned), in subsections (1) and (3) after “Act” there is inserted “in its application to England and Wales and Northern Ireland”.
- (3) In section 4 (contracts for transfer: quality or fitness) for subsections (2) and (3) there is substituted—
- “(2) Where, under such a contract, the transferor transfers the property in goods in the course of a business, there is an implied condition that the goods supplied under the contract are of satisfactory quality.
- (2A) For the purposes of this section and section 5 below, goods are of satisfactory quality if they meet the standard that a reasonable person would regard as satisfactory, taking account of any description of the goods, the price (if relevant) and all the other relevant circumstances.
- (3) The condition implied by subsection (2) above does not extend to any matter making the quality of goods unsatisfactory—
- (a) which is specifically drawn to the transferee’s attention before the contract is made,
- (b) where the transferee examines the goods before the contract is made, which that examination ought to reveal, or

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- (c) where the property in the goods is transferred by reference to a sample, which would have been apparent on a reasonable examination of the sample.”; and subsection (9) is omitted.
- (4) In section 5 (transfer by sample)—
  - (a) in subsection (2)(c), for “rendering them unmerchantable” there is substituted “making their quality unsatisfactory”; and
  - (b) subsection (3) is omitted.
- (5) After section 5 there is inserted the following section—

**“5A Modification of remedies for breach of statutory condition in non-consumer cases.**

- (1) Where in the case of a contract for the transfer of goods—
  - (a) the transferee would, apart from this subsection, have the right to treat the contract as repudiated by reason of a breach on the part of the transferor of a term implied by section 3, 4 or 5(2)(a) or (c) above, but
  - (b) the breach is so slight that it would be unreasonable for him to do so, then, if the transferee does not deal as consumer, the breach is not to be treated as a breach of condition but may be treated as a breach of warranty.
- (2) This section applies unless a contrary intention appears in, or is to be implied from, the contract.
- (3) It is for the transferor to show that a breach fell within subsection (1)(b) above.”
- (6) In section 6 (the contracts concerned) in subsections (1) and (3) after “Act” there is inserted “in its application to England and Wales and Northern Ireland”.
- (7) In section 9 (contracts for hire: quality or fitness) for subsections (2) and (3) there is substituted—
  - “(2) Where, under such a contract, the bailor bails goods in the course of a business, there is an implied condition that the goods supplied under the contract are of satisfactory quality.
  - (2A) For the purposes of this section and section 10 below, goods are of satisfactory quality if they meet the standard that a reasonable person would regard as satisfactory, taking account of any description of the goods, the consideration for the bailment (if relevant) and all the other relevant circumstances.
  - (3) The condition implied by subsection (2) above does not extend to any matter making the quality of goods unsatisfactory—
    - (a) which is specifically drawn to the bailee’s attention before the contract is made,
    - (b) where the bailee examines the goods before the contract is made, which that examination ought to reveal, or
    - (c) where the goods are bailed by reference to a sample, which would have been apparent on a reasonable examination of the sample.”; and subsection (9) is omitted.

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- (8) In section 10 (hire by sample)—
- (a) in subsection (2)(c), for “rendering them unmerchantable” there is substituted “making their quality unsatisfactory”; and
  - (b) subsection (3) is omitted.
- (9) After section 10 there is inserted the following section—

**“10A Modification of remedies for breach of statutory condition in non-consumer cases.**

- (1) Where in the case of a contract for the hire of goods—
    - (a) the bailee would, apart from this subsection, have the right to treat the contract as repudiated by reason of a breach on the part of the bailor of a term implied by section 8, 9 or 10(2)(a) or (c) above, but
    - (b) the breach is so slight that it would be unreasonable for him to do so, then, if the bailee does not deal as consumer, the breach is not to be treated as a breach of condition but may be treated as a breach of warranty.
  - (2) This section applies unless a contrary intention appears in, or is to be implied from, the contract.
  - (3) It is for the bailor to show that a breach fell within subsection (1)(b) above.”
- (10) In section 18 (interpretation) in subsection (1) the definition of “quality” is omitted and at the end of that section there is inserted—
- “(3) For the purposes of this Act, the quality of goods includes their state and condition and the following (among others) are in appropriate cases aspects of the quality of goods—
    - (a) fitness for all the purposes for which goods of the kind in question are commonly supplied,
    - (b) appearance and finish,
    - (c) freedom from minor defects,
    - (d) safety, and
    - (e) durability.
  - (4) References in this Act to dealing as consumer are to be construed in accordance with Part I of the Unfair Contract Terms Act 1977; and, for the purposes of this Act, it is for the transferor or bailor claiming that the transferee or bailee does not deal as consumer to show that he does not.”