

CHAPTER V

PROVISIONS COMMON TO THE OBLIGATIONS OF THE SELLER AND OF THE BUYER

SECTION I – CONCURRENCE BETWEEN DELIVERY OF THE GOODS AND PAYMENT OF THE PRICE

Article 71

Except as otherwise provided in Article 72, delivery of the goods and payment of the price shall be concurrent conditions. Nevertheless, the buyer shall not be obliged to pay the price until he has had an opportunity to examine the goods.

Article 72

1. Where the contract involves carriage of the goods and where delivery is by virtue of paragraph 2 of Article 19, effected by handing over the goods to the carrier, the seller may either postpone despatch of the goods until he receives payment or proceed to despatch them on terms that reserve to himself the right of disposal of the goods during transit. In the latter case, he may require that the goods shall not be handed over to the buyer at the place of destination except against payment of the price and the buyer shall not be bound to pay the price until he has had an opportunity to examine the goods.
2. Nevertheless, when the contract requires payment against documents, the buyer shall not be entitled to refuse payment of the price on the ground that he has not had the opportunity to examine the goods.

Article 73

1. Each party may suspend the performance of his obligations whenever, after the conclusion of the contract, the economic situation of the other party appears to have become so difficult that there is good reason to fear that he will not perform a material part of his obligations.
2. If the seller has already despatched the goods before the economic situation of the buyer described in paragraph 1 of this Article becomes evident, he may prevent the handing over of the goods to the buyer even if the latter holds a document which entitles him to obtain them.
3. Nevertheless, the seller shall not be entitled to prevent the handing over of the goods if they are claimed by a third person who is a lawful holder of a document which entitles him to obtain the goods unless the document contains a reservation concerning the effects of its transfer or unless the seller can prove that the holder of the document when he acquired it, knowingly acted to the detriment of the seller.

SECTION II – EXEMPTIONS

Article 74

1. Where one of the parties has not performed one of his obligations, he shall not be liable for such non-performance if he can prove that it was due to circumstances which according to the intention of the parties at the time of the conclusion of the contract, he was not bound to take into account or to avoid or to overcome; in the absence of any expression of the intention of the parties, regard shall be had to what reasonable persons in the same situation would have intended.
2. Where the circumstances which gave rise to the non-performance of the obligation constituted only a temporary impediment to performance, the party in default shall nevertheless be

permanently relieved of his obligation if, by reason of the delay, performance would be so radically changed as to amount to the performance of an obligation quite different from that contemplated by the contract.

3. The relief provided by this Article for one of the parties shall not include the avoidance of the contract under some other provision of the present Law or deprive the other party of any right which he has under the present Law to reduce the price, unless the circumstances which entitled the first party to relief were caused by the act of the other party or of some person for whose conduct he was responsible.

SECTION III – SUPPLEMENTARY RULES CONCERNING THE AVOIDANCE OF THE CONTRACT

A – SUPPLEMENTARY GROUNDS FOR AVOIDANCE

Article 75

1. Where, in the case of contracts for delivery of goods by instalments, by reason of any failure by one party of his obligations under the contract in respect of any instalment, the other party has good reason to fear failure of performance in respect of future instalments, he may declare the contract avoided for the future, provided that he does so promptly.

2. The buyer may also, provided that he does so promptly, declare the contract avoided in respect of future deliveries or in respect of deliveries already made or both, if by reason of their interdependence such deliveries would be worthless to him.

Article 76

Where prior to the date fixed for performance of the contract it is clear that one of the parties will commit a fundamental breach of the contract, the other party shall have the right to declare the contract avoided.

Article 77

Where the contract has been avoided under Article 75 or Article 76, the party declaring the contract avoided may claim damages in accordance with Articles 84 to 87.

B – EFFECTS OF AVOIDANCE

Article 78

1. Avoidance of the contract releases both parties from their obligations thereunder, subject to any damages which may be due.

2. If one party has performed the contract either wholly or in part, he may claim the return of whatever he has supplied or paid under the contract. If both parties are required to make restitution, they shall do so concurrently.

Article 79

1. The buyer shall lose his right to declare the contract avoided where it is impossible for him to return the goods in the condition in which he received them.

2. Nevertheless, the buyer may declare the contract avoided –

- (a) if the goods or part of the goods have perished or deteriorated as a result of the defect which justifies the avoidance;
- (b) if the goods or part of the goods have perished or deteriorated as a result of the examination prescribed in Article 38;

- (c) if part of the goods have been consumed or transformed by the buyer in the course of normal use before the lack of conformity with the contract was discovered;
- (d) if the impossibility of returning the goods or of returning them in the condition in which they were received is not due to the act of the buyer, or of some other person for whose conduct he is responsible;
- (e) if the deterioration of transformation of the goods is unimportant.

Article 80

The buyer who has lost the right to declare the contract avoided by virtue of Article 79 shall retain all the other rights conferred on him by the present Law.

Article 81

1. Where the seller is under an obligation to refund the price, he shall also be liable for the interest thereon at the rate fixed by Article 83, as from the date of payment.
2. The buyer shall be liable to account to the seller for all benefits which he has derived from the goods or part of them, as the case may be –
 - (a) where he is under an obligation to return the goods or part of them;
 - (b) where it is impossible for him to return the goods or part of them, but the contract is nevertheless avoided.

SECTION IV – SUPPLEMENTARY RULES CONCERNING DAMAGES

A – DAMAGES WHERE THE CONTRACT IS NOT AVOIDED

Article 82

Where the contract is not avoided, damages for a breach of contract by one party shall consist of a sum equal to the loss of profit, suffered by the other party. Such damages shall not exceed the loss which the party in breach ought to have foreseen at the time of the conclusion of the contract, in the light of the facts and matters which then were known or ought to have been known to him, as a possible consequence of the breach of the contract.

Article 83

Where the breach of contract consists of delay in the payment of the price, the seller shall in any event be entitled to interest on such sum as in arrear at a rate equal to the official discount rate in the country where he has his place of business, or if he has no place of business, his habitual residence, plus 1%.

B – DAMAGES WHERE THE CONTRACT IS AVOIDED

Article 84

1. In the case of avoidance of the contract, where there is a current price for the goods, damages shall be equal to the difference between the price fixed by the contract and the current price on the date on which the contract is avoided.
2. In calculating the amount of damages under paragraph 1 of this Article, the current price to be taken into account shall be that prevailing in the market in which the transaction took place, if there is no such current price or if its application is inappropriate, the price in a market which serves as a reasonable substitute, making due allowance for differences in the cost of transporting goods.

Article 85

If the buyer has bought goods in replacement or the seller has resold goods in a reasonable manner, he may recover the difference between the contract price and the price paid for the goods bought in replacement or that obtained by the resale.

Article 86

The damages referred to in Articles 84 and 85 may be increased by the amount of any reasonable expenses incurred as a result of the breach or up to the amount of any loss, including loss of profit, which should have been foreseen by the party in breach, at the time of the conclusion of the contract, in the light of the facts and matters which were known or ought to have been known to him, as a possible consequence of the breach of the contract.

Article 87

If there is no current price for the goods, damages shall be calculated on the same basis as that provided in Article 82.

C – GENERAL PROVISIONS CONCERNING DAMAGES

Article 88

The party who relies on a breach of the contract shall adopt all reasonable measures to mitigate the loss resulting from the breach. If he fails to adopt such measures, the party in breach may claim reduction in the damages.

Article 89

In case of fraud, damages shall be determined by the rules applicable in respect of contracts of sale not governed by the present law.

SECTION V – EXPENSES

Article 90

The expenses of delivery shall be borne by the seller; all expenses after delivery shall be borne by the buyer.

SECTION VI – PRESERVATION OF THE GOODS

Article 91

Where the buyer is in delay in taking delivery of the goods or in paying the price, the seller shall take reasonable steps to preserve the goods; he shall have the right to retain them until he has been reimbursed his reasonable expenses by the buyer.

Article 92

1. Where the goods have been received by the buyer, he shall take reasonable steps to preserve them if he intends to reject them: he shall have the right to retain them until he has been reimbursed his reasonable expenses by the seller.
2. Where the goods despatched to the buyer have been put at his disposal at their place of destination and he exercises the right to reject them he shall be bound to take possession of them on behalf of the seller, provided that this may be done without payment of the price and without reasonable inconvenience or unreasonable expense. This provision shall not apply where the seller or a person authorised to take charge of the goods on his behalf is present at such destination.

Article 93

The party who is under an obligation to take steps to preserve the goods may deposit them in the warehouse of a third person at the expense of the other party provided that the expense incurred is not unreasonable.

Article 94

1. The party who, in the cases to which Articles 91 and 92 apply, is under an obligation to take steps to preserve the goods may sell them by any appropriate means, provided that there has been unreasonable delay by the other party in accepting them or taking them back or in paying the costs of preservation and provided that due notice has been given to the other party of the intention to sell.

2. The party selling the goods shall have the right to retain out of the proceeds of sale an amount equal to the reasonable costs of preserving the goods and of selling them and shall transmit the balance to the other party.

Article 95

Where, in the cases to which Articles 91 and 92 apply, the goods are subject to loss or rapid deterioration or their preservation would involve unreasonable expense, the party under the duty to preserve them is bound to sell them in accordance with Article 94.

CHAPTER VI**PASSING OF THE RISK****Article 96**

Where the risk has passed to the buyer, he shall pay the price notwithstanding the loss or deterioration of the goods, unless this is due to the act of the seller or of some other person for whose conduct the seller is responsible.

Article 97

1. The risk shall pass to the buyer when delivery of the goods is effected in accordance with the provision of the contract and the present Law.

2. In the case of the handing over of goods which are not in conformity with the contract, the risk shall pass to the buyer from the moment when the handing over has, apart from the lack of conformity, been effected in accordance with the provisions of the contract and of the present Law, where the buyer has neither declared the contract avoided nor required goods in replacement.

Article 98

1. Where the handing over of the goods is delayed owing to the breach of an obligation of the buyer, the risk shall pass to the buyer as from the last date when, apart from such breach, the handing over could have been made in accordance with the contract.

2. Where the contract relates to a sale of unascertained goods, delay on the part of the buyer shall cause the risk to pass only when the seller has set aside goods manifestly appropriated to the contract and has notified the buyer that this has been done.

3. Where unascertained goods are of such a kind that the seller cannot set aside a part of them until the buyer takes delivery, it shall be sufficient for the seller to do all acts necessary to enable the buyer to take delivery.

Article 99

1. Where the sale is of goods in transit by sea, the risk shall be borne by the buyer as from the time at which the goods were handed over to the carrier.
2. Here the seller, at the time of the conclusion of the contract, knew or ought to have known that the goods had been lost or had deteriorated, the risk shall remain with him until the time of the conclusion of the contract.

Article 100

If, in the case to which paragraph 3 of Article 19 applies, the seller, at the time of sending the notice or other document referred to in that paragraph knew or ought to have known that the goods had been lost or had deteriorated after they were handed over to the carrier, the risk shall remain with the seller until the time of sending such notice or document.

Article 101

The passing of the risk shall not necessarily be determined by the provisions of the contract concerning expenses.

SCHEDULE 2**THE UNIFORM LAW ON THE FORMATION OF CONTRACTS FOR THE INTERNATIONAL SALES OF GOODS****Article 1**

The present law shall apply to the formation of contracts of sale of goods which, if they were concluded, would be governed by the Uniform Law on the International Sale of Goods.

Article 2

1. The provision of the following Articles shall apply except to the extent that it appears from the preliminary negotiations, the offer, the reply, the practices which the parties have established between themselves or usage, that other rules apply.
2. However, a term of the offer stipulating that silence shall amount to acceptance is invalid.

Article 3

An offer or an acceptance need not be evidenced by writing and shall not be subject to any other requirement as to form. In particular, they may be proved by means of witnesses.

Article 4

1. The communication which one person addresses to one or more specific persons with the object of concluding a contract of sale shall not constitute an offer unless it is sufficiently definite to permit the conclusion of the contract by acceptance and indicates the intention of the offeror to be bound.
2. This communication may be interpreted by reference to and supplemented by the preliminary negotiations, any practices which the parties have established between themselves, usage and the provisions of the Uniform Law on the International Sale of Goods.

Article 5

1. The offer shall not bind the offeror until it has been communicated to the offeree; it shall lapse if its withdrawal is communicated to the offeree before or at the same time as the offer.
2. After an offer has been communicated to the offeree it can be revoked unless the revocation is not made in good faith or in conformity with fair dealing or unless the offer states a fixed time for acceptance or otherwise indicates that it is firm or irrevocable.

3. An indication that the offer is firm or irrevocable may be express or implied from the circumstances, the preliminary negotiations, any practices which the parties have established between themselves or usage.

4. A revocation of an offer shall only have effect if it has been communicated to the offeree before he has despatched his acceptance or has done any act treated as acceptance under paragraph 2 of Article 6.

Article 6

1. Acceptance of an offer consists of a declaration communicated by any means whatsoever to the offeror.

2. Acceptance may also consist of the despatch of the goods or of the price or of any other act which may be considered to be equivalent to the declaration referred to in paragraph 1 of this Article either by virtue of the offer or as a result of practices which the parties have established between themselves or usage.

Article 7

1. An acceptance containing additions, limitations or other modifications shall be a rejection of the offer and shall constitute a counter-offer.

2. However, a reply to an offer which purports to be an acceptance but which contains additional or different terms which do not materially alter the terms of the offer shall constitute an acceptance unless the offeror promptly objects to the discrepancy; if he does not so object the terms of the contract shall be the terms of the offer with the modifications contained in the acceptance.

Article 8

1. A declaration of acceptance of an offer shall have effect only if it is communicated to the offeror within the time he has fixed or, if no such time is fixed, within a reasonable time, due account being taken of the circumstances of the transaction, including the rapidity of the means of communication employed by the offeror, and usage. In the case of an oral offer, the acceptance shall be immediate, if the circumstances do not show that the offeree shall have time for reflection.

2. If a time for acceptance is fixed by an offeror in a letter or in a telegram, it shall be presumed to begin to run from the day the letter was dated or the hour of the day the telegram was handed in for despatch.

3. If an acceptance consists of an act referred to in paragraph 2 of Article 6, the act shall have effect only if it is done within the period laid down in paragraph 1 of the present Article.

Article 9

1. If the acceptance is late, the offeror may nevertheless consider it to have arrived in due time on condition that he promptly so informs the acceptor orally or by despatch of a notice.

2. If however the acceptance is communicated late, it shall be considered to have been communicated in due time, if the letter or document which contains the acceptance shows that it has been sent in such circumstances that if its transmission had been normal it would have been communicated in due time; this provision shall not however apply if the offeror has promptly informed the acceptor orally or by despatch of a notice that he considers his offer as having lapsed.

Article 10

An acceptance cannot be revoked except by a revocation which is communicated to the offeror before or at the same time as the acceptance.

Article 11

The formation of the contract is not affected by the death of the parties or by his becoming incapable of contracting before acceptance unless the contrary results from the intention of the parties, usage or the nature of the transaction.

Article 12

1. For the purpose of the present law, the expression 'to be communicated' means to be delivered at the address of the person to whom the communication is directed.
2. Communications provided for by the present Law shall be made by the means usual in the circumstances.

Article 13

1. 'Usage' means any practice or method of dealing which reasonable persons in the same situation as the parties usually consider to be applicable to the formation of their contract.
2. Where expressions, provisions or forms of contract commonly used in commercial practice are employed, they shall be interpreted according to the meaning usually given to them in the trade concerned.

CARRIAGE OF GOODS BY SEA ACT 1971

CHAPTER 19

1 Application of Hague Rules as amended

(1) In this Act, 'the Rules' means the International Convention for the unification of certain rules of law relating to bills of lading signed at Brussels on 25th August 1924, as amended by the Protocol signed at Brussels on 23rd February 1968 and by the Protocol signed at Brussels on 21st December 1979.

(2) The provisions of the Rules as set out in the Schedule to this Act shall have the force of law.

(3) Without prejudice to subsection (2) above, the said provisions shall have effect (and have the force of law) in relation to and in connection with the carriage of goods by sea in ships where the port of shipment is a port in the United Kingdom, whether or not the carriage is between ports in two different states within the meaning of Article X of the Rules.

(4) Subject to subsection (6) below, nothing in this section shall be taken as applying anything in the Rules to any contract for the carriage of goods by sea, unless the contract expressly or by implication provides for the issue of a bill of lading or any similar document of title.

(5) [Repealed].

(6) Without prejudice to Article X(c) of the Rules, the Rules shall have the force of law in relation to –

- (a) any bill of lading if the contract contained in or evidenced by it expressly provides that the Rules shall govern the contract; and
- (b) any receipt which is a non-negotiable document marked as such if the contract contained in or evidenced by it is a contract for the carriage of goods by sea which expressly provides that the Rules are to govern the contract as if the receipt were a bill of lading,

but subject, where paragraph (b) applies, to any necessary modifications and in particular with the omission in Article III of the Rules of the second sentence of paragraph 4 and of paragraph 7.

(7) If and so far as the contract contained in or evidenced by a bill of lading or receipt within paragraph (a) or (b) of subsection (6) above applies to deck cargo or live animals, the Rules as given the force of law by that subsection shall have effect as if Article 1(c) did not exclude deck cargo and live animals. In this subsection 'deck cargo' means cargo which by the contract of carriage is stated as being carried on deck and is so carried.

1A Conversion of special drawing rights into sterling

(1) For the purposes of Article IV of the Rules the value on a particular day of one special drawing right shall be treated as equal to such a sum in sterling as the International Monetary Fund have fixed as being the equivalent of one special drawing right –

- (a) for that day; or
- (b) if no sum has been so fixed for that day, for the last day before that day for which a sum has been so fixed.

(2) A certificate given by or on behalf of the Treasury stating –

- (a) that a particular sum in sterling has been fixed as aforesaid for a particular day; or
- (b) that no sum has been so fixed for a particular day and that a particular sum in sterling has been so fixed for a day which is the last day for which a sum has been so fixed before the particular day,

shall be conclusive evidence of those matters for the purpose of subsection (1) above; and a document purporting to be such a certificate shall in any proceedings be received in evidence and, unless the contrary is proved, be deemed to be such a certificate.

(3) The Treasury may charge a reasonable fee for any certificate given in pursuance of subsection (2) above, and any fee received by the Treasury by virtue of this subsection shall be paid into the Consolidated Fund.

2 [Omitted].

3 Absolute warranty of seaworthiness not to be implied in contracts to which Rules apply

There shall not be implied in any contract for the carriage of goods by sea to which Rules apply by virtue of this Act any absolute undertaking by the carrier of the goods to provide a seaworthy ship.

4–5 [Omitted].

6 Supplemental

(1)–(3) [Omitted].

(4) It is hereby declared that for the purposes of Article VIII of the Rules section 186 of the Merchant Shipping Act 1995 (which entirely exempts shipowners and others in certain circumstances for loss of, or damage to, goods) is a provision relating to limitation of liability.

SCHEDULE

THE HAGUE RULES AS AMENDED BY THE BRUSSELS PROTOCOL 1968

Article I

In these Rules the following words are employed with the meaning set out below –

- (a) 'Carrier' includes the owner or the charterer who enters into a contract of carriage with a shipper.

- (b) 'Contract of carriage' applies only to contracts of carriage covered by a bill of lading or any similar document of title, in so far as such document relates to the carriage of goods by sea, including any bill of lading or any similar document as aforesaid issued under or pursuant to a charter party from the moment at which such bill of lading or similar document of title regulates the relations between a carrier and a holder of the same.
- (c) 'Goods' includes goods, wares, merchandise and articles of every kind whatsoever except live animals and cargo which by the contract of carriage is stated as being carried on deck and is so carried.
- (d) 'Ship' means any vessel used for the carriage of goods by sea.
- (e) 'Carriage of goods' covers the period from the time when the goods are loaded on to the time they are discharged from the ship.

Article II

Subject to the provisions of Article VI, under every contract of carriage of goods by sea the carrier, in relation to the loading, handling, stowage, carriage, custody, care and discharge of such goods, shall be subject to the responsibilities and liabilities, and entitled to the rights and immunities hereinafter set forth.

Article III

1. The carrier shall be bound before and at the beginning of the voyage to exercise due diligence to –

- (a) make the ship seaworthy;
- (b) properly man, equip and supply the ship;
- (c) make the holds, refrigerating and cool chambers, and all other parts of the ship in which goods are carried, fit and safe for their reception, carriage and preservation.

2. Subject to the provisions of Article IV, the carrier shall properly and carefully load, handle, stow, carry, keep, care for, and discharge the goods carried.

3. After receiving the goods into his charge the carrier or the master or agent of the carrier shall, on demand of the shipper, issue to the shipper a bill of lading showing among other things –

- (a) the leading marks necessary for identification of the goods as the same are furnished in writing by the shipper before the loading of such goods starts, provided such marks are stamped or otherwise shown clearly upon the goods if uncovered, or on the cases or coverings in which such goods are contained, in such a manner as should ordinarily remain legible until the end of the voyage;
- (b) either the number of packages or pieces, or the quantity, or weight, as the case may be, as furnished in writing by the shipper;
- (c) the apparent order and conditions of the goods. Provided that no carrier, master or agent of the carrier shall be bound to state or show in the bill of lading any marks, number, quantity, or weight which he has reasonable grounds for suspecting not accurately to represent the goods actually received or which he has had no reasonable means of checking.

4. Such a bill of lading shall be *prima facie* evidence of the receipt by the carrier of the goods as therein described in accordance with paragraph 3(a), (b) and (c). However, proof to the contrary shall not be admissible when the bill of lading has been transferred to a third party acting in good faith.

5. The shipper shall be deemed to have guaranteed to the carrier the accuracy at the time of shipment of the marks, number, quantity and weight, as furnished by him, and the shipper shall indemnify the carrier against all loss, damages and expenses arising or resulting from

inaccuracies in such particulars. The right of the carrier to such indemnity shall in no way limit his responsibility and liability under the contract of carriage to any person other than the shipper.

6. Unless notice of loss or damage and the general nature of such loss or damage be given in writing to the carrier or his agent at the port of discharge before or at the time of the removal of the goods into the custody of the person entitled to delivery thereof under the contract of carriage, or, if the loss or damage be not apparent, within three days, such removal shall be *prima facie* evidence of the delivery by the carrier of the goods as described in the bill of lading.

The notice in writing need not be given if the state of the goods has, at the time of their receipt been the subject of joint survey or inspection.

Subject to paragraph 6bis the carrier and the ship shall in any event be discharged from all liability whatsoever in respect of the goods, unless suit is brought within one year of their delivery or of the date when they should have been delivered. This period may, however, be extended if the parties so agree after the cause of action has arisen.

In the case of any actual or apprehended loss or damage the carrier and the receiver shall give all reasonable facilities to each other for inspecting and tallying the goods.

6. *bis*. An action for indemnity against a third person may be brought even after the expiration of the year provided for in the preceding paragraph if brought within the time allowed by the law of the Court seized of the case. However, the time allowed shall be not less than three months, commencing from the day when the person bringing such action for indemnity has settled the claim or has been served with process in the action against himself.

7. After the goods are loaded the bill of lading to be issued by the carrier, master, or agent of the carrier to the shipper shall, if the shipper so demands, be a 'shipped' bill of lading, provided that if the shipper shall have previously taken up any document of title to such goods, he shall surrender the same as against the issue of the 'shipped' bill of lading, but at the option of the carrier such document of title may be noted at the port of shipment by the carrier, master, or agent with the name or names of the ship or ships upon which the goods have been shipped and the date or dates of shipment, and when so noted, if it shows the particulars mentioned in paragraph 3 of Article III, shall for the purpose of this Article be deemed to constitute a 'shipped' bill of lading.

8. Any clause, covenant, or agreement in a contract of carriage relieving the carrier or the ship from liability for loss or damage to, or in connection with goods, arising from negligence, fault, or failure in the duties and obligations provided in this Article or lessening such liability otherwise than as provided in these Rules shall be null and void and of no effect. A benefit of insurance in favour of the carrier or similar clause shall be deemed to be a clause relieving the carrier from liability.

Article IV

1. Neither the carrier nor the ship shall be liable for loss or damage arising or resulting from unseaworthiness unless caused by want of due diligence on the part of the carrier to make the ship seaworthy, and to secure that the ship is properly manned, equipped and supplied, and to make the holds, refrigerating and cool chambers and all other parts of the ship in which goods are carried fit and safe for their reception, carriage and preservation in accordance with the provisions of paragraph 1 of Article III. Whenever loss or damage has resulted from unseaworthiness the burden of proving the exercise of due diligence shall be on the carrier or other person claiming exemption under this article.

2. Neither the carrier nor the ship shall be liable for loss or damage arising or resulting from –

- (a) act, neglect, or default of the master, mariner, pilot, or the servants of the carrier in the navigation or in the management of the ship;
- (b) fire, unless caused by the actual fault or privity of the carrier;
- (c) perils, dangers and accidents of the sea or other navigable waters;
- (d) act of God;
- (e) act of war;
- (f) act of public enemies;
- (g) arrest or restraint of princes, rulers or people, or seizure under legal process;
- (h) quarantine restrictions;
- (i) act or omission of the shipper or owner of the goods, his agent or representative;
- (j) strikes or lockouts or stoppage or restraint of labour from whatever cause, whether partial or general;
- (k) riots and civil commotions;
- (l) saving or attempting to save life or property at sea;
- (m) wastage in bulk or weight or any other loss or damage arising from inherent defect, quality or vice of the goods;
- (n) insufficiency of packing;
- (o) insufficiency or inadequacy of marks;
- (p) latent defects not discoverable by due diligence;
- (q) any other cause arising without the actual fault or privity of the carrier, or without the fault or neglect of the agents or servants of the carrier, but the burden of proof shall be on the person claiming the benefit of this exception to show that neither the actual fault or privity of the carrier nor the fault or neglect of the agents or servants of the carrier contributed to the loss or damage.

3. The shipper shall not be responsible for loss or damage sustained by the carrier or the ship arising or resulting from any cause without the act, fault or neglect of the shipper, his agents or his servants.

4. Any deviation in saving or attempting to save life or property at sea or any reasonable deviation shall not be deemed to be an infringement or breach of these Rules or of the contract of carriage, and the carrier shall not be liable for any loss or damage resulting therefrom.

5. – (a) Unless the nature and value of such goods have been declared by the shipper before shipment and inserted in the bill of lading, neither the carrier nor the ship shall in any event be or become liable for any loss or damage to or in connection with the goods in an amount exceeding 666.67 units of account per package or unit or 2 units of account per kilogram of gross weight of the goods lost or damaged, whichever is the higher.
- (b) The total amount recoverable shall be calculated by reference to the value of such goods at the place and time at which the goods are discharged from the ship in accordance with the contract or should have been so discharged. The value of the goods shall be fixed according to the commodity exchange price, or, if there be no such price, according to the current market price, or if there be no commodity exchange price or current market price, by reference to the normal value of goods of the same kind and quality.
- (c) Where a container, pallet or similar article of transport is used to consolidate goods, the number of packages or units enumerated in the bill of lading as packed in such article of transport shall be deemed the number of packages or units for the purpose of this paragraph as far as these packages or units are concerned. Except as aforesaid such article of transport shall be considered the package or unit.

- (d) The unit of account mentioned in this Article is the special drawing right as defined by the International Monetary Fund. The amounts mentioned in subparagraph (a) of this paragraph shall be converted into national currency on the basis of the value of that currency on a date to be determined by the law of the Court seized of the case.
- (e) Neither the carrier nor the ship shall be entitled to the benefit of the limitation of liability provided for in this paragraph if it is proved that the damage resulted from an act or omission of the carrier done with intent to cause damage, or recklessly and with knowledge that damage would probably result.
- (f) The declaration mentioned in sub-paragraph (a) of this paragraph if embodied in the bill of lading shall be *prima facie* evidence, but shall not be binding or conclusive on the carrier.
- (g) By agreement between the carrier, master or agent of the carrier and the shipper other maximum amounts than those mentioned in sub-paragraph (a) of this paragraph may be fixed, provided that no maximum amount so fixed shall be less than the appropriate maximum mentioned in that sub-paragraph.
- (h) Neither the carrier nor the ship shall be responsible in any event for loss or damage to, or in connection with goods, if the nature or value thereof has been knowingly misstated by the shipper in the bill of lading.

6. Goods of an inflammable, explosive or dangerous nature to the shipment whereof the carrier, master or agent of the carrier has not consented with knowledge of their nature and character, may at any time before discharge be landed at any place, or destroyed or rendered innocuous by the carrier without compensation and the shipper of such goods shall be liable for all damages and expenses directly or indirectly arising out of or resulting from such shipment. If any such goods shipped with such knowledge and consent shall become a danger to the ship or cargo, they may in like manner be landed at any place, or destroyed or rendered innocuous by the carrier without liability on the part of the carrier except to general average, if any.

Article IV *bis*

1. The defences and limits of liability provided for in these Rules shall apply in any action against the carrier in respect of loss or damage to goods covered by a contract of carriage whether the action be founded in contract or in tort.
2. If such an action is brought against a servant or agent of the carrier (such servant or agent not being an independent contractor), such servant or agent shall be entitled to avail himself of the defences and limits of liability which the carrier is entitled to invoke under these Rules.
3. The aggregate of the amounts recoverable from the carrier, and such servants and agents, shall in no case exceed the limit provided for in these Rules.
4. Nevertheless, a servant or agent of the carrier shall not be entitled to avail himself of the provisions of this Article, if it is proved that the damage resulted from an act or omission of the servant or agent done with intent to cause damage or recklessly and with knowledge that damage would probably result.

Article V

A carrier shall be at liberty to surrender in whole or in part all or any of his rights and immunities or to increase any of his responsibilities and obligations under these Rules, provided such surrender or increase shall be embodied in the bill of lading issued to the shipper. The provisions of these Rules shall not be applicable to charter parties, but if bills of lading are issued in the case of a ship under a charter party they shall comply with the terms of these Rules. Nothing in these Rules shall be held to prevent the insertion in a bill of lading of any lawful provision regarding general average.

Article VI

Notwithstanding the provisions of the preceding Articles, a carrier, master or agent of the carrier and a shipper shall in regard to any particular goods be at liberty to enter into any agreement in any terms as to the responsibility and liability of the carrier for such goods, and as to the rights and immunities of the carrier in respect of such goods, or his obligation as to seaworthiness, so far as this stipulation is not contrary to public policy, or the care or diligence of his servant or agents in regard to the loading, handling, stowage, carriage, custody, care and discharge of the goods carried by sea, provided that in this case no bill of lading has been or shall be issued and that the terms agreed shall be embodied in a receipt which shall be a non-negotiable document and shall be marked as such. Any agreement so entered into shall have legal effect.

Provided that this Article shall not apply to ordinary commercial shipments made in the ordinary course of trade, but only to other shipments where the character or condition of the property to be carried or the circumstances, terms and conditions under which the carriage is to be performed are such as reasonably to justify a special agreement.

Article VII

Nothing herein contained shall prevent a carrier or a shipper from entering into any agreement, stipulation, condition, reservation or exemption as to the responsibility and liability of the carrier or the ship for the loss or damage to, or in connection with, the custody and care and handling of goods prior to the loading on, and subsequent to the discharge from, the ship on which the goods are carried by sea.

Article VIII

The provisions of these Rules shall not affect the rights and obligations of the carrier under any statute for the time being in force relating to the limitation of the liability of owners of sea-going vessels.

Article IX

These rules shall not affect the provisions of any international Convention or national law governing liability for nuclear damage.

Article X

The provisions of these Rules shall apply to every bill of lading relating to the carriage of goods between ports in two different States if –

- (a) the bill of lading is issued in a contracting State; or
- (b) the carriage is from a port in a contracting State; or
- (c) the contract contained in or evidenced by the bill of lading provides that these Rules or legislation of any State giving effect to them are to govern the contract,

whatever may be the nationality of the ship, the carrier, the shipper, the consignee, or any other interested person.

Articles XI–XVI [Omitted].

UNFAIR CONTRACT TERMS ACT 1977

CHAPTER 50

1 [Omitted].

2 Negligence liability

(1) A person cannot by reference to any contract term or to a notice given to persons generally or to particular persons exclude or restrict his liability for death or personal injury resulting from negligence.

(2) In the case of other loss or damage, a person cannot so exclude or restrict his liability for negligence except in so far as the term or notice satisfies the requirement of reasonableness.

(3) Where a contract term or notice purports to exclude or restrict liability for negligence a person's agreement to or awareness of it is not of itself to be taken as indicating his voluntary acceptance of any risk.

3–25 [Omitted].

Miscellaneous

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 possession 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 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 those 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 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.’

28–32 [Omitted].

SCHEDULE 1

SCOPE OF SECTIONS 2 TO 4 AND 7

1. Sections 2 to 4 of this Act do not extend to –

- (a) any contract of marine salvage or towage;
- (b) any charterparty of a ship or hovercraft; and
- (c) any contract for the carriage of goods by ship or hovercraft;

but, subject to this, sections 2 to 4 and 7 do not extend to any such contract except in favour of a person dealing as consumer.

2–5 [Omitted].

STATE IMMUNITY ACT 1978

CHAPTER 33

PART I

PROCEEDINGS IN UNITED KINGDOM BY OR AGAINST OTHER STATES

Immunity from jurisdiction

1 General immunity from jurisdiction

(1) A State is immune from the jurisdiction of the courts of the United Kingdom except as provided in the following provisions of this part of the Act.

(2) A court shall give effect to the immunity conferred by this section even though the State does not appear in the proceedings in question.

Exceptions from immunity

2 Submission to jurisdiction

(1) A state is not immune as respects proceedings in respect of which it has submitted to the jurisdiction of the courts of the United Kingdom.

(2) A state may submit after the dispute giving rise to the proceedings has arisen or by a prior written agreement: but a provision in any agreement that it is to be governed by the law of the United Kingdom is not be regarded as a submission.

- (3) A state is deemed to have submitted –
- (a) if it has instituted the proceedings; or
 - (b) subject to subsections (4) and (5) below, if it has intervened or taken any step in the proceedings.
- (4) Subsection (3)(b) above does not apply to intervention or any step taken for the purpose only of –
- (a) claiming immunity; or
 - (b) asserting an interest in property in circumstances such that the State would have been entitled to immunity if the proceedings had been brought against it.
- (5) Subsection (3)(b) above does not apply to any step taken by the State in ignorance of facts entitling it to immunity if those facts could not reasonably have been ascertained and immunity is claimed as soon as reasonably practicable.
- (6) A submission in respect of any proceedings extends to any appeal but not to any counter-claim unless it arises out of the same legal relationship or facts as the claim.
- (7) The head of a State's diplomatic mission in the United Kingdom, or the person for the time being performing his functions, shall be deemed to have authority to submit on behalf of the State in respect of any proceedings; and any person who has entered into a contract on behalf of and with the authority of a State shall be deemed to have authority to submit on its behalf in respect of proceedings arising out of the contract.

3 Commercial transactions and contracts to be performed in the United Kingdom

- (1) A state is not immune as respects proceedings relating to –
- (a) a commercial transaction entered into by the State; or
 - (b) an obligation of the State which by virtue of a contract (whether a commercial transaction or not) falls to be performed wholly or partly in the United Kingdom.
- (2) This section does not apply if the parties to the dispute are States or have otherwise agreed in writing; and subsection (1)(b) above does not apply if the contract (not being a commercial transaction) was made in the territory of the State concerned and the obligation in question is governed by its administrative law.
- (3) In this section 'commercial transaction' means –
- (a) any contract for the supply of goods or services;
 - (b) any loan or other transaction for the provision of finance and any guarantee or indemnity in respect of any such transaction or of any other financial obligation; and
 - (c) any other transaction or activity (whether of a commercial industrial, financial, professional or other similar character) into which a state enters or in which it engages otherwise than in the exercise of sovereign authority;
- but neither paragraph of subsection (1) above applies to a contract of employment between a State and an individual.

4–8 [Omitted].

9 Arbitrations

- (1) Where a State has agreed in writing to submit a dispute which has arisen, or may arise, to arbitration, the State is not immune as respects proceedings in the courts of the United Kingdom which relate to the arbitration.
- (2) This section has effect subject to any contrary provision in the arbitration agreement and does not apply to any arbitration agreement between states.

10 Ships used for commercial purposes

(1) This section applies to –

- (a) Admiralty proceedings; and
- (b) proceedings on any claim which could be made the subject of Admiralty proceedings.

(2) A State is not immune as respects –

- (a) an action *in rem* against a ship belonging to that State; or
- (b) an action *in personam* for enforcing a claim in connection with such a ship,

if, at the time when the cause of action arose, the ship was in use or intended for use for commercial purposes.

(3) Where an action *in rem* is brought against a ship belonging to a State for enforcing a claim in connection with another ship belonging to that State, subsection (2) (a) above does not apply as respects the first-mentioned ship unless at the time when the cause of action relating to the other ship arose, both ships were in use or intended for use for commercial purposes.

(4) A State is not immune as respects –

- (a) an action *in rem* against a cargo belonging to that State if both the cargo and the ship carrying it were, at the time when the cause of action arose, in use or intended for use for commercial purposes; or
- (b) an action *in personam* for enforcing a claim in connection with such a cargo if the ship carrying it was then in use or intended for use as aforesaid.

(5) In the foregoing provisions references to a ship or cargo belonging to a State include references to a ship or cargo in its possession or control or in which it claims an interest; and, subject to subsection (4) above, subsection (2) above applies to property other than a ship as it applies to a ship.

(6) Sections 3 to 5 above do not apply to proceedings of the kind described in subsection (1) above if the State in question is a party to the Brussels Convention and the claim relates to the operation of a ship owned or operated by that State, the carriage of cargo or passengers on any such ship or the carriage of cargo owned by that State on any other ship.

11–13 [Omitted].

Supplementary provisions

14 States entitled to immunities and privileges

(1) The immunities and privileges conferred by this Part of this Act apply to any foreign or commonwealth State other than the United Kingdom; and references to a State include references to –

- (a) the sovereign or other head of that State in his public capacity;
- (b) the government of that State; and
- (c) any department of that government, but not to any entity (hereafter referred to as a 'separate entity') which is distinct from the executive organs of the government of the State and capable of suing or being sued.

(2) A separate entity is immune from the jurisdiction of the courts of the United Kingdom if, and only if –

- (a) the proceedings relate to anything done by it in the exercise of sovereign authority; and
- (b) the circumstances are such that a State (or, in the case of proceedings to which Section 10 above applies, a State which is not a party to the Brussels Convention) would have been so immune.

(3) If a separate entity (not being a State's central bank or other monetary authority) submits to

the jurisdiction in respect of proceedings in the case of which it is entitled to immunity by virtue of subsection (2) above, subsections (1) to (4) of section 13 above shall apply to it in respect of those proceedings as if references to a State were references to that entity.

(4) Property of a State's central bank or other monetary authority shall not be regarded for the purposes of subsection (4) of section 13 above as in use or intended for use for commercial purposes; and where any such bank or authority is a separate entity subsections (1) to (3) of that section shall apply to it as if references to a State were references to the bank or authority.

(5) Section 12 above applies to proceedings against the constituent territories of a federal State; and her Majesty may by Order in Council provide for the other provisions of this Part of this Act to apply to any such constituent territory specified in the Order as they apply to a State.

(6) Where the provisions of this Part of this Act do not apply to a constituent territory by virtue of any such Order subsections (2) and (3) above shall apply to it as if it were a separate entity.

15–16 [Omitted].

17 Interpretation of Part I

(1) In this Part of the Act 'the Brussels Convention' means the International Convention for the Unification of Certain Rules Concerning the Immunity of State-owned Ships signed in Brussels on 10th April 1926; 'commercial purposes' means purposes of such transactions or activities as are mentioned in section 3(3) above; 'ship' includes hovercraft.

(2) In sections 2(2) and 13(3) above references to an agreement include references to a treaty, convention or other international agreement.

(3) For the purposes of sections 3 to 8 above the territory of the United Kingdom shall be deemed to include any dependent territory in respect of which the United Kingdom is a party to the European Convention on State Immunity.

(4) In sections 3(1), 4(1), 5 and 16(2) above references to the United Kingdom include references to its territorial waters and any area designated under section 1(7) of the Continental Shelf Act 1964.

(5) In relation to Scotland in this Part of this Act 'action *in rem*' means such an action only in relation to Admiralty proceedings.

18–23 [Omitted].

SALE OF GOODS ACT 1979

CHAPTER 54

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PART II
FORMATION OF THE CONTRACT

Contract of sale

2 Contract of sale

(1) A contract of sale of goods is a contract by which the seller transfers or agrees to transfer the property in goods to the buyer for a money consideration, called the price.

- (2) There may be a contract of sale between one part owner and another.
- (3) A contract of sale may be absolute or conditional.
- (4) Where under a contract of sale the property in the goods is transferred from the seller to the buyer the contract is called a sale.
- (5) Where under a contract of sale the transfer of the property in the goods is to take place at a future time or subject to some condition later to be fulfilled the contract is called an agreement to sell.
- (6) An agreement to sell becomes a sale when the time elapses or the conditions are fulfilled subject to which the property in the goods is to be transferred.

3 Capacity to buy and sell

- (1) Capacity to buy and sell is regulated by the general law concerning capacity to contract and to transfer and acquire property.
- (2) Where necessaries are sold and delivered to a minor or a person who by reason of or drunkenness is incompetent to contract, he must pay a reasonable price for them.
- (3) In subsection (2) above 'necessaries' means goods suitable to the condition in life of the minor or other person concerned and to his actual requirements at the time of the sale and delivery.

Formalities of contract

4 How contract of sale is made

- (1) Subject to this and any other Act, a contract of sale may be made in writing (either with or without seal), or by word of mouth, or partly in writing and partly by word of mouth, or may be implied from the conduct of the parties.
- (2) Nothing in this section affects the law relating to corporations.

Subject matter of contract

5 Existing or future goods

- (1) The goods which form the subject of a contract of sale may be either existing goods, owned or possessed by the seller, or goods to be manufactured or acquired by him after the making of the contract of sale, in this Act called future goods.
- (2) There may be a contract for the sale of goods the acquisition of which by the seller depends on a contingency which may or may not happen.
- (3) Where by a contract of sale the seller purports to effect a present sale of future goods, the contract operates as an agreement to sell the goods.

6 Goods which have perished

Where there is a contract for the sale of specific goods, and the goods without the knowledge of the seller have perished at the time when the contract is made, the contract is void.

7 Goods perishing before sale but after agreement to sell

Where there is an agreement to sell specific goods and subsequently the goods, without any fault on the part of the seller or buyer perish before the risk passes to the buyer, the agreement is avoided.

The price

8 Ascertainment of price

- (1) The price in a contract of sale may be fixed by the contract, or may be left to be fixed in a manner agreed by the contract, or may be determined by the course of dealing between the parties.

(2) Where the price is not determined as mentioned in subsection (1) above the buyer must pay a reasonable price.

(3) What is a reasonable price is a question of fact dependent on the circumstances of each particular case.

9 Agreement to sell at valuation

(1) Where there is an agreement to sell goods on the terms that the price is to be fixed by the valuation of a third party, and he cannot or does not make the valuation, the agreement is avoided; but if the goods or any part of them have been delivered to and appropriated by the buyer he must pay a reasonable price for them.

(2) Where the third party is prevented from making the valuation by the fault of the seller or buyer, the party not at fault may maintain an action for damages against the party at fault.

Implied terms, etc

10 Stipulations about time

(1) Unless a different intention appears from the terms of the contract, stipulations as to time of payment are not of the essence of a contract of sale.

(2) Whether any other stipulation as to time is or is not of the essence of the contract depends on the terms of the contract.

(3) In a contract of sale 'month' *prima facie* means calendar month.

11 When condition to be treated as warranty

(1) This section does not apply to Scotland.

(2) Where a contract of sale is subject to a condition to be fulfilled by the seller the buyer may waive the condition, or may elect to treat the breach of the condition as a breach of warranty and not as a ground for treating the contract as repudiated.

(3) Whether a stipulation in a contract of sale is a condition, the breach of which may give rise to a right to treat the contract as repudiated, or a warranty, the breach of which may give rise to a claim for damages but not a right to reject the goods and treat the contract as repudiated, depends in each case on the construction of the contract; and a stipulation may be a condition, although called a warranty in the contract.

(4) Subject to section 35A below, where a contract of sale is not severable and the buyer has accepted the goods or part of them, the breach of a condition to be fulfilled by the seller can only be treated as a breach of warranty, and not as a ground for rejecting the goods and treating the contract as repudiated, unless there is an express or implied term of the contract to that effect.

(5) [Repealed].

(6) Nothing in this section affects a condition or warranty whose fulfilment is excused by law by reason of impossibility or otherwise.

(7) [Omitted].

12 Implied terms about title, etc

(1) In a contract of sale, other than one to which subsection (3) below applies, there is an implied term on the part of the seller that in the case of a sale he has the 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.

(2) In a contract of sale, other than one to which subsection (3) below applies, there is also an implied term that –

- (a) the goods are free, and will remain free until the time when the property is to pass, from any charge or encumbrance not disclosed or known to the buyer before the contract is made; and
- (b) the buyer will enjoy quiet possession of the goods except so far as it may be disturbed by the owner or other person entitled to the benefit of any charge or encumbrance so disclosed or known.

(3) This subsection applies to a contract of sale in the case of which there appears from the contract or is to be inferred from its circumstances an intention that the seller should transfer only such title as he or a third person may have.

(4) In a contract to which subsection (3) above applies there is an implied term that all charges or encumbrances known to the seller and not known to the buyer have been disclosed to the buyer before the contract is made.

(5) In a contract to which subsection (3) above applies there is also an implied term that none of the following will disturb the buyer's quiet possession of the goods, namely –

- (a) the seller;
- (b) in a case where the parties to the contract intend that the seller should transfer only such title as a third person may have, that person;
- (c) anyone claiming through or under the seller or that third person otherwise than under a charge or encumbrance disclosed or known to the buyer before the contract is made.

(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.
(6) [Omitted].

13 Sale by description

(1) Where there is a contract for the sale of goods by description, there is an implied term that the goods will correspond with the description.

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

(2) If the sale is by sample as well as by description it is not sufficient that the bulk of the goods correspond with the sample if the goods do not also correspond with the description.

(3) A sale of goods is not prevented from being a sale by description by reason only that, being exposed for sale or hire, they are selected by the buyer.

(4) [Omitted].

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 term 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 term that the goods supplied under the contract 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 the 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 buyer's attention before the contract is made;
- (b) where the buyer examines the goods before the contract is made, which that examination ought to reveal; or
- (c) in the case of a contract for sale by sample, which would have been apparent on a reasonable examination of the sample.

2D to 2F [Omitted].

(3) Where the seller sells goods in the course of a business and the buyer, expressly or by implication, makes known –

- (a) to the seller; or
- (b) where the purchase price or part of it is payable by instalments and the goods were previously sold by a credit-broker to the seller, to that credit-broker,

any particular purpose for which the goods are being bought, there is an implied term that the goods supplied under the contract are reasonable 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 skill or judgment of the seller or credit-broker.

(4) An implied term 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) As regards England and Wales and Northern Ireland, the terms implied by subsections (2) and (3) above are conditions.

(7) and (8) [Omitted].

Sale by sample

15 Sale by sample

(1) A contract of sale is a contract for sale by sample where there is an express or implied term to that effect in the contract.

(2) In the case of a contract for sale by sample there is an implied term –

- (a) that the bulk will correspond with the sample in quality;
- (b) [Repealed];
- (c) that the goods will be free from any defect, making their quality unsatisfactory, which would not be apparent on reasonable examination of the sample.

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

(4) [Omitted].

Miscellaneous

15A Modification of remedies for breach of condition in non-consumer cases

(1) Where in the case of a contract of sale –

(a) the buyer would, apart from this subsection, have the right to reject goods by reason of a breach on the part of the seller of a term implied by section 13, 14 or 15 above, but

(b) the breach is so slight that it would be unreasonable for him to reject them,

then, if the buyer 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 seller to show that a breach fell within subsection (1)(b) above.

(4) This section does not apply to Scotland.

15B Remedies for breach of contract as respects Scotland

(1) Where in a contract of sale the seller is in breach of any term of the contract (express or implied), the buyer shall be entitled –

(a) to claim damages, and

(b) if the breach is material, to reject any goods delivered under the contract and treat it as repudiated.

(2) Where a contract of sale is a consumer contract, then, for the purposes of subsection (1)(b) above, breach by the seller 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, sold by description, that the goods will correspond with the description,

(c) if the goods are, or are to be, sold by reference to a sample, that the bulk will correspond with the sample in quality,

shall be deemed to be a material breach.

(3) This section applies to Scotland only.

PART III

EFFECTS OF THE CONTRACT

Transfer of property as between seller and buyer

16 Goods must be ascertained

Subject to section 20A below, where there is a contract for the sale of unascertained goods no property in the goods is transferred to the buyer unless and until the goods are ascertained.

17 Property passes when intended to pass

(1) Where there is a contract for the sale of specific or ascertained goods the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred.

(2) For the purpose of ascertaining the intention of the parties regard shall be had to the terms of the contract, the conduct of the parties and the circumstances of the case.

18 Rules for ascertaining intention

Unless a different intention appears, the following are rules for ascertaining the intention of the parties as to the time at which the property in the goods is to pass to the buyer.

Rule 1 – Where there is an unconditional contract for the sale of specific goods in a deliverable state the property in the goods passes to the buyer when the contract is made, and it is immaterial whether the time of payment or the time of delivery, or both, be postponed.

Rule 2 – Where there is a contract for the sale of specific goods and the seller is bound to do something to the goods for the purpose of putting them into a deliverable state, the property does not pass until the thing is done and the buyer has notice that it has been done.

Rule 3 – Where there is a contract for the sale of specific goods in a deliverable state but the seller is bound to weigh, measure, test or do some other act or thing with reference to the goods for the purpose of ascertaining the price, the property does not pass until the act or thing is done and the buyer has notice that it has been done.

Rule 4 – When goods are delivered to the buyer on approval or on sale or return or other similar terms the property in the goods passes to the buyer –

- (a) when he signifies his approval or acceptance to the seller or does any other act adopting the transaction;
- (b) if he does not signify his approval or acceptance to the seller but retains the goods without giving notice of rejection, then, if a time has been fixed for the return of the goods on the expiration of that time, and if no time has been fixed, on the expiration of a reasonable time.

Rule 5 – (1) Where there is a contract for the sale of unascertained or future goods by description, and goods of that description and in a deliverable state are unconditionally appropriated to the contract, either by the seller with the assent of the buyer or by the buyer with the assent of the seller, the property in the goods then passes to the buyer; and the assent may be express or implied, and may be given either before or after the appropriation is made.

(2) Where, in pursuance of the contract, the seller delivers the goods to the buyer or to a carrier or other bailee or custodian (whether named by the buyer or not) for the purpose of transmission to the buyer, and does not reserve the right of disposal, he is to be taken to have unconditionally appropriated the goods to the contract.

(3) Where there is a contract for the sale of a specified quantity of unascertained goods in a deliverable state forming part of a bulk which is identified either in the contract or by subsequent agreement between the parties and the bulk is reduced to (or to less than) that quantity, then, if the buyer under that contract is the only buyer to whom goods are then due out of the bulk –

- (a) the remaining goods are to be taken as appropriated to that contract at the time when the bulk is so reduced; and
- (b) the property in those goods then passes to that buyer.

(4) Paragraph (3) above applies also (with the necessary modifications) where a bulk is reduced to (or to less than) the aggregate of the quantities due to a single buyer under separate contracts relating to that bulk and he is the only buyer to whom goods are then due out of that bulk.

19 Reservation of right of disposal

(1) Where there is a contract for the sale of specific goods or where goods are subsequently appropriated to the contract, the seller may, by the terms of the contract or appropriation, reserve the right of disposal of the goods until certain conditions are fulfilled; and in such a case, notwithstanding the delivery of the goods to the buyer, or to the carrier or other bailee or custodian for the purpose of transmission to the buyer, the property in the goods does not pass to the buyer until the conditions imposed by the seller are fulfilled.

(2) Where goods are shipped and by the bill of lading the goods are deliverable to the order of the seller or his agent, the seller is *prima facie* to be taken to reserve the right of disposal.

(3) Where the seller of goods draws on the buyer for the price and transmits the bill of exchange and bill of lading to the buyer together to secure acceptance or payment of the bill of exchange, the buyer is bound to return the bill of lading if he does not honour the bill of

exchange, and if he wrongfully retains the bill of lading the property in the goods does not pass to him.

20 Passing of risk

(1) Unless otherwise agreed, the goods remain at the seller's risk until the property in them is transferred to the buyer, but when the property in them is transferred to the buyer the goods are at the buyer's risk whether delivery has been made or not.

(2) But where delivery has been delayed through the fault of either buyer or seller the goods are at the risk of the party at fault as regards any loss which might not have occurred but for such fault.

(3) Nothing in this section affects the duties or liabilities of either seller or buyer as a bailee or custodian of the goods of the other party.

(4) [Omitted].

20A Undivided shares in goods forming part of a bulk

(1) This section applies to a contract for the sale of a specified quantity of unascertained goods if the following conditions are met –

- (a) the goods or some of them form part of a bulk which is identified either in the contract or by subsequent agreement between the parties; and
- (b) the buyer has paid the price for some or all of the goods which are the subject of the contract and which form part of the bulk.

(2) Where this section applies, then (unless the parties agree otherwise), as soon as the conditions specified in paragraphs (a) and (b) of subsection (1) above are met or at such later time as the parties may agree –

- (a) property in an undivided share in the bulk is transferred to the buyer; and
- (b) the buyer becomes an owner in common of the bulk.

(3) Subject to subsection (4) below, for the purposes of this section, the undivided share of a buyer in a bulk at any time shall be such share as the quantity of goods paid for and due to the buyer out of the bulk bears to the quantity of goods in the bulk at that time.

(4) Where the aggregate of the undivided shares of buyers in a bulk determined under subsection (3) above would at any time exceed the whole of the bulk at that time, the undivided share in the bulk of each buyer shall be reduced proportionately so that the aggregate of the undivided shares is equal to the whole bulk.

(5) Where a buyer has paid the price for only some of the goods due to him out of a bulk, any delivery to the buyer out of the bulk shall, for the purposes of this section, be ascribed in the first place to the goods in respect of which payment has been made.

(6) For the purposes of this section payment of part of the price for any goods shall be treated as payment for a corresponding part of the goods.

20B Deemed consent by co-owner to dealings in bulk goods

(1) A person who has become an owner in common of a bulk by virtue of section 20A above shall be deemed to have consented to –

- (a) any delivery of goods out of the bulk to any other owner in common of the bulk, being goods which are due to him under his contract;
- (b) any dealing with or removal, delivery or disposal of goods in the bulk by any other person who is an owner in common of the bulk in so far as the goods fall within that co-owner's undivided share in the bulk at the time of the dealing, removal, delivery or disposal.

(2) No cause of action shall accrue to anyone against a person by reason of that person having acted in accordance with paragraph (a) or (b) of subsection (1) above in reliance on any consent deemed to have been given under that subsection.

(3) Nothing in this section or section 20A above shall –

- (a) impose an obligation on a buyer of goods out of a bulk to compensate any other buyer of goods out of that bulk for any shortfall in the goods received by that other buyer;
- (b) affect any contractual arrangement between buyers of goods out of a bulk for adjustments between themselves; or
- (c) affect the rights of any buyer under his contract.

Transfer of title

21 Sale by person not the owner

(1) Subject to this Act, where goods are sold by a person who is not their owner and who does not sell them under the authority or with the consent of the owner, the buyer acquires no better title to the goods than the seller had, unless the owner of the goods is by his conduct precluded from denying the seller's authority to sell.

(2) Nothing in this Act affects –

- (a) the provisions of the Factors Acts or any enactment enabling the apparent owner of goods to dispose of them as if he were their true owner;
- (b) the validity of any contract of sale under any special common law or statutory power of sale or under the order of a court of competent jurisdiction.

22 [Repealed].

23 Sale under voidable title

When the seller of goods has a voidable title to them, but his title has not been avoided at the time of the sale, the buyer acquires a good title to the goods, provided he buys them in good faith and without notice of the seller's defect of title.

24 Seller in possession after sale

Where a person having sold goods continues or is in possession of the goods, or of the documents of title to the goods, the delivery or transfer by that person, or by a mercantile agent acting for him, of the goods or documents of title under any sale, pledge, or other disposition thereof, to any person receiving the same in good faith and without notice of the previous sale, has the same effect as if the person making the delivery or transfer were expressly authorised by the owner of the goods to make the same.

25 Buyer in possession after sale

(1) Where a person having bought or agreed to buy goods obtains, with the consent of the seller, possession of the goods or the documents of title to the goods or documents of title, under any sale, pledge, or other disposition thereof, to any person receiving the same in good faith and without notice of any lien or other right of the original seller in respect of the goods, has the same effect as if the person making the delivery or transfer were a mercantile agent in possession of the goods or documents of title with the consent of the owner.

(2) For the purposes of subsection (1) above –

- (a) the buyer under a conditional sale agreement is to be taken not to be a person who has bought or agreed to buy goods; and

- (b) 'conditional sale agreement' means an agreement for the sale of goods which is a consumer credit agreement within the meaning of the Consumer Credit Act 1974 under which the purchase price or part of it is payable by instalments, and the property in the goods is to remain in the seller (notwithstanding that the buyer is to be in possession of the goods) until such conditions as to the payment of instalments or otherwise as may be specified in the agreement are fulfilled.

(3) and (4)[Omitted].

26 Supplementary to sections 24 and 25

In sections 24 and 25 above 'mercantile agent' means a mercantile agent having in the customary course of his business as such agent authority either –

- (a) to sell goods; or
- (b) to consign goods for the purpose of sale; or
- (c) to buy goods; or
- (d) to raise money on the security of goods.

PART IV

PERFORMANCE OF THE CONTRACT

27 Duties of seller and buyer

It is the duty of the seller to deliver the goods, and of the buyer to accept and pay for them, in accordance with the terms of the contract of sale.

28 Payment and delivery are concurrent conditions

Unless otherwise agreed, delivery of the goods and payment of the price are concurrent conditions, that is to say, the seller must be ready and willing to give possession of the goods to the buyer in exchange for the price and the buyer must be ready and willing to pay the price in exchange for possession of the goods.

29 Rules about delivery

(1) Whether it is for the buyer to take possession of the goods or for the seller to send them to the buyer is a question depending in each case on the contract, express or implied, between the parties.

(2) Apart from any such contract, express or implied, the place of delivery is the seller's place of business if he has one, and if not, his residence; except that, if the contract is for the sale of specific goods, which to the knowledge of the parties when the contract is made are in some other place, then that place is the place of delivery.

(3) Where under the contract of sale the seller is bound to send the goods to the buyer, but no time for sending them is fixed, the seller is bound to send them within a reasonable time.

(4) Where the goods at the time of sale are in the possession of a third person, there is no delivery by seller to buyer unless and until the third person acknowledges to the buyer that he holds the goods on his behalf; but nothing in this section affects the operation of the issue or transfer of any document of title to goods.

(5) Demand or tender of delivery may be treated as ineffectual unless made at a reasonable hour; and what is a reasonable hour is a question of fact.

(6) Unless otherwise agreed, the expenses of and incidental to putting the goods into a deliverable state must be borne by the seller.

30 Delivery of wrong quantity

(1) Where the seller delivers to the buyer a quantity of goods less than he contracted to sell, the buyer may reject them, but if the buyer accepts the goods so delivered he must pay for them at the contract rate.

(2) Where the seller delivers to the buyer a quantity of goods larger than he contracted to sell, the buyer may accept the goods included in the contract and reject the rest, or he may reject the whole.

(2A) A buyer who does not deal as consumer may not –

(a) where the seller delivers a quantity of goods less than he contracted to sell, reject the goods under subsection (1) above; or

(b) where the seller delivers a quantity of goods larger than he contracted to sell, reject the whole under subsection (2) above,

if the shortfall or, as the case may be, excess is so slight that it would be unreasonable for him to do so.

(2B) It is for the seller to show that a shortfall or excess fell within subsection (2A) above.

(2C) Subsections (2A) and (2B) above do not apply to Scotland.

(2D) Where the seller delivers a quantity of goods –

(a) less than he contracted to sell, the buyer shall not be entitled to reject the goods under subsection (1) above,

(b) larger than he contracted to sell, the buyer shall not be entitled to reject the whole under subsection (2) above,

unless the shortfall or excess is material.

(2E) Subsection (2D) above applies to Scotland only.

(3) Where the seller delivers to the buyer a quantity of goods larger than he contracted to sell and the buyer accepts the whole of the goods so delivered he must pay for them at the contract rate.

(4) [Repealed].

(5) This section is subject to any usage of trade, special agreement, or of course of dealing between the parties.

31 Instalment deliveries

(1) Unless otherwise agreed, the buyer of goods is not bound to accept delivery of them by instalments.

(2) Where there is a contract for the sale of goods to be delivered by stated instalments, which are to be separately paid for, and the seller makes defective deliveries in respect of one or more instalments or the buyer neglects or refuses to take delivery of or pay for one or more instalments, it is a question in each case depending on the terms of the contract and the circumstances of the case whether the breach of contract is a repudiation of the whole contract or whether it is a severable breach giving rise to a claim for compensation but not to a right to treat the whole contract as repudiated.

32 Delivery to carrier

(1) Where, in pursuance of a contract of sale, the seller is authorised or required to send the goods to the buyer, delivery of the goods to a carrier (whether named by the buyer or not) for the purpose of transmission to the buyer is *prima facie* deemed to be a delivery of the goods to the buyer.

(2) Unless otherwise authorised by the buyer, the seller must make such contract with the carrier on behalf of the buyer as may be reasonable having regard to the nature of the goods and the other circumstances of the case; and if the seller omits to do so, and the goods are lost or

damaged in course of transit, the buyer may decline to treat the delivery to the carrier as a delivery to himself or may hold the seller responsible in damages.

(3) Unless otherwise agreed, where goods are sent by the seller to the buyer by a route involving sea transit, under circumstances in which it is usual to insure, the seller must give such notice to the buyer as may enable him to insure them during their sea transit; and if the seller fails to do so, the goods are at his risk during such sea transit.

(4) [Omitted].

33 Risk where goods are delivered at distant place

Where the seller of goods agrees to deliver them at his own risk at a place other than that where they are when sold, the buyer must nevertheless (unless otherwise agreed) take any risk of deterioration in the goods necessarily incident to the course of transit.

34 Buyer's right of examining the goods

Unless otherwise agreed, when the seller tenders delivery of goods to the buyer, he is bound on request to afford the buyer a reasonable opportunity of examining the goods for the purpose of ascertaining whether they are in conformity with the contract and, in the case of a contract for sale by sample, of comparing the bulk with the sample.

35 Acceptance

(1) The buyer is deemed to have accepted the goods subject to subsection (2) below –

(a) when he intimates to the seller that he has accepted them; or

(b) when the goods have been delivered to him and he does any act in relation to them which is inconsistent with the ownership of the seller.

(2) Where goods are delivered to the buyer, and he has not previously examined them, he is not deemed to have accepted them under subsection (1) above until he has had a reasonable opportunity of examining them for the purpose –

(a) of ascertaining whether they are in conformity with the contract; and

(b) in the case of a contract for sale by sample, of comparing the bulk with the sample.

(3) Where the buyer deals as consumer or (in Scotland) the contract of sale is a consumer contract, the buyer cannot lose his right to rely on subsection (2) above by agreement, waiver or otherwise.

(4) The buyer is also deemed to have accepted the goods when after the lapse of a reasonable time he retains the goods without intimating to the seller that he has rejected them.

(5) The questions that are material in determining for the purposes of subsection (4) above whether a reasonable time has elapsed include whether the buyer has had a reasonable opportunity of examining the goods for the purpose mentioned in subsection (2) above.

(6) The buyer is not by virtue of this section deemed to have accepted the goods merely because –

(a) he asks for, or agrees to, their repair by or under an arrangement with the seller; or

(b) the goods are delivered to another under a sub-sale or other disposition.

(7) Where the contract is for the sale of goods making one or more commercial units, a buyer accepting any goods included in a unit is deemed to have accepted all the goods making the unit; and in this subsection 'commercial unit' means a unit division of which would materially impair the value of the goods or the character of the unit.

(8) [Omitted].

35A Right of partial rejection

(1) If the buyer –

- (a) has the right to reject the goods by reason of a breach on the part of the seller that affects some or all of them; but
- (b) accepts some of the goods, including, where there are any goods unaffected by the breach, all such goods,

he does not by accepting them lose his right to reject the rest.

(2) In the case of a buyer having the right to reject an instalment of goods, subsection (1) above applies as if references to the goods were references to the goods comprised in the instalment.

(3) For the purposes of subsection (1) above, goods are affected by a breach if by reason of the breach they are not in conformity with the contract.

(4) This section applies unless a contrary intention appears in, or is to be implied from, the contract.

36 Buyer not bound to return rejected goods

Unless otherwise agreed, where goods are delivered to the buyer, and he refuses to accept them, having the right to do so, he is not bound to return them to the seller, but it is sufficient if he intimates to the seller that he refuses to accept them.

37 Buyer's liability for not taking delivery of goods

(1) When the seller is ready and willing to deliver the goods, and requests the buyer to take delivery, and the buyer does not within a reasonable time after such request take delivery of the goods, he is liable to the seller for any loss occasioned by his neglect or refusal to take delivery, and also for a reasonable charge for the care and custody of the goods.

(2) Nothing in this section affects the rights of the seller where the neglect or refusal of the buyer to take delivery amounts to a repudiation of the contract.

PART V

RIGHTS OF UNPAID SELLER AGAINST THE GOODS

Preliminary

38 Unpaid seller defined

(1) The seller of goods is an unpaid seller within the meaning of this Act –

- (a) when the whole of the price has not been paid or tendered;
- (b) when a bill of exchange or other negotiable instrument has been received as conditional payment, and the condition on which it was received has not been fulfilled by reason of the dishonour of the instrument or otherwise.

(2) In this Part of this Act 'seller' includes any person who is in the position of a seller, as, for instance, an agent of the seller to whom the bill of lading has been indorsed, or a consignee or agent who has himself paid (or is directly responsible for) the price.

39 Unpaid seller's rights

(1) Subject to this and any other Act, notwithstanding that the property in the goods may have passed to the buyer, the unpaid seller of goods, as such, has by implication of law –

- (a) a lien on the goods or right to retain them for the price while he is in possession of them;
- (b) in case of the insolvency of the buyer, a right of stopping the goods in transit after he has parted with the possession of them;
- (c) a right of re-sale as limited by this Act.

(2) Where the property in goods has not passed to the buyer, the unpaid seller has (in addition to his other remedies) a right of withholding delivery similar to and co-extensive with his rights of lien or retention and stoppage in transit where the property has passed to the buyer.

40 [Repealed].

Unpaid seller's lien

41 Seller's lien

(1) Subject to this Act, the unpaid seller of goods who is in possession of them is entitled to retain possession of them until payment or tender of the price in the following cases –

- (a) where the goods have been sold without any stipulation as to credit;
- (b) where the goods have been sold on credit but the term of credit has expired;
- (c) where the buyer becomes insolvent.

(2) The seller may exercise his lien or right of retention notwithstanding that he is in possession of the goods as agent or bailee or custodian for the buyer.

42 Part delivery

Where an unpaid seller has made part delivery of the goods, he may exercise his lien or right of retention on the remainder, unless such part delivery has been made under such circumstances as to show an agreement to waive the lien or right of retention.

43 Termination of lien

(1) The unpaid seller of goods loses his lien or right of retention in respect of them –

- (a) when he delivers the goods to a carrier or other bailee or custodian for the purpose of transmission to the buyer without reserving the right of disposal of the goods;
- (b) when the buyer or his agent lawfully obtains possession of the goods;
- (c) by waiver of the lien or right of retention.

(2) An unpaid seller of goods who has a lien or right of retention in respect of them does not lose his lien or right of retention by reason only that he has obtained judgment or decree for the price of the goods.

Stoppage in transit

44 Right of stoppage in transit

Subject to this Act, when the buyer of goods becomes insolvent the unpaid seller who has parted with the possession of the goods has the right of stopping them in transit, that is to say, he may resume possession of the goods as long as they are in course of transit, and may retain them until payment or tender the price.

45 Duration of transit

(1) Goods are deemed to be in course of transit from the time when they are delivered to a carrier or other bailee or custodian for the purpose of transmission to the buyer, until the buyer or his agent in that behalf takes delivery of them from the carrier or other bailee or custodian.

(2) If the buyer or his agent in that behalf obtains delivery of the goods before their arrival at the appointed destination, the transit is at an end.

(3) If, after the arrival of the goods at the appointed destination, the carrier or other bailee or custodian acknowledges to the buyer or his agent that he holds the goods on his behalf and continues in possession of them as bailee or custodian for the buyer or his agent, the transit is at an end, and it is immaterial that a further destination for the goods may have been indicated by the buyer.

(4) If the goods are rejected by the buyer, and the carrier or other bailee or custodian continues in possession of them, the transit is not deemed to be at an end, even if the seller has refused to receive them back.

(5) When goods are delivered to a ship chartered by the buyer it is a question depending on the circumstances of the particular case whether they are in the possession of the master as a carrier or as agent to the buyer.

(6) Where the carrier or other bailee or custodian wrongfully refuses to deliver the goods to the buyer or his agent in that behalf, the transit is deemed to be at an end.

(7) Where part delivery of the goods has been made to the buyer or his agent in that behalf, the remainder of the goods may be stopped in transit, unless such part delivery has been made under such circumstances as to show an agreement to give up possession of the whole of the goods.

46 How stoppage in transit is effected

(1) The unpaid seller may exercise his right of stoppage in transit either by taking actual possession of the goods or by giving notice of his claim to the carrier or other bailee or custodian in whose possession the goods are.

(2) The notice may be given either to the person in actual possession of the goods or to his principal.

(3) If given to the principal, the notice is ineffective unless given at such time and under such circumstances that the principal, by the exercise of reasonable diligence, may communicate it to his servant or agent in time to prevent a delivery to the buyer.

(4) When notice of stoppage in transit is given by the seller to the carrier or other bailee or custodian in possession of the goods, he must re-deliver the goods to, or according to the directions of, the seller; and the expenses of the redelivery must be borne by the seller.

Re-sale, etc. by buyer

47 Effect of sub-sale etc. by buyer

(1) Subject to this Act, the unpaid seller's right of lien or retention or stoppage in transit is not affected by any sale or other disposition of the goods which the buyer may have made, unless the seller has assented to it.

(2) Where a document of title to goods has been lawfully transferred to any person as buyer or owner of the goods, and that person transfers the document to a person who takes it in good faith and for valuable consideration, then –

(a) if the last-mentioned transfer was by way of sale the unpaid seller's right of lien or retention or stoppage in transit is defeated; and

(b) if the last-mentioned transfer was made by way of pledge or other disposition for value, the unpaid seller's right of lien or retention or stoppage in transit can only be exercised subject to the rights of the transferee.

Rescission and re-sale by seller

48 Rescission and re-sale by seller

(1) Subject to this section, a contract of sale is not rescinded by the mere exercise by an unpaid seller of his right of lien or retention or stoppage in transit.

(2) Where an unpaid seller who has exercised his right of lien or retention or stoppage in transit re-sells the goods, the buyer acquires a good title to them as against the original buyer.

(3) Where the goods are of a perishable nature, or where the unpaid seller gives notice to the buyer of his intention to re-sell, and the buyer does not within a reasonable time pay or tender

the price, the unpaid seller may re-sell the goods and recover from the original buyer damages for any loss occasioned by his breach of contract.

(4) Where the seller expressly reserves the right of re-sale in case the buyer should make default, and on the buyer making default re-sells the goods, the original contract of sale is rescinded but without prejudice to any claim the seller may have for damages.

PART VA

48A–48F [Omitted].

PART VI

ACTIONS FOR BREACH OF THE CONTRACT

Seller's remedies

49 Action for price

(1) Where, under a contract of sale, the property in the goods has passed to the buyer and he wrongfully neglects or refuses to pay for the goods according to the terms of the contract, the seller may maintain an action against him for the price of the goods.

(2) Where, under a contract of sale, the price is payable on a certain day irrespective of delivery and the buyer wrongfully neglects or refuses to pay such price, the seller may maintain an action for the price, although the property in the goods has not passed and the goods have not been appropriated to the contract.

(3) Nothing in this section prejudices the right of the seller in Scotland to recover interest on the price from the date of tender of the goods, or from the date on which the price was payable, as the case may be.

50 Damages for non-acceptance

(1) Where the buyer wrongfully neglects or refuses to accept and pay for the goods, the seller may maintain an action against him for damages for non-acceptance.

(2) The measure of damages is the estimated loss directly and naturally resulting, in the ordinary course of events, from the buyer's breach of contract.

(3) Where there is an available market for the goods in question the measure of damages is *prima facie* to be ascertained by the difference between the contract price and the market or current price at the time or times when the goods ought to have been accepted or (if no time was fixed for acceptance) at the time of the refusal to accept.

Buyer's remedies

51 Damages for non-delivery

(1) Where the seller wrongfully neglects or refuses to deliver the goods to the buyer, the buyer may maintain an action against the seller for damages for non-delivery.

(2) The measure of damages is the estimated loss directly and naturally resulting, in the ordinary course of events, from the seller's breach of contract.

(3) Where there is an available market for the goods in question the measure of damages is *prima facie* to be ascertained by the difference between the contract price and the market or current price of the goods at the time or times when they ought to have been delivered or (if no time was fixed) at the time of the refusal to deliver.

52 Specific performance

(1) In any action for breach of contract to deliver specific or ascertained goods the court may, if

it thinks fit, on the plaintiff's application, by its judgment or decree direct that the contract shall be performed specifically, without giving the defendant the option of retaining the goods on payment of damages.

(2) The plaintiff's application may be made at any time before judgment or decree.

(3) The judgment or decree may be unconditional, or on such terms and conditions as to damages, payment of the price and otherwise as seem just to the court.

(4) The provisions of this section shall be deemed to be supplementary to, and not in derogation of, the right of specific implement in Scotland.

53 Remedy for breach of warranty

(1) Where there is a breach of warranty by the seller, or where the buyer elects (or is compelled) to treat any breach of a condition on the part of the seller as a breach of warranty, the buyer is not by reason only of such breach of warranty entitled to reject the goods; but he may:

(a) set up against the seller the breach of warranty in diminution or extinction of the price, or

(b) maintain an action against the seller for damages for the breach of warranty.

(2) The measure of damages for breach of warranty is the estimated loss directly and naturally resulting, in the ordinary course of events, from the breach of warranty.

(3) In the case of breach of warranty of quality such loss is *prima facie* the difference between the value of the goods at the time of delivery to the buyer and the value they would have had if they had fulfilled the warranty.

(4) The fact that the buyer has set up the breach of warranty in diminution or extinction of the price does not prevent him from maintaining an action for the same breach of warranty if he has suffered further damage.

(5) This section does not apply to Scotland.

53A Measure of damages as respects Scotland

(1) The measure of damages for the seller's breach of contract is the estimated loss directly and naturally resulting, in the ordinary course of events, from the breach.

(2) Where the seller's breach consists of the delivery of goods which are not of the quality required by the contract and the buyer retains the goods, such loss as aforesaid is *prima facie* the difference between the value of the goods at the time of delivery to the buyer and the value they would have had if they had fulfilled the contract.

(3) This section applies to Scotland only.

Interest, etc

54 Interest, etc

Nothing in this Act affects the right of the buyer or the seller to recover interest or special damages in any case where by law interest or special damages may be recoverable, or to recover money paid where the consideration for the payment of it has failed.

PART VII

SUPPLEMENTARY

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 (subject to the Unfair Contract Terms Act 1977) 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.

- (2) An express term does not negative a term implied by this Act unless inconsistent with it.
 (3) [Omitted].

56 [Omitted].

57 Auction sales

- (1) Where goods are put up for sale by auction in lots, each lot is *prima facie* deemed to be the subject of a separate contract of sale.
 (2) A sale by auction is complete when the auctioneer announces its completion by the fall of the hammer, or in other customary manner; and until the announcement is made any bidder may retract his bid.
 (3) A sale by auction may be notified to be subject to a reserve or upset price, and a right to bid may also be reserved expressly by or on behalf of the seller.
 (4) Where a sale by auction is not notified to be subject to a right to bid by or on behalf of the seller, it is not lawful for the seller to bid himself or to employ any person to bid at the sale, or for the auctioneer knowingly to take any bid from the seller or any such person.
 (5) A sale contravening subsection (4) above may be treated as fraudulent by the buyer.
 (6) Where, in respect of a sale by auction, a right to bid is expressly reserved (but not otherwise) the seller or any one person on his behalf may bid at the auction.

58 [Omitted].

59 Reasonable time a question of fact

Where a reference is made in this Act to a reasonable time the question what is a reasonable time is a question of fact.

60 Rights etc. enforceable by action

Where a right, duty or liability is declared by this Act, it may (unless otherwise provided by this Act) be enforced by action.

61 Interpretation

- (1) In this Act, unless the context or subject matter otherwise requires –
 ‘action’ includes counterclaim and set-off, and in Scotland condescendence and claim and compensation;
 ‘bulk’ means a mass or collection of goods of the same kind which –
 (a) is contained in a defined space or area; and
 (b) is such that any goods in the bulk are interchangeable with any other goods therein of the same number or quantity;
 ‘business’ includes a profession and the activities of any Government department (including a Northern Ireland department) or local or public authority;
 ‘buyer’ means a person who buys or agrees to buy goods;
 ‘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;
 ‘contract of sale’ includes an agreement to sell as well as a sale;
 ‘credit-broker’ means a person acting in the course of a business of credit brokerage carried on by him, that is a business of effecting introduction of individuals desiring to obtain credit –
 (a) to persons carrying on any business so far as it relates to the provision of credit; or
 (b) to other persons engaged in credit brokerage;

'defendant' includes in Scotland defender, respondent, and claimant in a multiplepinding;

'delivery' means voluntary transfer of possession from one person to another, except that in relation to sections 20A and 20B above it includes such appropriation of goods to the contract as results in property in the goods being transferred to the buyer;

'document of title to goods' has the same meaning as it has in the Factors Acts;

'Factors Acts' means the Factors Act 1889, the Factors (Scotland) Act 1890, and any enactment amending or substituted for the same;

'fault' means wrongful act or default;

'future goods' means goods to be manufactured or acquired by the seller after the making of the contract of sale;

'goods' includes all personal chattels other than things in action and money, and in Scotland all corporeal moveables except money; and in particular 'goods' includes emblements, industrial growing crops, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale and includes an undivided share in goods;

'plaintiff' includes pursuer, complainer, claimant in a multiple pinding and defendant or defender counter-claiming;

'producer' means the manufacturer of goods, the importer of goods into the European Economic Area or any person purporting to be a producer by placing his name, trade mark or other distinctive sign on the goods;

'property' means the general property in goods, and not merely a special property;

'repair' means, in cases where there is a lack of conformity in goods for the purposes of section 48F of this Act, to bring the goods into conformity with the contract;

'sale' includes a bargain and sale as well as a sale and delivery;

'seller' means a person who sells or agrees to sell goods;

'specific goods' means goods identified and agreed on at the time a contract of sale is made and includes an undivided share, specified as a fraction or percentage, of goods identified and agreed on as aforesaid;

'warranty' (as regards England and Wales and Northern Ireland) means an agreement with reference to goods which are the subject of a contract of sale, but collateral to the main purpose of such contract, the breach of which gives rise to a claim for damages, but not to a right to reject the goods and treat the contract as repudiated.

(2) [Repealed].

(3) A thing is deemed to be done in good faith within the meaning of this Act when it is in fact done honestly, whether it is done negligently or not.

(4) A person is deemed to be insolvent within the meaning of this Act if he has either ceased to pay his debts in the ordinary course of business or he cannot pay his debts as they become due.

(5) Goods are in a deliverable state within the meaning of this Act when they are in such a state that the buyer would under the contract be bound to take delivery of them.

(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.

(6) [Omitted].

62–64 and Schedules 1–4 [Omitted].

CIVIL JURISDICTION AND JUDGMENTS ACT 1982

CHAPTER 27

PART I

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3. Interpretation of the Brussels Conventions.
- 3A. The Lugano Convention to have the force of law.
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PART I

IMPLEMENTATION OF THE CONVENTIONS

Main implementing provisions

1 Interpretation of references to the Conventions and Contracting States

(1) In this Act –

‘the 1968 Convention’ means the Convention on jurisdiction and the enforcement of judgments in civil and commercial matters (including the Protocol annexed to that Convention), signed at Brussels on 27th September 1968;

‘the 1971 Protocol’ means the Protocol on the interpretation of the 1968 Convention by the European Court, signed at Luxembourg on 3rd June 1971;

‘the Accession convention’ means the Convention on the accession to the 1968 convention and the 1971 Protocol of Denmark, the Republic of Ireland and the United Kingdom, signed at Luxembourg on 9th October 1978;

'the 1982 Accession Convention' means the Convention on the accession of the Hellenic Republic to the 1968 Convention and the 1971 Protocol, with the adjustments made to them by the Accession Convention, signed at Luxembourg on 25th October 1982;

'the 1989 Accession Convention' means the Convention on the accession of the Kingdom of Spain and the Portuguese Republic to the 1968 convention and the 1971 Protocol, with the adjustments made to them by the Accession convention and the 1982 Accession Convention, signed at Donostia-San Sebastian on 26th May 1989;

'the 1996 Accession Convention' means the Convention on the accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden to the 1968 Convention and the 1971 Protocol, with the adjustments made to them by the Accession Convention, the 1982 Accession Convention and the 1989 Accession Convention, signed at Brussels on 29th November 1996;

'the Brussels Conventions' means the 1968 Convention, the 1971 Protocol, the Accession Convention, the 1982 Accession Convention, the 1989 Accession Convention and the 1996 Accession Convention;

'the Lugano Convention' means the Convention on jurisdiction and the enforcement of judgments in civil and commercial matters (including the Protocols annexed to that Convention) opened for signature at Lugano on 16th September 1988 and signed by the United Kingdom on 18th September 1989;

'the Regulation' means Council Regulation (EC) No. 44/2001 of 22nd December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, as amended from time to time and as applied by the Agreement made on 19th October 2005 between the European Community and the Kingdom of Denmark on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ No. L 299 16.11.2005 at p 62).

(2) [Omitted].

(3) In this Act –

'Contracting State', without more, in any provision means –

- (a) in the application of the provision in relation to the Brussels Conventions, a Brussels Contracting State; and
- (b) in the application of the provision in relation to the Lugano Convention, a Lugano Contracting State.

'Brussels Contracting State' means a state which is one of the original parties to the 1968 Convention or one of the parties acceding to that Convention under the Accession Convention, or under the 1982 Accession Convention, or under the 1989 Accession Convention, but only with respect to any territory –

- (a) to which the Brussels Conventions apply; and
- (b) which is excluded from the scope of the Regulation pursuant to Article 299 of the Treaty establishing the European Community;

'Lugano Contracting State' means –

- (a) one of the original parties to the Lugano Convention, that is to say – Austria, Belgium, Denmark, Finland, France, the Federal Republic of Germany, the Hellenic Republic, Iceland, the Republic of Ireland, Italy, Luxembourg, the Netherlands, Norway, Portugal, Spain, Sweden, Switzerland and the United Kingdom; or

(b) a party who has subsequently acceded to that Convention, that is to say, Poland, being a State in relation to which that Convention has taken effect in accordance with paragraph 3 or 4 of Article 61.

'Regulation State' in any provision, in the application of that provision in relation to the Regulation, means a Member State.

(4) Any question arising as to whether it is the Regulation, any of the Brussels Conventions, or the Lugano Convention which applies in the circumstances of a particular case shall be determined as follows –

- (a) in accordance with Article 54B of the Lugano Convention (which determines the relationship between the Brussels Conventions and the Lugano Convention); and
- (b) in accordance with Article 68 of the Regulation (which determines the relationship between the Brussels Conventions and the Regulation).

2 The Brussels Conventions to have the force of law

(1) The Brussels Conventions shall have the force of law in the United Kingdom, and judicial notice shall be taken of them.

(2) [Omitted].

3 Interpretation of the Brussels Conventions

(1) Any question as to the meaning or effect of any provision of the Brussels Conventions shall, if not referred to the European Court in accordance with the 1971 Protocol, be determined in accordance with the principles laid down by any relevant decision of the European Court.

(2) Judicial notice shall be taken of any decision of, or expression of opinion by, the European Court on any such question.

(3) Without prejudice to the generality of subsection (1), the following reports (which are reproduced in the Official Journal of the Communities), namely –

- (a) the reports by Mr P Jenard on the 1968 Convention and the 1971 Protocol;
- (b) the report by Professor Peter Schlosser on the Accession Convention;
- (c) the report by Professor Demetrios I Evvigenis and Professor K D Kerameus on the 1982 Accession Convention; and
- (d) the report by Mr Martinho de Almeida Cruz, Mr Manuel Desantes Real and Mr P Jenard on the 1989 Accession Convention,

may be considered in ascertaining the meaning or effect of any provision of the Brussels Conventions and shall be given such weight as is appropriate in the circumstances.

3A The Lugano Convention to have the force of law

(1) The Lugano Convention shall have the force of law in the United Kingdom, and judicial notice shall be taken of it.

(2) [Omitted].

3B Interpretation of the Lugano Convention

(1) In determining any question as to the meaning or effect of a provision of the Lugano Convention, a court in the United Kingdom shall, in accordance with Protocol No 2 to that Convention, take account of any principles laid down in any relevant decision delivered by a court of any other Lugano Contracting State concerning provisions of the Convention.

(2) Without prejudice to any practice of the courts as to the matters which may be considered apart from this section, the report on the Lugano Convention by Mr P Jenard and Mr G Moller (which is reproduced in the official Journal of the communities of 28th July 1990) may be considered in ascertaining the meaning or effect of any provision of the Convention and shall be given such weight as is appropriate in the circumstances.

4–23 [Omitted].

PART IV

MISCELLANEOUS PROVISIONS

*Provisions relating to jurisdiction***24 Interim relief and protective measures in cases of doubtful jurisdiction**

(1) Any power of a court in England and Wales or Northern Ireland to grant interim relief pending trial or pending the determination of an appeal shall extend to a case where –

- (a) the issue to be tried, or which is the subject of the appeal, relates to the jurisdiction of the court to entertain the proceedings; or
- (b) the proceedings involve the reference of any matter to the European Court under the 1971 Protocol; or
- (c) the proceedings involve a reference of any matter relating to the Regulation to the European Court under Article 68 of the Treaty establishing the European Community.

(2) Any power of a court in Scotland to grant protective measures pending the decision of any hearing shall apply to a case where –

- (a) the subject of the proceedings includes a question as to the jurisdiction of the court to entertain them; or
- (b) the proceedings involve the reference of a matter to the European Court under the 1971 Protocol; or
- (c) the proceedings involve a reference of any matter relating to the Regulation to the European Court under Article 68 of the Treaty establishing the European Community.

(3) Subsections (1) and (2) shall not be construed as restricting any power to grant relief of protective measures which a court may have apart from this section.

25 Interim relief in England and Wales and Northern Ireland in the absence of substantive proceedings

(1) The High Court in England and Wales or Northern Ireland shall have power to grant interim relief where –

- (a) proceedings have been or are to be commenced in a Brussels or Lugano Contracting State or a Regulation State other than the United Kingdom or in a part of the United Kingdom other than that in which the High Court in question exercises jurisdiction; and
- (b) they are or will be proceedings whose subject-matter is within the scope of the Regulation as determined by Article 1 of the Regulation (whether or not the Regulation has effect in relation to the proceedings).

(2) On an application for any interim relief under subsection (1) the court may refuse to grant that relief if, in the opinion of the court, the fact that the court has no jurisdiction apart from this section in relation to the subject-matter of the proceedings in question makes it inexpedient for the court to grant it.

(3) and (4) [Omitted]; (5) [Repealed] and (6) [Omitted].

(7) In this section ‘interim relief, in relation to the High Court in England and Wales or Northern Ireland, means interim relief of any kind which that court has power to grant in proceedings relating to matters within its jurisdiction, other than –

- (a) a warrant for the arrest of property; or
- (b) provision for obtaining evidence.

26 Security in Admiralty proceedings in England and Wales or Northern Ireland in case of stay, etc

(1) Where in England and Wales or Northern Ireland a court stays or dismisses Admiralty proceedings on the ground that the dispute in question should be submitted to the determination of the courts of another part of the United Kingdom or of an overseas country, the court may, if in those proceedings property has been arrested or bail or other security has been given to prevent or obtain release from arrest –

- (a) order that the property arrested be retained as security for the satisfaction of any award or judgment which –
 - (i) is given in respect of the dispute in the legal proceedings in favour of which those proceedings are stayed or dismissed; and
 - (ii) is enforceable in England and Wales or, as the case may be, in Northern Ireland;
- or
- (b) order that the stay or dismissal of those proceedings be conditional on the provision of equivalent security for the satisfaction of any such award or judgment.

(2) Where a court makes an order under subsection (1), it may attach such conditions to the order as it thinks fit, in particular conditions with respect to the institution or prosecution of the relevant legal proceedings.

(3) Subject to any provision made by rules of court and to any necessary modifications, the same law and practice shall apply in relation to property retained in pursuance of an order made by a court under subsection (1) as would apply if it were held for the purposes of proceedings in that court.

Provisions relating to recognition and enforcement of judgments

31 Overseas judgments given against states, etc

(1) A judgment given by a court of an overseas country against a State to which that court belongs shall be recognised and enforced in the United Kingdom if, and only if –

- (a) it would be so recognised and enforced if it had not been given against a State; and
- (b) that court would have had jurisdiction in the matter if it had applied rules corresponding to those applicable to such matters in the United Kingdom in accordance with sections 2 to 11 of the State Immunity Act 1978.

(2) References in subsection (1) to a judgment given against a State include references to judgments of any of the following descriptions given in relation to a State –

- (a) judgments against the government, or a department of the government, of the State but not (except as mentioned in paragraph (c)) judgments against an entity which is distinct from the executive organs of Government;
- (b) judgments against the sovereign or head of State in his public capacity;
- (c) judgments against any such separate entity as is mentioned in paragraph (a) given in proceedings relating to anything done by it in the exercise of the sovereign authority of the State.

(3) Nothing in subsection (1) shall affect the recognition or enforcement in the United Kingdom of a judgment to which Part I of the Foreign Judgments (Reciprocal Enforcement) Act 1933 applies by virtue of section 4 of the Carriage of Goods by Road Act 1965, section 17(4) of the Nuclear Installations Act 1965, section 166(4) of the Merchant Shipping Act 1995, regulation 8 of the Railways (Convention on International Carriage by Rail) Regulations 2005.

(4) Sections 12, 13 and 14(3) and (4) of the State Immunity Act 1978 (service of process and procedural privileges) shall apply to proceedings for the recognition or enforcement in the

United Kingdom of a judgment given by a court of an overseas country (whether or not that judgment is within subsection (1) of this section) as they apply to other proceedings.

(5) In this section 'state', in the case of a federal State, includes any of its constituent territories.

32 Overseas judgments given in proceedings brought in breach of agreement for settlement of disputes

(1) Subject to the following provisions of this section, a judgment given by a court of an overseas country in any proceedings shall not be recognised or enforced in the United Kingdom if –

- (a) the bringing of those proceedings in that court was contrary to an agreement under which the dispute in question was to be settled otherwise than by proceedings in the courts of that country; and
- (b) those proceedings were not brought in that court by, or with the agreement of, the person against whom the judgment was given; and
- (c) that person did not counterclaim in the proceedings or otherwise submit to the jurisdiction of that court.

(2) Subsection (1) does not apply where the agreement referred to in paragraph (a) of that subsection was illegal, void or unenforceable or was incapable of being performed for reasons not attributable to the fault of the party bringing the proceedings in which the judgment was given.

(3) In determining whether a judgment given by a court of an overseas country should be recognised or enforced in the United Kingdom, a court in the United Kingdom shall not be bound by any decision of the overseas court relating to any of the matters mentioned in subsection (1) or (2).

(4) Nothing in subsection (1) shall affect the recognition or enforcement in the United Kingdom of –

- (a) a judgment which is required to be recognised or enforced there under the 1968 Convention or the Lugano Convention or the Regulation.
- (b) a judgment to which Part I of the Foreign Judgments (Reciprocal Enforcement) Act 1933 applies by virtue of section 4 of the Carriage of Goods by Road Act 1965, section 17(4) of the Nuclear Installations Act 1965, regulation 8 of the Railways (Convention on International Carriage by Rail) Regulations 2005 or section 177(4) of the Merchant Shipping Act 1995).

33 Certain steps not to amount to submission to jurisdiction of overseas court

(1) For the purposes of determining whether a judgment given by a court of an overseas country should be recognised or enforced in England and Wales or Northern Ireland, the person against whom the judgment was given shall not be regarded as having submitted to the jurisdiction of the court by reason only of the fact that he appeared (conditionally or otherwise) in the proceedings for all or any one or more of the following purposes, namely –

- (a) to contest the jurisdiction of the court;
- (b) to ask the court to dismiss or start the proceedings on the ground that the dispute in question should be submitted to arbitration or to the determination of the courts of another country;
- (c) to protect, or obtain the release of, property seized or threatened with seizure in the proceedings.

(2) Nothing in this section shall affect the recognition or enforcement in England and Wales or Northern Ireland of a judgment which is required to be recognised or enforced there under the 1968 Convention or the Lugano Convention or the Regulation.

34 Certain judgments a bar to further proceedings on the same cause of action

No proceedings may be brought by a person in England and Wales or Northern Ireland on a cause of action in respect of which a judgment has been given in his favour in proceedings between the same parties, or their privies, in a court in another part of the United Kingdom or in a court of an overseas country, unless that judgment is not enforceable or entitled to recognition in England and Wales or, as the case may be, in Northern Ireland.

35–45 [Omitted].

PART V

SUPPLEMENTARY AND GENERAL PROVISIONS

Domicile

46 Domicile and seat of the Crown

(1) For the purposes of this Act the seat of the Crown (as determined by this section) shall be treated as its domicile.

(2) The following provisions of this section determine where the Crown has its seat –

- (a) for the purposes of the 1968 Convention and the Lugano Convention, (in each of which Article 53 equates the domicile of a legal person with its seat); and
- (b) for the purposes of this Act.

(3) Subject to the provisions of any Order in Council for the time being in force under subsection (4) –

- (a) the Crown in right of Her Majesty's government in the United Kingdom has its seat in every part of, and every place in, the United Kingdom; and
- (aa) the Crown in the right of the Scottish Administration has its seat in, and in every place in, Scotland;
- (b) the Crown in right of Her Majesty's government in Northern Ireland has its seat in, and in every place in, Northern Ireland.

(4) Her Majesty may by Order in Council provide that, in the case of proceedings of any specified description against the Crown in right of Her Majesty's government in the United Kingdom, the Crown shall be treated for the purposes of the 1968 Convention, the Lugano Convention and this Act as having its seat in, and in every place in, a specified part of the United Kingdom and not in any other part of the United Kingdom.

(5) An Order in council under subsection (4) may frame a description of proceedings in any way, and in particular may do so by reference to the government department or officer of the Crown against which or against whom they fall to be instituted.

(6) [Omitted].

(7) Nothing in this section applies to the Crown otherwise than in right of Her Majesty's government in the United Kingdom or Her Majesty's government in Northern Ireland.

47–48 [Omitted].

49 Saving for powers to stay, sist, strike out or dismiss proceedings

Nothing in this Act shall prevent any court in the United Kingdom from staying, sisting, striking out or dismissing any proceedings before it, on the ground of *forum non conveniens* or otherwise, where to do so is not inconsistent with the 1968 Convention.

50–55 [Omitted].

FOREIGN LIMITATION PERIODS ACT 1984

CHAPTER 16

1. Application of foreign limitation law.
2. Exceptions to section 1.
3. Foreign judgments on limitation points.
4. Meaning of law relating to limitation.

1 Application of foreign limitation law

(1) Subject to the following provisions of this Act, where in any action or proceedings in a court in England and Wales the law of any other country falls (in accordance with rules of private international law applicable by any such court) to be taken into account in the determination of any matter –

- (a) the law of that country relating to limitation shall apply in respect of that matter for the purposes of the action or proceedings; and
- (b) except where that matter falls within subsection (2) below, the law of England and Wales relating to limitation shall not so apply.

(2) A matter falls within this subsection if it is a matter in the determination of which both the law of England and Wales and the law of some other country fall to be taken into account.

(3) The law of England and Wales shall determine for the purposes of any law applicable by virtue of subsection (1)(a) above whether, and the time at which, proceedings have been commenced in respect of any matter; and, accordingly, section 35 of the Limitation Act 1980 (new claims in pending proceedings) shall apply in relation to time limits applicable by virtue of subsection (1)(a) above as it applies in relation to time limits under that Act.

(4) A court in England and Wales, in exercising in pursuance of subsection (1)(a) above any discretion conferred by the law of any other country, shall so far as practicable exercise that discretion in the manner in which it is exercised in comparable cases by the courts of that other country.

(5) In this section 'law', in relation to any country, shall not include rules of private international law applicable by the courts of that country or, in the case of England and Wales, this Act.

2 Exceptions to section 1

(1) In any case in which the application of section 1 above would to any extent conflict (whether under subsection (2) below or otherwise) with public policy, that section shall not apply to the extent that its application would so conflict.

(2) The application of section 1 above in relation to any action or proceedings shall conflict with public policy to the extent that its application would cause undue hardship to a person who is, or might be made, a party to the action or proceedings.

(3) Where, under a law applicable by virtue of section 1(1)(a) above for the purposes of any action or proceedings, a limitation period is or may be extended or interrupted in respect of the absence of a party to the action or proceedings from any specified jurisdiction or country, so much of that law as provides for the extension or interruption shall be disregarded for those purposes.

(4) [Omitted].

3 Foreign judgments on limitation points

Where a court in any country outside England and Wales has determined any matter wholly or partly by reference to the law of that or any other country (including England and Wales)

relating to limitation, then, for the purposes of the law relating to the effect to be given in England and Wales to that determination, that court shall, to the extent that it has so determined the matter, be deemed to have determined it on its merits.

4 Meaning of law relating to limitation

(1) Subject to subsection (3) below, references in this Act to the law of any country (including England and Wales) relating to limitation shall, in relation to any matter, be construed as references to so much of the relevant law of that country as (in any manner) makes provision with respect to a limitation period applicable to the bringing of proceedings in respect of that matter in the courts of that country and shall include –

- (a) references to so much of that law as relates to, and to the effect of, the application, extension, reduction or interruption of that period; and
- (b) a reference, where under that law there is no limitation period which is so applicable, to the rule that such proceedings may be brought within an indefinite period.

(2) In subsection (1) above 'relevant law', in relation to any country, means the procedural and substantive law applicable, apart from any rules of private international law, by the courts of that country.

(3) References in this Act to the law of England and Wales relating to limitation shall not include the rules by virtue of which a court may, in the exercise of any discretion, refuse equitable relief on the grounds of acquiescence or otherwise; but, in applying those rules to a case in relation to which the law of any country outside England and Wales is applicable by virtue of section 1(1)(a) above (not being a law that provides for a limitation period that has expired), a court in England and Wales shall have regard, in particular, to the provisions of the law that is so applicable.

5 [Repealed]; 6. and 7 [Omitted].

COMPUTER MISUSE ACT 1990

CHAPTER 18

Computer misuse offences

1 Unauthorised access to computer material

(1) A person is guilty of an offence if –

- (a) he causes a computer to perform any function with intent to secure access to any program or data held in any computer or to enable any such access to be secured;
- (b) the access he intends to secure or to enable to be secured, is unauthorised; and
- (c) he knows at the time when he causes the computer to perform the function that that is the case.

(2) The intent a person has to have to commit an offence under this section need not be directed at –

- (a) any particular program or data;
- (b) a program or data of any particular kind; or
- (c) a program or data held in any particular computer.

(3) A person guilty of an offence under this section shall be liable –

- (a) on summary conviction in England and Wales, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum or to both;

- (b) on summary conviction in Scotland, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both;
- (c) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.

2 Unauthorised access with intent to commit or facilitate commission of further offences

(1) A person is guilty of an offence under this section if he commits an offence under section 1 above ('the unauthorised access offence') with intent –

- (a) to commit an offence to which this section applies; or
- (b) to facilitate the commission of such an offence (whether by himself or by any other person),

and the offence he intends to commit or facilitate is referred to below in this section as the further offence.

(2) This section applies to offences –

- (a) for which the sentence is fixed by law; or
- (b) for which a person who has attained the age of twenty-one years (eighteen in relation to England and Wales) and has no previous convictions may be sentenced to imprisonment for a term of five years (or, in England and Wales, might be so sentenced but for the restrictions imposed by section 33 of the Magistrates' Courts Act 1980).

(3) It is immaterial for the purposes of this section whether the further offence is to be committed on the same occasion as the unauthorised access offence or on any future occasion.

(4) A person may be guilty of an offence under this section even though the facts are such that the commission of the further offence is impossible.

(5) A person guilty of an offence under this section shall be liable –

- (a) on summary conviction in England and Wales, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum or to both;
- (b) on summary conviction in Scotland, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both;
- (c) on conviction on indictment, to imprisonment for a term not exceeding five years or to a fine or to both.

3 Unauthorised acts with intent to impair, or with recklessness as to impairing, operation of computer, etc.

(1) A person is guilty of an offence if –

- (a) he does any unauthorised act in relation to a computer;
- (b) at the time when he does the act he knows that it is unauthorised; and
- (c) either subsection (2) or subsection (3) below applies.

(2) This subsection applies if the person intends by doing the act –

- (a) to impair the operation of any computer;
- (b) to prevent or hinder access to any program or data held in any computer;
- (c) to impair the operation of any such program or the reliability of any such data; or
- (d) to enable any of the things mentioned in paragraphs (a) to (c) above to be done.

(3) This subsection applies if the person is reckless as to whether the act will do any of the things mentioned in paragraphs (a) to (d) of subsection (2) above.

(4) The intention referred to in subsection (2) above, or the recklessness referred to in subsection (3) above, need not relate to –

- (a) any particular computer;
 - (b) any particular program or data; or
 - (c) a program or data of any particular kind.
- (5) In this section –
- (a) a reference to doing an act includes a reference to causing an act to be done;
 - (b) 'act' includes a series of acts;
 - (c) a reference to impairing, preventing or hindering something includes a reference to doing so temporarily.
- (6) A person guilty of an offence under this section shall be liable –
- (a) on summary conviction in England and Wales, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum or to both;
 - (b) on summary conviction in Scotland, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both;
 - (c) on conviction on indictment, to imprisonment for a term not exceeding ten years or to a fine or to both.

3A Making, supplying or obtaining articles for use in offence under section 1 or 3

- (1) A person is guilty of an offence if he makes, adapts, supplies or offers to supply any article intending it to be used to commit, or to assist in the commission of, an offence under section 1 or 3.
- (2) A person is guilty of an offence if he supplies or offers to supply any article believing that it is likely to be used to commit, or to assist in the commission of, an offence under section 1 or 3.
- (3) A person is guilty of an offence if he obtains any article with a view to its being supplied for use to commit, or to assist in the commission of, an offence under section 1 or 3.
- (4) In this section 'article' includes any program or data held in electronic form.
- (5) A person guilty of an offence under this section shall be liable –
- (a) on summary conviction in England and Wales, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum or to both;
 - (b) on summary conviction in Scotland, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both;
 - (c) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.

Jurisdiction

4 Territorial scope of offences under sections 1 to 3

- (1) Except as provided below in this section, it is immaterial for the purposes of any offence under section 1 or 3 above –
- (a) whether any act or other event proof of which is required for conviction of the offence occurred in the home country concerned; or
 - (b) whether the accused was in the home country concerned at the time of any such act or event.
- (2) Subject to subsection (3) below, in the case of such an offence at least one significant link with domestic jurisdiction must exist in the circumstances of the case for the offence to be committed.
- (3) There is no need for any such link to exist for the commission of an offence under section 1 above to be established in proof of an allegation to that effect in proceedings for an offence under section 2 above.

(4) Subject to section 8 below, where –

- (a) any such link does in fact exist in the case of an offence under section 1 above; and
- (b) commission of that offence is alleged in proceedings for an offence under section 2 above;

section 2 above shall apply as if anything the accused intended to do or facilitate in any place outside the home country concerned which would be an offence to which section 2 applies if it took place in the home country concerned were the offence in question.

(5) This section is without prejudice to any jurisdiction exercisable by a court in Scotland apart from this section.

(6) References in this Act to the home country concerned are references –

- (a) in the application of this Act to England and Wales, to England and Wales;
- (b) in the application of this Act to Scotland, to Scotland; and
- (c) in the application of this Act to Northern Ireland, to Northern Ireland.

5 Significant links with domestic jurisdiction

(1) The following provisions of this section apply for the interpretation of section 4 above.

(2) In relation to an offence under section 1, either of the following is a significant link with domestic jurisdiction –

- (a) that the accused was in the home country concerned at the time when he did the act which caused the computer to perform the function; or
- (b) that any computer containing any program or data to which the accused by doing that act secured or intended to secure unauthorised access, or enabled or intended to enable unauthorised access to be secured, was in the home country concerned at that time.

(3) In relation to an offence under section 3, either of the following is a significant link with domestic jurisdiction –

- (a) that the accused was in the home country concerned at the time when he did the unauthorised act (or caused it to be done); or
- (b) that the unauthorised act was done in relation to a computer in the home country concerned.

6 Territorial scope of inchoate offences related to offences under sections 1 to 3

(1) On a charge of conspiracy to commit an offence under sections 1, 2 or 3 the following questions are immaterial to the accused's guilt –

- (a) the question where any person became a party to the conspiracy; and
- (b) the question whether any act, omission or other event occurred in the home country concerned.

(2) On a charge of attempting to commit an offence under section 3 above the following questions are immaterial to the accused's guilt –

- (a) the question where the attempt was made; and
- (b) the question whether it had an effect in the home country concerned.

(3) [Repealed].

(4) This section does not extend to Scotland.

7 [Omitted].

8 Relevance of external law

(1) A person is guilty of an offence triable by virtue of section 4(4) above only if what he intended to do or facilitate would involve the commission of an offence under the law in force where the whole or any part of it was intended to take place.

(2) [Repealed].

(3) A person is guilty of an offence triable by virtue of section 1(1A) of the Criminal Attempts Act 1981 only if what he had in view would involve the commission of an offence under the law in force where the whole or any part of it was intended to take place.

(4) Conduct punishable under the law in force in any place is an offence under that law for the purposes of this section, however it is described in that law.

(5) Subject to subsection (7) below, a condition specified in any of subsections (1) or (3) above shall be taken to be satisfied unless not later than rules of court may provide the defence serve on the prosecution a notice –

(a) stating that, on the facts as alleged with respect to the relevant conduct, the condition is not in their opinion satisfied;

(b) showing their grounds for that opinion; and

(c) requiring the prosecution to show that it is satisfied.

(6) In subsection (5) above 'the relevant conduct' means –

(a) where the condition in subsection (1) above is in question, what the accused intended to do or facilitate;

(b) [repealed]

(c) where the condition in subsection (3) above is in question, what the accused had in view.

(7) The court, if it thinks fit, may permit the defence to require the prosecution to show that the condition is satisfied without the prior service of a notice under subsection (5) above.

(8) If by virtue of subsection (7) above a court of solemn jurisdiction in Scotland permits the defence to require the prosecution to show that the condition is satisfied, it shall be competent for the prosecution for that purpose to examine any witness or to put in evidence any production not included in the lists lodged by it.

(9) In the Crown Court the question whether the condition is satisfied shall be decided by the judge alone.

(10) In the High Court of Justiciary and in the sheriff's court the question whether the condition is satisfied shall be decided by the judge or, as the case may be, the sheriff alone.

9.–

(1) in any proceedings brought in England and Wales in respect of British any offence to which this section applies it is immaterial to guilt whether or not the accused was a British citizen at the time of any act, omission or other event proof of which is required for conviction of the offence.

(2) This section applies to the following offences –

(a) any offence under section 1, 2 or 3 above

(b) [repealed]

(c) any attempt to commit an offence under section 3 above;

(d) [repealed]

10–16 [Omitted].

17 Interpretation

(1) The following provisions of this section apply for the interpretation of this Act.

(2) A person secures access or to enable such access to be secured to any program or data held in a computer if by causing a computer to perform any function he –

(a) alters or erases the program or data;

(b) copies or moves it to any storage medium other than that in which it is held or to a different location in the storage medium in which it is held;

- (c) uses it; or
 - (d) has it output from the computer in which it is held (whether by having it displayed or in any other manner); and references to access to a program or data (and to an intent to secure such access) shall be read accordingly.
- (3) For the purposes of subsection (2)(c) above a person uses a program if the function he causes the computer to perform –
- (a) causes the program to be executed; or
 - (b) is itself a function of the program.
- (4) For the purposes of subsection (2)(d) above –
- (a) a program is output if the instructions of which it consists are output; and
 - (b) the form in which any such instructions or any other data is output (and in particular whether or not it represents a form in which, in the case of instructions, they are capable of being executed or, in the case of data, it is capable of being processed by a computer) is immaterial.
- (5) Access of any kind by any person to any program or data held in a computer is unauthorised if –
- (a) he is not himself entitled to control access of the kind in question to the program or data; and
 - (b) he does not have consent to access by him of the kind in question to the program or data from any person who is so entitled, but this subsection is subject to section 10.
- (6) References to any program or data held in a computer include references to any program or data held in any removable storage medium which is for the time being in the computer; and a computer is to be regarded as containing any program or data held in any such medium.
- (7) [Repealed].
- (8) An act done in relation to a computer is unauthorised if the person doing the act (or causing it to be done) –
- (a) is not himself a person who has responsibility for the computer and is entitled to determine whether the act may be done; and
 - (b) does not have consent to the act from any such person.

In this subsection 'act' includes a series of acts.

- (9) References to the home country concerned shall be read in accordance with section 4(6) above.
- (10) References to a program include references to part of a program.

18 [Omitted].

CONTRACTS (APPLICABLE LAW) ACT 1990

CHAPTER 36

1 Meaning of 'the Conventions'

In this Act –

- (a) 'the Rome Convention' means the Convention on the law applicable to contractual obligations opened for signature in Rome on 19th June 1980 and signed by the United Kingdom on 7th December 1981;
- (b) 'the Luxembourg Convention' means the Convention on the accession of the Hellenic Republic to the Rome Convention signed by the United Kingdom in Luxembourg on 10th April 1984;

- (c) 'the Brussels Protocol' means the first Protocol on the interpretation of the Rome Convention by the European Court signed by the United Kingdom in Brussels on 19th December 1988;
- (d) 'the Funchal Convention' means the Convention on the accession of the Kingdom of Spain and the Portuguese Republic to the Rome Convention and the Brussels Protocol, with adjustments made to the Rome Convention by the Luxembourg Convention, signed by the United Kingdom in Funchal on 18th May 1992;
- (e) 'the 1996 Accession Convention' means the Convention on the accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden to the Rome Convention and the Brussels Protocol, with the adjustments made to the Rome Convention by the Luxembourg Convention and the Funchal Convention, signed by the United Kingdom in Brussels on 29th November 1996;

and these Conventions and this Protocol are together referred to as 'the Conventions'.

2 Conventions to have force of law

(1) Subject to subsections (2) and (3) below, the Conventions shall have the force of law in the United Kingdom.

(1A) The internal law for the purposes of Article 1(3) of the Rome Convention is the provisions of the regulations for the time being in force under section 424(3) of the Financial Services and Markets Act 2000.

(2) Articles 7(1) and 10(1)(e) of the Rome Convention shall not have the force of law in the United Kingdom.

(3) Notwithstanding Article 19(2) of the Rome Convention, the Conventions shall apply in the case of conflicts between the laws of different parts of the United Kingdom.

(4) [Omitted].

3 Interpretation of Conventions

(1) Any question as to the meaning or effect of any provision of the Conventions shall, if not referred to the European Court in accordance with the Brussels Protocol, be determined in accordance with the principles laid down by, and any relevant decision of, the European Court.

(2) Judicial notice shall be taken of any decision of, or expression of opinion by, the European Court on any such question.

(3) Without prejudice to any practice of the courts as to the matters which may be considered apart from this subsection –

(a) the report on the Rome Convention by Professor Mario Giuliano and Professor Paul Lagarde which is reproduced in the Official Journal of the Communities of 31st October 1980 may be considered in ascertaining the meaning or effect of any provision of that Convention; and

(b) any report on the Brussels Protocol which is reproduced in the Official Journal of the Communities may be considered in ascertaining the meaning or effect of any provision of that Protocol.

4–9 [Omitted].

SCHEDULE 1

THE ROME CONVENTION

TITLE 1

SCOPE OF THE CONVENTION

Article 1 Scope of the Convention

1. The rules of this Convention shall apply to contractual obligations in any situation involving a choice between the laws of different countries.

2. They shall not apply to –

- (a) questions involving the status or legal capacity of natural persons, without prejudice to Article 11;
- (b) contractual obligations relating to:
 - wills and succession;
 - rights in property arising out of a matrimonial relationship;
 - rights and duties arising out of a family relationship, parentage, marriage or affinity, including maintenance obligations in respect of children who are not legitimate;
- (c) obligations arising under bills of exchange, cheques and promissory notes and other negotiable instruments to the extent that the obligations under such other negotiable instruments arise out of their negotiable character;
- (d) arbitration agreements and agreements on the choice of court;
- (e) questions governed by the law of companies and other bodies corporate or unincorporate such as the creation, by registration or otherwise, legal capacity, internal organisation or winding up of companies and other bodies corporate or unincorporate and the personal liability of officers and members as such for the obligations of the company or body;
- (f) the question whether an agent is able to bind a principal, or an organ to bind a company or body corporate or unincorporate, to a third party;
- (g) the constitution of trusts and the relationship between settlors, trustees and beneficiaries;
- (h) evidence and procedure, without prejudice to Article 14.

3. The rules of this Convention do not apply to contracts of insurance which cover risks situated in the territories of the Member States of the European Economic Community. In order to determine whether a risk is situated in these territories the court shall apply its internal law.

4. The preceding paragraph does not apply to contracts of re-insurance.

Article 2 Application of law of non-contracting states

Any law specified by this Convention shall be applied whether or not it is the law of a Contracting State.

TITLE II

UNIFORM RULES

Article 3 Freedom of choice

1. A contract shall be governed by the law chosen by the parties. The choice must be express or demonstrated with reasonable certainty by the terms of the contract or the circumstances of the

case. By their choice the parties can select the law applicable to the whole or a part only of the contract.

2. The parties may at any time agree to subject the contract to a law other than that which previously governed it, whether as a result of an earlier choice under this Article or of other provisions of this Convention. Any variation by the parties of the law to be applied made after the conclusion of the contract shall not prejudice its formal validity under Article 9 or adversely affect the rights of third parties.

3. The fact that the parties have chosen a foreign law, whether or not accompanied by the choice of a foreign tribunal, shall not, where all the other elements relevant to the situation at the time of the choice are connected with one country only, prejudice the application of rules of the law of that country which cannot be derogated from by contract, hereinafter called 'mandatory rules'.

4. The existence and validity of the consent of the parties as to the choice of the applicable law shall be determined in accordance with the provisions of Articles 8, 9 and 11.

Article 4 Applicable law in the absence of choice

1. To the extent that the law applicable to the contract has not been chosen in accordance with Article 3, the contract shall be governed by the law of the country with which it is most closely connected. Nevertheless, a severable part of the contract which has a closer connection with another country may by way of exception be governed by the law of that other country.

2. Subject to the provisions of paragraph 5 of this Article, it shall be presumed that the contract is most closely connected with the country where the party who is to effect the performance which is characteristic of the contract has, at the time of conclusion of the contract, his habitual residence, or, in the case of a body corporate or unincorporate, its central administration. However, if the contract is entered into in the course of that party's trade or profession, that country shall be the country in which the principal place of business is situated or, where under the terms of the contract the performance is to be effected through a place of business other than the principal place of business, the country in which that other place of business is situated.

3. Notwithstanding the provisions of paragraph 2 of this Article, to the extent that the subject matter of the contract is a right in immovable property or a right to use immovable property it shall be presumed that the contract is most closely connected with the country where the immovable property is situated.

4. A contract for the carriage of goods shall not be subject to the presumption in paragraph 2. In such a contract if the country in which, at the time the contract is concluded, the carrier has his principal place of business is also the country in which the place of loading or the place of discharge or the principal place of business of the consignor is situated, it shall be presumed that the contract is most closely connected with that country. In applying this paragraph single voyage charter-parties and other contracts the main purpose of which is the carriage of goods shall be treated as contracts for the carriage of goods.

5. Paragraph 2 shall not apply if the characteristic performance cannot be determined, and the presumptions in paragraphs 2, 3 and 4 shall be disregarded if it appears from the circumstances as a whole that the contract is more closely connected with another country.

Article 5 Certain consumer contracts

1. This Article applies to a contract the object of which is the supply of goods or services to a person ('the consumer') for a purpose which can be regarded as being outside his trade or profession, or a contract for the provision of credit for that object.

2. Notwithstanding the provisions of Article 3, a choice of law made by the parties shall not have the result of depriving the consumer of the protection afforded to him by the mandatory rules of the law of the country in which he has his habitual residence:

- if in that country the conclusion of the contract was preceded by a specific invitation addressed to him or by advertising, and he had taken in that country all the steps necessary on his part for the conclusion of the contract, or
- if the other party or his agent received the consumer's order in that country, or
- if the contract is for the sale of goods and the consumer travelled from that country to another country and there gave his order, provided that the consumer's journey was arranged by the seller for the purpose of inducing the consumer to buy.

3. Notwithstanding the provisions of Article 4, a contract to which this Article applies will, in the absence of choice in accordance with Article 3, be governed by the law of the country in which the consumer has his habitual residence if it is entered into in the circumstances described in paragraph 2 of this Article.

4. This Article shall not apply to –

- (a) a contract of carriage;
- (b) a contract for the supply of services where the services are to be supplied to the consumer exclusively in a country other than that in which he has his habitual residence.

5. Notwithstanding the provisions of paragraph 4, this Article shall apply to a contract which, for an inclusive price, provides for a combination of travel and accommodation.

Article 6 Individual employment contracts

1. Notwithstanding the provisions of Article 3, in a contract of employment a choice of law made by the parties shall not have the result of depriving the employee of the protection afforded to him by the mandatory rules of the law which would be applicable under paragraph 2 in the absence of choice.

2. Notwithstanding the provisions of Article 4, a contract of employment shall, in the absence of choice in accordance with Article 3, be governed –

- (a) by the law of the country in which the employee habitually carries out his work in performance of the contract, even if he is temporarily employed in another country; or
- (b) if the employee does not habitually carry out his work in any one country, by the law of the country in which the place of business through which he was engaged is situated,

unless it appears from the circumstances as a whole that the contract is more closely connected with another country, in which case the contract shall be governed by the law of that country.

Article 7 Mandatory rules

1. When applying under this Convention the law of a country, effect may be given to the mandatory rules of the law of another country with which the situation has a close connection, if and in so far as, under the law of the latter country, those rules must be applied whatever the law applicable to the contract. In considering whether to give effect to these mandatory rules, regard shall be had to their nature and purpose and to the consequences of their application or non-application.

2. Nothing in this Convention shall restrict the application of the rules of the law of the forum in a situation where they are mandatory irrespective of the law otherwise applicable to the contract.

Article 8 Material validity

1. The existence and validity of a contract, or of any term of a contract, shall be determined by the law which would govern it under this Convention if the contract or term were valid.
2. Nevertheless a party may rely upon the law of the country in which he has his habitual residence to establish that he did not consent if it appears from the circumstances that it would not be reasonable to determine the effect of his conduct in accordance with the law specified in the preceding paragraph.

Article 9 Formal validity

1. A contract concluded between persons who are in the same country is formally valid if it satisfies the formal requirements of the law which governs it under this Convention or of the law of the country where it is concluded.
2. A contract concluded between persons who are in different countries is formally valid if it satisfies the formal requirements of the law which governs it under this Convention or of the law of one of those countries.
3. Where a contract is concluded by an agent, the country in which the agent acts is the relevant country for the purposes of paragraphs 1 and 2.
4. An act intended to have legal effect relating to an existing or contemplated contract is formally valid if it satisfies the formal requirements of the law which under this Convention governs or would govern the contract or of the law of the country where the act was done.
5. The provisions of the preceding paragraphs shall not apply to a contract to which Article 5 applies, concluded in the circumstances described in paragraph 2 of Article 5. The formal validity of such a contract is governed by the law of the country in which the consumer has his habitual residence.
6. Notwithstanding paragraphs 1 to 4 of this Article, a contract the subject matter of which is a right in immovable property or a right to use immovable property shall be subject to the mandatory requirements of form of the law of the country where the property is situated if by that law those requirements are imposed irrespective of the country where the contract is concluded and irrespective of the law governing the contract.

Article 10 Scope of the applicable law

1. The law applicable to a contract by virtue of Articles 3 to 6 and 12 of this Convention shall govern in particular –
 - (a) interpretation;
 - (b) performance;
 - (c) within the limits of the powers conferred on the court by its procedural law, the consequences of breach, including the assessment of damages in so far as it is governed by rules of law;
 - (d) the various ways of extinguishing obligations and prescription and limitation of actions;
 - (e) the consequences of nullity of the contract.
2. In relation to the manner of performance and the steps to be taken in the event of defective performance regard shall be had to the law of the country in which performance takes place.

Article 11 Incapacity

In a contract concluded between persons who are in the same country, a natural person who would have capacity under the law of that country may invoke his incapacity resulting from another law only if the other party to the contract was aware of this incapacity at the time of the conclusion of the contract or was not aware thereof as a result of negligence.

Article 12 Voluntary assignment

1. The mutual obligations of assignor and assignee under a voluntary assignment of a right against another person ('the debtor') shall be governed by the law which under this Convention applies to the contract between the assignor and assignee.
2. The law governing the right to which the assignment relates shall determine its assignability, the relationship between the assignee and the debtor, the conditions under which the assignment can be invoked against the debtor and any question whether the debtor's obligations have been discharged.

Article 13 Subrogation

1. Where a person ('the creditor') has a contractual claim upon another ('the debtor'), and a third person has a duty to satisfy the creditor, or has in fact satisfied the creditor in discharge of that duty, the law which governs the third person's duty to satisfy the creditor shall determine whether the third person is entitled to exercise against the debtor the rights which the creditor had against the debtor under the law governing their relationship and, if so, whether he may do so in full or only to a limited extent.
2. The same rule applies where several persons are subject to the same contractual claim and one of them has satisfied the creditor.

Article 14 Burden of proof, etc

1. The law governing the contract under this Convention applies to the extent that it contains, in the law of contract, rules which raise presumptions of law or determine the burden of proof.
2. A contract or an act intended to have legal effect may be proved by any mode of proof recognised by the law of the forum or by any of the laws referred to in Article 9 under which that contract or act is formally valid, provided that such mode of proof can be administered by the forum.

Article 15 Exclusion of renvoi

The application of the law of any country specified by this Convention means the application of the rules of law in force in that country other than its rules of private international law.

Article 16 'Ordre public'

The application of a rule of the law of any country specified by this Convention may be refused only if such application is manifestly incompatible with the public policy (*'ordre public'*) of the forum.

Article 17 No retrospective effect

This Convention shall apply in a Contracting State to contracts made after the date on which this Convention has entered into force with respect to that State.

Article 18 Uniform interpretation

In the interpretation and application of the preceding uniform rules, regard shall be had to their international character and to the desirability of achieving uniformity in their interpretation and application.

Article 19 States with more than one legal system

1. Where a State comprises several territorial units each of which has its own rules of law in respect of contractual obligations, each territorial unit shall be considered as a country for the purposes of identifying the law applicable under this Convention.
2. A State within which different territorial units have their own rules of law in respect of

contractual obligations shall not be bound to apply this Convention to conflicts solely between the laws of such units.

Article 20 Precedence of Community law

This Convention shall not affect the application of provisions which, in relation to particular matters, lay down choice of law rules relating to contractual obligations and which are or will be contained in acts of the institutions of the European Communities or in national laws harmonised in implementation of such acts.

Article 21 Relationship with other conventions

This Convention shall not prejudice the application of international conventions to which a Contracting State is, or becomes, a party.

Articles 22–26 [Omitted].

Article 27 [Revoked].

Articles 28–33 [Omitted].

SCHEDULE 3

THE BRUSSELS PROTOCOL

Article 1

The Court of Justice of the European Communities shall have jurisdiction to give rulings on the interpretation of –

- (a) the Convention on the law applicable to contractual obligations, opened for signature in Rome on 19 June 1980, hereinafter referred to as ‘the Rome Convention’;
- (b) the Convention on accession to the Rome Convention by the States which have become Members of the European Communities since the date on which it was opened for signature;
- (c) this Protocol.

Articles 2–11 [Omitted].

CARRIAGE OF GOODS BY SEA ACT 1924

CHAPTER 50

1 Shipping documents, etc, to which Act applies

(1) This Act applies to the following documents, that is to say –

- (a) any bill of lading;
- (b) any sea waybill; and
- (c) any ship’s delivery order.

(2) References in this Act to a bill of lading –

- (a) do not include references to a document which is incapable of transfer either by endorsement or, as a bearer bill, by delivery without endorsement; but
- (b) subject to that, do include references to a received for shipment bill of lading.

(3) References in this Act to a sea waybill are references to any document which is not a bill of lading but –

- (a) is such a receipt for goods as contains or evidences a contract for the carriage of goods by sea; and
 - (b) identifies the person to whom delivery of the goods is to be made by the carrier in accordance with that contract.
- (4) References in this Act to a ship's delivery order are references to any document which is neither a bill of lading nor a sea waybill but contains an undertaking which –
- (a) is given under or for the purposes of a contract for the carriage by sea of the goods to which the document relates, or of goods which include those goods; and
 - (b) is an undertaking by the carrier to a person identified in the document to deliver the goods to which the document relates to that person.
- (5) The Secretary of State may by regulations make provision for the application of this Act to cases where an electronic communications network or any other information technology is used for effecting transactions corresponding to –
- (a) the issue of a document to which this Act applies;
 - (b) the endorsement, delivery or other transfer of such a document; or
 - (c) the doing of anything else in relation to such a document.
- (6) [Omitted].

2 Rights under shipping documents

- (1) Subject to the following provisions of this section, a person who becomes –
- (a) the lawful holder of a bill of lading;
 - (b) the person who (without being an original party to the contract of carriage) is the person to whom delivery of the goods to which a sea waybill relates is to be made by the carrier in accordance with that contract; or
 - (c) the person to whom delivery of the goods to which a ship's delivery order relates is to be made in accordance with the undertaking contained in the order,
- shall (by virtue of becoming the holder of the bill or, as the case may be, the person to whom delivery is to be made) have transferred to and vested in him all rights of suit under the contract of carriage as if he had been a party to that contract.
- (2) Where, when a person becomes the lawful holder of a bill of lading, possession of the bill no longer gives a right (as against the carrier) to possession of the goods to which the bill relates, that person shall not have any rights transferred to him by virtue of subsection (1) above unless he becomes the holder of the bill –
- (a) by virtue of a transaction effected in pursuance of any contractual or other arrangements made before the time when such a right to possession ceased to attach to possession of the bill; or
 - (b) as a result of the rejection to that person by another person of goods or documents delivered to the other person in pursuance of any such arrangements.
- (3) The rights vested in any person by virtue of the operation of subsection (1) above in relation to a ship's delivery order –
- (a) shall be so vested subject to the terms of the order; and
 - (b) where the goods to which the order relates form a part only of the goods to which the contract of carriage relates, shall be confined to rights in respect of the goods to which the order relates.
- (4) Where, in the case of any document to which this Act applies –
- (a) a person with any interest or right in or in relation to goods to which the document relates sustains loss or damage in consequence of a breach of the contract of carriage; but

(b) subsection (1) above operates in relation to that document so that rights of suit in respect of that breach are vested in another person, the other person shall be entitled to exercise those rights for the benefit of the person who sustained the loss or damage to the same extent as they could have been exercised if they had been vested in the person for whose benefit they are exercised.

(5) Where rights are transferred by virtue of the operation of subsection (1) above in relation to any document, the transfer for which that subsection provides shall extinguish any entitlement to those rights which derives –

- (a) where that document is a bill of lading, from a person's having been an original party to the contract of carriage; or
- (b) in the case of any document to which this Act applies, from the previous operation of that subsection in relation to that document;

but the operation of that subsection shall be without prejudice to any rights which derive from a person's having been an original party to the contract contained in, or evidenced by, a sea waybill and, in relation to a ship's delivery order, shall be without prejudice to any rights deriving otherwise than from the previous operation of that subsection in relation to that order.

3 Liabilities under shipping documents

(1) Where subsection (1) of section 2 of this Act operates in relation to any document to which this Act applies and the person in whom rights are vested by virtue of that subsection –

- (a) takes or demands delivery from the carrier of any of the goods to which the document relates;
- (b) makes a claim under the contract of carriage against the carrier in respect of any of those goods; or
- (c) is a person who, at a time before those rights were vested in him, took or demanded delivery from the carrier of any of those goods,

that person shall (by virtue of taking or demanding delivery or making the claim or, in a case falling within paragraph (c) above, of having the rights vested in him) become subject to the same liabilities under that contract as if he had been a party to that contract.

(2) Where the goods to which a ship's delivery order relates form a part only of the goods to which the contract of carriage relates, the liabilities to which any person is subject by virtue of the operation of this section in relation to that order shall exclude liabilities in respect of any goods to which the order does not relate.

(3) This section, so far as it imposes liabilities under any contract on any person, shall be without prejudice to the liabilities under the contract of any person as an original party to the contract.

4 Representations in bills of lading

A bill of lading which –

- (a) represents goods to have been shipped on board a vessel or to have been received for shipment on board a vessel; and
- (b) has been signed by the master of the vessel or by a person who was not the master but has the express, implied or apparent authority of the carrier to sign bills of lading,

shall, in favour of a person who has become the lawful holder of the bill, be conclusive evidence against the carrier of the shipment of the goods or, as the case may be, of their receipt for shipment.

5 Interpretation, etc

(1) In this Act –

'bill of lading', 'sea waybill' and 'ship's delivery order' shall be construed in accordance with section 1 above;

'the contract of carriage' –

- (a) in relation to a bill of lading or sea waybill, means the contract contained in or evidenced by that bill or waybill; and
- (b) in relation to a ship's delivery order, means the contract under or for the purposes of which the undertaking contained in the order is given;

'holder', in relation to a bill of lading, shall be construed in accordance with subsection (2) below;

'information technology' includes any computer or other technology by means of which information or other matter may be recorded or communicated without being reduced to documentary form.

(2) References in this Act to the holder of a bill of lading are references to any of the following persons, that is to say –

- (a) a person with possession of the bill who, by virtue of being the person identified in the bill, is the consignee of the goods to which the bill relates;
- (b) a person with possession of the bill as a result of the completion, by delivery of the bill, of any endorsement of the bill or, in the case of a bearer bill, of any other transfer of the bill;
- (c) a person with possession of the bill as a result of any transaction by virtue of which he would have become a holder falling within paragraph (a); or
- (d) above had not the transaction been effected at a time when possession of the bill no longer gave a right (as against the carrier) to possession of the goods to which the bill relates; and a person shall be regarded for the purposes of this Act as having become the lawful holder of a bill of lading wherever he has become the holder of the bill in good faith.

(3) References in this Act to a person's being identified in a document include references to his being identified by a description which allows for the identity of the person in question to be varied, in accordance with the terms of the document, after its issue; and the reference in section 1(3)(b) of this Act to a document's identifying a person shall be construed accordingly.

(4) Without prejudice to sections 2(2) and 4 above, nothing in this Act shall preclude its operation in relation to a case where the goods to which a document relates –

- (a) cease to exist after the issue of the document; or
- (b) cannot be identified (whether because they are mixed with other goods or for any other reason);

and references in this Act to the goods to which a document relates shall be construed accordingly.

(5) The preceding provisions of this Act shall have effect without prejudice to the application, in relation to any case, of the rules (the Hague-Visby Rules) which for the time being have the force of law by virtue of section 1 of the Carriage of Goods by Sea Act 1971.

6 [Omitted].

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CHAPTER 21

1–184 [Omitted].

PART VII

Limitation of liability of shipowners, etc and salvors for maritime claims

185 Limitation of liability for maritime claims

(1) The provisions of the Convention on Limitation of Liability for Maritime Claims 1976 as set out in Part I of Schedule 7 (in this section and Part II of that Schedule referred to as ‘the Convention’) shall have the force of law in the United Kingdom.

(2) The provisions of Part II of that Schedule shall have effect in connection with the Convention, and subsection (1) above shall have effect subject to the provisions of that Part.

(2A)–(2E) [Omitted].

(3) The provisions having the force of law under this section shall apply in relation to Her Majesty’s ships as they apply in relation to other ships.

(4) The provisions having the force of law under this section shall not apply to any liability in respect of loss of life or personal injury caused to, or loss of or damage to any property of, a person who is on board the ship in question or employed in connection with that ship or with the salvage operations in question if –

- (a) he is so on board or employed under a contract of service governed by the law of any part of the United Kingdom; and
- (b) the liability arises from an occurrence which took place after the commencement of this Act.

In this subsection, ‘ship’ and ‘salvage operations’ have the same meaning as in the Convention.

(5) [Omitted].

186 Exclusion of liability

(1) Subject to subsection (3) below, the owner of a United Kingdom ship shall not be liable for any loss or damage in the following cases, namely –

- (a) where any property on board the ship is lost or damaged by reason of fire on board the ship; or
- (b) where any gold, silver, watches, jewels or precious stones on board the ship are lost or damaged by reason of theft, robbery or other dishonest conduct and their nature and value were not at the time of shipment declared by their owner or shipper to the owner or master of the ship in the bill of lading or otherwise in writing.

(2) Subject to subsection (3) below, where the loss or damage arises from anything done or omitted by any person in his capacity of master or member of the crew or (otherwise than in that capacity) in the course of his employment as a servant of the owner of the ship, subsection (1) above shall also exclude the liability of –

- (a) the master, member of the crew or servant; and
- (b) in a case where the master or member of the crew is the servant of a person whose liability would not be excluded by that subsection apart from this paragraph, the person whose servant he is.

(3) This section does not exclude the liability of any person for any loss or damage resulting from any such personal act or omission of his as is mentioned in Article 4 of the Convention set out in Part I of Schedule 7.

(4) This section shall apply in relation to Her.Majesty's ships as it applies in relation to other ships.

(5) In this section 'owner', in relation to a ship, includes any part owner and any charterer, manager or operator of the ship.

Multiple fault, apportionment, liability and contribution

187 Damage or loss: apportionment of liability

(1) Where, by the fault of two or more ships, damage or loss is caused to one or more of those ships, to their cargoes or freight, or to any property on board, the liability to make good the damage or loss shall be in proportion to the degree in which each ship was in fault.

(2) If, in any such case, having regard to all the circumstances, it is not possible to establish different degrees of fault, the liability shall be apportioned equally.

(3) This section applies to persons other than the owners of a ship who are responsible for the fault of the ships, as well as to the owners of a ship and where, by virtue of any charter or demise, or for any other reason, the owners are not responsible for the navigation and management of the ship, this section applies to the charterers or other persons for the time being so responsible instead of the owners.

(4) Nothing in this section shall operate so as to render any ship liable for any loss or damage to which the fault of the ship has not contributed.

(5) Nothing in this section shall affect the liability of any person under a contract of carriage or any contract, or shall be construed as imposing any liability upon any person from which he is exempted by any contract or by any provision of law, or as affecting the right of any person to limit his liability in the manner provided by law.

(6) In this section 'freight' includes passage money and hire.

(7) In this section references to damage or loss caused by the fault of a ship include references to any salvage or other expenses, consequent upon that fault, recoverable at law by way of damages.

188 Loss of life or personal injuries: joint and several liability

(1) Where loss of life or personal injuries are suffered by any person on board a ship owing to the fault of that ship and of any other ship or ships, the liability of the owners of the ships shall be joint and several.

(2) Subsection (3) of section 187 applies also to this section.

(3) Nothing in this section shall be construed as depriving any person of any right of defence on which, apart from this section, he might have relied in an action brought against him by the person injured, or any person or persons entitled to sue in respect of such loss of life, or shall affect the right of any person to limit his liability in the manner provided by law.

(4) Subsection (7) of section 187 applies also for the interpretation of this section.

189 loss of life or personal injuries: right of contribution

(1) Where loss of life or personal injuries are suffered by any person on board a ship owing to the fault of that ship and any other ship or ships, and a proportion of the damages is recovered against the owners of one of the ships which exceeds the proportion in which the ship was in fault, they may recover by way of contribution the amount of the excess from the owners of the other ship or ships to the extent to which those ships were respectively in fault.

(2) Subsection (3) of section 187 applies also to this section.

(3) Nothing in this section authorises the recovery of any amount which could not, by reason of any statutory or contractual limitation of, or exemption from, liability, or which could not for any other reason, have been recovered in the first instance as damages by the persons entitled to sue therefor.

(4) In addition to any other remedy provided by law, the persons entitled to any contribution recoverable under this section shall, for the purposes of recovering it, have the same rights and powers as the persons entitled to sue for damages in the first instance.

190 Time limit for proceedings against owners or ship

(1) This section applies to any proceedings to enforce any claim or lien against a ship or her owners –

- (a) in respect of damage or loss caused by the fault of that ship to another ship, its cargo or freight or any property on board it; or
- (b) for damages for loss of life or personal injury caused by the fault of that ship to any person on board another ship.

(2) The extent of the fault is immaterial for the purposes of this section.

(3) Subject to subsections (5) and (6) below, no proceedings to which this section applies shall be brought after the period of two years from the date when –

- (a) the damage or loss was caused; or
- (b) the loss of life or injury was suffered.

(4) Subject to subsections (5) and (6) below, no proceedings under any of sections 187 to 189 to enforce any contribution in respect of any overpaid proportion of any damages for loss of life or personal injury shall be brought after the period of one year from the date of payment.

(5) Any court having jurisdiction in such proceedings may, in accordance with rules of court, extend the period allowed for bringing proceedings to such extent and on such conditions as it thinks fit.

(6) Any such court, if satisfied that there has not been during any period allowed for bringing proceedings any reasonable opportunity of arresting the defendant ship within –

- (a) the jurisdiction of the court; or
- (b) the territorial sea of the country to which the plaintiff's ship belongs or in which the plaintiff resides or has his principal place of business,

shall extend the period allowed for bringing proceedings to an extent sufficient to give a reasonable opportunity of so arresting the ship.

SCHEDULE 7

CONVENTION ON LIMITATION OF LIABILITY FOR MARITIME CLAIMS 1976

PART I TEXT OF CONVENTION

CHAPTER I THE RIGHT OF LIMITATION

Article 1 Persons entitled to limit liability

1. Shipowners and salvors, as hereinafter defined, may limit their liability in accordance with the rules of this Convention for claims set out in Article 2.
2. The term 'shipowner' shall mean the owner, charterer, manager or operator of a seagoing ship.
3. Salvor shall mean any person rendering services in direct connection with salvage operations. Salvage operations shall also include operations referred to in Article 2, paragraph 1(d), (e) and (f).
4. If any claims set out in Article 2 are made against any person for whose act, neglect or default the shipowner or salvor is responsible, such person shall be entitled to avail himself of the limitation of liability provided for in this Convention.

5. In this Convention the liability of a shipowner shall include liability in an action brought against the vessel herself.
6. An insurer of liability for claims subject to limitation in accordance with the rules of this Convention shall be entitled to the benefits of this Convention to the same extent as the assured himself.
7. The act of invoking limitation of liability shall not constitute an admission of liability.

Article 2 Claims subject to limitation

1. Subject to Articles 3 and 4 the following claims, whatever the basis of liability may be, shall be subject to limitation of liability –

- (a) claims in respect of loss of life or personal injury or loss of or damage to property (including damage to harbour works, basins and waterways and aids to navigation) occurring on board or in direct connection with the operation of the ship or with salvage operations and consequential loss resulting therefrom;
- (b) claims in respect of loss resulting from delay in the carriage by sea of cargo, passengers or their luggage;
- (c) claims in respect of other loss resulting from infringement of rights other than contractual rights, occurring in direct connection with the operation of the ship or salvage operations;
- (d) claims in respect of the raising, removal, destruction or the rendering harmless of a ship which is sunk, wrecked, stranded or abandoned, including anything that is or has been on board such ship;
- (e) claims in respect of the removal, destruction or the rendering harmless of the cargo of the ship;
- (f) claims of a person other than the person liable in respect of measures taken in order to avert or minimise loss for which the person liable may limit his liability in accordance with this Convention, and further loss caused by such measures.

2. Claims set out in paragraph 1 shall be subject to limitation of liability even if brought by way of recourse or for indemnity under a contract or otherwise. However, claims set out under paragraphs (d), (e) and (f) shall not be subject to limitation of liability to the extent that they relate to remuneration under a contract with the person liable.

Article 3 Claims excepted from limitation

The rules of this Convention shall not apply to –

- (a) claims for salvage, including, if applicable, any claim for special compensation under Article 14 of the International Convention on Salvage 1989, as amended, or contribution in general average;
- (b) claims for oil pollution damage within the meaning of the international Convention on Civil Liability for Oil Pollution Damage dated 29th November 1969 or of any amendment or Protocol thereto which is in force;
- (c) claims subject to any international convention or national legislation governing or prohibiting limitation of liability for nuclear damage;
- (d) claims against the shipowner of a nuclear ship for nuclear damage;
- (e) claims by servant of the shipowner or salvor whose duties are connected with the ship or the salvage operations, including claims of their heirs, dependants or other persons entitled to make such claims, if under the law governing the contract of service between the shipowner or salvor and such servant the shipowner or salvor is not entitled to limit his liability in respect of such claims, or if he is by such law only permitted to limit his liability to an amount greater than that provided for in Article 6.

Article 4 Conduct barring limitation

A person liable shall not be entitled to limit his liability if it is proved that the loss resulted from his personal act or omission, committed with the intent to cause such loss, or recklessly and with knowledge that such loss would probably result.

Article 5 Counterclaims

Where a person entitled to limitation of liability under the rules of this Convention has a claim against the claimant arising out of the same occurrence, their respective claims shall be set off against each other and the provisions of this Convention shall only apply to the balance, if any.

CHAPTER II**LIMITS OF LIABILITY****Article 6 The general limits**

1. The limits of liability for claims other than those mentioned in Article 7, arising on any distinct occasion, shall be calculated as follows –

- (a) in respect of claims for loss of life or personal injury:
 - (i) 2 million Units of Account for a ship with a tonnage not exceeding 2,000 tons;
 - (ii) for a ship with a tonnage in excess thereof, the following amount in addition to that mentioned in (i) – for each ton from 2,001 to 30,000 tons, 800 Units of Account; for each ton from 30,001 to 70,000 tons, 600 Units of Account; and for each ton in excess of 70,000 tons, 400 Units of Account;
- (b) in respect of any other claims:
 - (i) 1 million Units of Account for a ship with a tonnage not exceeding 2,000 tons;
 - (ii) for a ship with a tonnage in excess thereof the following amount in addition to that mentioned in (i) – for each ton from 2,001 to 30,000 tons, 400 Units of Account; for each ton from 30,001 to 70,000 tons, 300 Units of Account; and for each ton in excess of 70,000 tons, 200 Units of Account.

2. Where the amount calculated in accordance with paragraph 1(a) is insufficient to pay the claims mentioned therein in full, the amount calculated in accordance with paragraph 1(b) shall be available for payment of the unpaid balance of claims under paragraph 1(a) and such unpaid balance shall rank rateably with claims mentioned under paragraph 1(b).

3. The limits of liability for any salvor not operating from any ship or for any salvor operating solely on the ship to, or in respect of which he is rendering salvage services, shall be calculated according to a tonnage of 1,500 tons.

Article 7 The limit for passenger claims

1. In respect of claims arising on any distinct occasion for loss of life or personal injury to passengers of a ship, the limit of liability of the shipowner thereof shall be an amount of 175,000 Units of Account multiplied by the number of passengers which the ship is authorised to carry according to the ship's certificate.

2. For the purpose of this Article 'claims for loss of life or personal injury to passengers of a ship' shall mean any such claims brought by or on behalf of any person carried in that ship –

- (a) under a contract of passenger carriage; or
- (b) who, with the consent of the carrier, is accompanying a vehicle or live animals which are covered by a contract for the carriage of goods.

Article 8 Unit of Account

1. The Unit of Account referred to in Articles 6 and 7 is the Special Drawing Right as defined by the International Monetary Fund. The amounts mentioned in Articles 6 and 7 shall be converted into the national currency of the State in which limitation is sought, according to the value of that currency at the date the limitation fund shall have been constituted, payment is made, or security is given which under the law of that State is equivalent to such payment.

Article 9 Aggregation of claims

1. The limits of liability determined in accordance with Article 6 shall apply to the aggregate of all claims which arise on any distinct occasion –

- (a) against the person or persons mentioned in paragraph 2 of Article 1 and any person for whose act, neglect or default he or they are responsible; or
- (b) against the shipowner of a ship rendering salvage services from that ship and the salvor or salvors operating from such ship and any person for whose act, neglect or default he or they are responsible; or
- (c) against the salvor or salvors who are not operating from a ship or who are operating solely on the ship to, or in respect of which, the salvage services are rendered and any person for whose act, neglect or default he or they are responsible.

2. The limits of liability determined in accordance with Article 7 shall apply to the aggregate of all claims subject thereto which may arise on any distinct occasion against the person or persons mentioned in paragraph 2 of Article 1 in respect of the ship referred to in Article 7 and any person for whose act, neglect or default he or they are responsible.

Article 10 Limitation of liability without constitution of a limitation fund

1. Limitation of liability may be invoked notwithstanding that a limitation fund as mentioned in Article 11 has not been constituted.

2. If limitation of liability is invoked without the constitution of a limitation fund, the provisions of Article 12 shall apply correspondingly.

3. Questions of procedure arising under the rules of this Article shall be decided in accordance with the national law of the State Party in which action is brought.

CHAPTER III**THE LIMITATION FUND****Article 11 Constitution of the fund**

1. Any person alleged to be liable may constitute a fund with the Court or other competent authority in any State Party in which legal proceedings are instituted in respect of claims subject to limitation. The fund shall be constituted in the sum of such of the amounts set out in Articles 6 and 7 as are applicable to claims for which that person may be liable, together with interest thereon from the date of the occurrence giving rise to the liability until the date of the constitution of the fund. Any fund thus constituted shall be available only for the payment of claims in respect of which limitation of liability can be invoked.

2. A fund may be constituted, either by depositing the sum, or by producing a guarantee acceptable under the legislation of the State Party where the fund is constituted and considered to be adequate by the court or other competent authority.

3. A fund constituted by one of the persons mentioned in paragraph 1(a), (b) or (c) or paragraph 2 of Article 9 or his insurer shall be deemed constituted by all persons mentioned in paragraph 1(a), (b) or (c) or paragraph 2, respectively.

Article 12 Distribution of the fund

1. Subject to the provisions of paragraphs 1 and 2 of Article 6 and of Article 7, the fund shall be distributed among the claimants in proportion to their established claims against the fund.
2. If, before the fund is distributed, the person liable, or his insurer, has settled a claim against the fund such person shall up to the amount he has paid, acquire by subrogation the rights which the person so compensated would have enjoyed under this Convention.
3. The right of subrogation provided for in paragraph 2 may also be exercised by persons other than those therein mentioned in respect of any amount of compensation which they may have paid, but only to the extent that such subrogation is permitted under the applicable national law.
4. Where the person liable or any other person establishes that he may be compelled to pay, at a later day, in whole or in part any such amount of compensation with regard to which such person would have enjoyed a right of subrogation pursuant to paragraphs 2 and 3 had the compensation been paid before the fund was distributed, the Court or other competent authority of the State where the fund has been constituted may order that a sufficient sum shall be provisionally set aside to enable such person at such later date to enforce his claim against the fund.

Article 13 Bar to other actions

1. Where a limitation fund has been constituted in accordance with Article II, any person having made a claim against the fund shall be barred from exercising any right in respect of such a claim against any other assets of a person by or on behalf of whom the fund has been constituted.
2. After a limitation fund has been constituted in accordance with Article II, any ship or other property, belonging to a person on behalf of whom the fund has been constituted, which has been arrested or attached within the jurisdiction of a State Party for a claim which may be raised against the fund, or any security given, may be released by order of the Court or other competent authority of such State. However, such release shall always be ordered if the limitation fund has been constituted –
 - (a) at the port where the occurrence took place, or, if it took place out of port, at the first port of call thereafter; or
 - (b) at the port of disembarkation in respect of claims for loss of life or personal injury; or
 - (c) at the port of discharge in respect of damage to cargo; or
 - (d) in the State where the arrest is made.
3. The rules of paragraphs 1 and 2 shall apply only if the claimant may bring a claim against the limitation fund before the Court administering that fund and the fund is actually available and freely transferable in respect of that claim.

Article 14 Governing Law

Subject to the provisions of this Chapter the rules relating to the constitution and distribution of a limitation fund, and all rules of procedure in connection therewith, shall be governed by the law of the State Party in which the fund is constituted.

CHAPTER IV

SCOPE OF APPLICATION

Article 15

(1) This Convention shall apply whenever any person referred to in Article 1 seeks to limit his liability before the Court of a State Party or seeks to procure the release of a ship or other property or the discharge of any security given within the jurisdiction of any such State.

(2) A State Party may regulate by specific provisions of national law the system of limitation of liability to be applied to vessels which are –

- (a) according to the law of that State, ships intended for navigation on inland waterways;
- (b) ships of less than 300 tons.

A State Party which makes use of the option provided for in this paragraph shall inform the depositary of the limits of liability adopted in its national legislation or of the fact that there are none.

(3) *bis* Notwithstanding the limit of liability prescribed in paragraph 1 of Article 7, a State Party may regulate by specific provisions of national law the system of liability to be applied to claims for loss of life or personal injury to passengers of a ship, provided that the limit of liability is not lower than that prescribed in paragraph 1 of Article 7. A State Party which makes use of the option provided for in this paragraph shall inform the Secretary-General of the limits of liability adopted or of the fact that there are none.

Article 18 Reservations

1. Any State may, at the time of signature, ratification, acceptance, approval or accession, or at any time thereafter, reserve the right –

- (a) to exclude the application of article 2, paragraphs 1(d) and (e);
- (b) to exclude claims for damage within the meaning of the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996 or of any amendment or Protocol thereto.

No other reservations shall be admissible to the substantive provisions of this Convention.

PART II

PROVISIONS HAVING EFFECT IN CONNECTION WITH CONVENTION

Interpretation

1. In this part of this Schedule any reference to a numbered Article is a reference to the Article of the Convention which is so numbered.

Right to limit liability

2. Subject to paragraph 6 below, the right to limit liability under the convention shall apply in relation to any ship whether seagoing or not, and the definition of 'shipowner' in paragraph 2 of Article 1 shall be construed accordingly.

Claims subject to limitation

2A. [repealed]

3. (1) Paragraph 1(d) of Article 2 shall not apply unless provision has been made by an order of the Secretary of State for the setting up and management of a fund to be used for the making of

harbour or conservancy authorities of payments needed to compensate them for the reduction, in consequence of the said paragraph 1(d), of amounts recoverable by them in claims of the kind there mentioned, and to be maintained by contributions from such authorities raised and collected by them in respect of vessels in like manner as other sums so raised by them.

(2) Any order under sub-paragraph (1) above may contain such incidental and supplemental provisions as appear to the Secretary of State to be necessary or expedient.

Claims excluded from limitation

4. (1) Claims for damage within the meaning of the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996, or any amendment of or Protocol to that Convention, which arise from occurrences which take place after the coming into force of the first Order in Council made by Her Majesty under section 182B of this Act shall be excluded from the Convention.

(2) The claims excluded from the Convention by paragraph (b) of Article 3 are claims in respect of any liability incurred under section 153 of this Act.

(3) The claims excluded from the Convention by paragraph (c) of Article 3 are claims made by virtue of any of sections 7 to 11 of the Nuclear Installations Act 1965.

The general limits

5. (1) In the application of Article 6 to a ship with a tonnage less than 300 tons that Article shall have effect as if –

(a) paragraph (a)(i) referred to 1,000,000 Units of Account; and

(b) paragraph (b)(i) referred to 500,000 Units of Account,

(2) For the purposes of Article 6 and this paragraph a ship's tonnage shall be its gross tonnage calculated in such manner as may be prescribed by an order made by the Secretary of State.

(3) Any order under this paragraph shall, so far as appears to the Secretary of State to be practicable, give effect to the regulations in Annex 1 of the International Convention on Tonnage Measurement of Ships 1969.

Limit for passenger claims

6. (1) Article 7 shall not apply in respect of any seagoing ship; and shall have effect in respect of any ship which is not seagoing as if, in paragraph 1 of that article –

(a) after 'thereof' there were inserted 'in respect of each passenger;'

(b) the words from 'multiplied' onwards were omitted.

(2) In paragraph 2 of Article 7 the reference to claims brought on behalf of a person includes a reference to any claim in respect of the death of a person under the Fatal Accidents Act 1976, the Fatal Accidents (Northern Ireland) Order 1977 or the Damages (Scotland) Act 1976.

Units of account

7. (1) For the purpose of converting the amounts mentioned in Articles 6 and 7 from special drawing rights into sterling one special drawing right shall be treated as equal to such a sum in sterling as the International Monetary Fund have fixed as being the equivalent of one special drawing right for –

(a) the relevant date under paragraph 1 of Article 8; or

(b) if no sum has been so fixed for that date, the last preceding date for which a sum has been so fixed.

(2) A certificate given by or on behalf of the Treasury stating –

(a) that a particular sum in sterling has been fixed as mentioned in the preceding sub-paragraph for a particular date; or

- (b) that no sum has been so fixed for that date and that a particular sum in sterling has been so fixed for a date which is the last preceding date for which a sum has been so fixed,
- shall be conclusive evidence of those matters for the purposes of those Articles; and a document purporting to be such a certificate shall, in any proceedings, be received in evidence and unless the contrary is proved be deemed to be such a certificate.

Constitution of fund

8. (1) The Secretary of State may from time to time with the concurrence of the Treasury, by order prescribe the rate of interest to be applied for the purposes of paragraph 1 of Article 11.
- (2) Any statutory instrument containing an order under sub-paragraph (1) above, shall be laid before Parliament after being made.
- (3) Where a fund is constituted with the court in accordance with Article II for the payment of claims arising out of any occurrence, the court may stay any proceedings relating to any claim arising out of that occurrence which are pending against the person by whom the fund has been constituted.

Distribution of fund

9. No lien or other right in respect of any ship or property shall affect the proportions in which under Article 12 the fund is distributed among several claimants.

Bar to other actions

10. Where the release of a ship or other property is ordered under paragraph 2 of Article 13 the person on whose application it is ordered to be released shall be deemed to have submitted to (or, in Scotland, prorogated) the jurisdiction of the court to adjudicate on the claim for which the ship or property was arrested or attached.

Meaning of 'court'

11. References in the Convention and the preceding provisions of this Part of this Schedule to the court are references to the High Court or, in relation to Scotland, the Court of Session.

Meaning of 'ship'

12. References in the Convention and in the preceding provisions of this Part of this Schedule to a ship include references to any structure (whether completed or in course of completion) launched and intended for use in navigation as a ship or part of a ship.

Meaning of 'state party'

13. An Order in Council made for the purposes of this paragraph and declaring that any State specified in the Order is a party to the Convention as amended by the 1996 Protocol shall, subject to the provisions of any subsequent Order made for those purposes be conclusive evidence that the State is a party to the Convention as amended by the 1996 Protocol.

PRIVATE INTERNATIONAL LAW (MISCELLANEOUS PROVISIONS) ACT 1995

CHAPTER 42

PART III

CHOICE OF LAW IN TORT AND DELICT

9 Purpose of Part III

- (1) The rules in this Part apply for choosing the law (in this Part referred to as 'the applicable law') to be used for determining issues relating to tort or (for the purposes of the law of Scotland) delict.
- (2) The characterisation for the purposes of private international law of issues arising in a claim as issues relating to tort or delict is a matter for the courts of the forum.
- (3) The rules in this Part do not apply in relation to issues arising in any claim excluded from the operation of this Part by section 13 below.
- (4) The applicable law shall be used for determining the issues arising in a claim, including in particular the question whether an actionable tort or delict has occurred.
- (5) The applicable law to be used for determining the issues arising in a claim shall exclude any choice of law rules forming part of the law of the country or countries concerned.
- (6) For the avoidance of doubt (and without prejudice to the operation of section 14 below) this Part applies in relation to events occurring in the forum as it applies in relation to events occurring in any other country.
- (7) In this Part as it extends to any country within the United Kingdom, 'the forum' means England and Wales, Scotland or Northern Ireland, as the case may be.
- (8) In this Part 'delict' includes quasi-delict.

10 Abolition of certain common law rules

The rules of the common law, in so far as they –

- (a) require actionability under both the law of the forum and the law of another country for the purpose of determining whether a tort or delict is actionable; or
- (b) allow (as an exception from the rules falling within paragraph (a) above) for the law of a single country to be applied for the purpose of determining the issues, or any of the issues, arising in the case in question, are hereby abolished so far as they apply to any claim in tort or delict which is not excluded from the operation of this Part by section 13 below.

11 Choice of applicable law: the general rule

- (1) The general rule is that the applicable law is the law of the country in which the events constituting the tort or delict in question occur.
- (2) Where elements of those events occur in different countries, the applicable law under the general rule is to be taken as being –
 - (a) for a cause of action in respect of personal injury caused to an individual or death resulting from personal injury, the law of the country where the individual was when he sustained the injury;
 - (b) for a cause of action in respect of damage to property, the law of the country where the property was when it was damaged; and

(c) in any other case, the law of the country in which the most significant element or elements of those events occurred.

(3) In this section 'personal injury' includes disease or any impairment of physical or mental condition.

12 Choice of applicable law: displacement of general rule

(1) If it appears, in all the circumstances, from a comparison of –

(a) the significance of the factors which connect a tort or delict with the country whose law would be the applicable law under the general rule; and

(b) the significance of any factors connecting the tort or delict with another country, that it is substantially more appropriate for the applicable law for determining the issues arising in the case, or any of those issues, to be the law of the other country, the general rule is displaced and the applicable law for determining those issues or that issue (as the case may be) is the law of that other country.

(2) The factors that may be taken into account as connecting a tort or delict with a country for the purposes of this section include, in particular, factors relating to the parties, to any of the events which constitute the tort or delict in question or to any of the circumstances or consequences of those events.

13 Exclusion of defamation claims from Part III

(1) Nothing in this Part applies to affect the determination of issues arising in any defamation claim.

(2) For the purposes of this section 'defamation claim' means –

(a) any claim under the law of any part of the United Kingdom for libel or slander or for slander of title, slander of goods or other malicious falsehood and any claim under the law of Scotland for verbal injury; and

(b) any claim under the law of any other country corresponding to or otherwise in the nature of a claim mentioned in paragraph (a) above.

14 Transitional provision and savings

(1) Nothing in this Part applies to acts or omissions giving rise to a claim which occur before the commencement of this Part.

(2) Nothing in this Part affects any rules of law (including rules of private international law) except those abolished by section 10 above.

(3) Without prejudice to the generality of subsection (2) above, nothing in this Part –

(a) authorises the application of the law of a country outside the forum as the applicable law for determining issues arising in any claim in so far as to do so:

(i) would conflict with principles of public policy; or

(ii) would give effect to such a penal, revenue or other public law as would not otherwise be enforceable under the law of the forum; or

(b) affects any rules of evidence, pleading or practice or authorises questions of procedure in any proceedings to be determined otherwise than in accordance with the law of the forum.

(4) This Part has effect without prejudice to the operation of any rule of law which either has effect notwithstanding the rules of private international law applicable in the particular circumstances or modifies the rules of private international law that would otherwise be so applicable.

15 Crown application

(1) This Part applies in relation to claims by or against the Crown as it applies in relation to claims to which the Crown is not a party.

(2) In subsection (1) above a reference to the Crown does not include a reference to Her Majesty in Her private capacity or to Her Majesty in right of Her Duchy of Lancaster or to the Duke of Cornwall.

(3) Without prejudice to the generality of section 14(2) above, nothing in this section affects any rule of law as to whether proceedings of any description may be brought against the Crown.

ARBITRATION ACT 1996

CHAPTER 23

PART I ARBITRATION PURSUANT TO AN ARBITRATION AGREEMENT

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PART I

ARBITRATION PURSUANT TO AN ARBITRATION AGREEMENT

Introductory

1 General principles

The provisions of this Part are founded on the following principles, and shall be construed accordingly –

- (a) the object of arbitration is to obtain the fair resolution of disputes by an impartial tribunal without unnecessary delay or expense;
- (b) the parties should be free to agree how their disputes are resolved, subject only to such safeguards as are necessary in the public interest;
- (c) in matters governed by this Part the court should not intervene except as provided by this Part.

2 Scope of application of provisions

(1) The provisions of this Part apply where the seat of the arbitration is in England and Wales or Northern Ireland.

(2) The following sections apply even if the seat of the arbitration is outside England and Wales or Northern Ireland or no seat has been designated or determined –

- (a) sections 9 to 11 (stay of legal proceedings, etc); and
- (b) section 66 (enforcement of arbitral awards).

(3) The powers conferred by the following sections apply even if the seat of the arbitration is outside England and Wales or Northern Ireland or no seat has been designated or determined –

- (a) section 43 (securing the attendance of witnesses); and
- (b) section 44 (court powers exercisable in support of arbitral proceedings), but the court may refuse to exercise any such power if, in the opinion of the court, the fact that the seat of the arbitration is outside England and Wales or Northern Ireland, or that when designated or determined the seat is likely to be outside England and Wales or Northern Ireland, makes it inappropriate to do so.

(4) The court may exercise a power conferred by any provision of this Part not mentioned in subsection (2) or (3) for the purpose of supporting the arbitral process where –

- (a) no seat of the arbitration has been designated or determined; and
- (b) by reason of a connection with England and Wales or Northern Ireland the court is satisfied that it is appropriate to do so.

(5) Section 7 (separability of arbitration agreement) and section 8 (death of a party) apply where the law applicable to the arbitration agreement is the law of England and Wales or Northern Ireland even if the seat of the arbitration is outside England and Wales or Northern Ireland or has not been designated or determined.

3 The seat of the arbitration

In this Part ‘the seat of the arbitration’ means the juridical seat of the arbitration designated –

- (a) by the parties to the arbitration agreement; or
- (b) by any arbitral or other institution or person vested by the parties with powers in that regard; or
- (c) by the arbitral tribunal if so authorised by the parties,

or determined, in the absence of any such designation, having regard to the parties’ agreement and all the relevant circumstances.

4 Mandatory and non-mandatory provisions

(1) The mandatory provisions of this Part are listed in Schedule 1 and have effect notwithstanding any agreement to the contrary.

(2) The other provisions of this Part (the 'non-mandatory provisions') allow the parties to make their own arrangements by agreement but provide rules which apply in the absence of such agreement.

(3) The parties may make such arrangements by agreeing to the application of institutional rules or providing any other means by which a matter may be decided.

(4) It is immaterial whether or not the law applicable to the parties' agreement is the law of England and Wales or, as the case may be, Northern Ireland.

(5) The choice of a law other than the law of England and Wales or Northern Ireland as the applicable law in respect of a matter provided for by a non-mandatory provision of this Part is equivalent to an agreement making provision about that matter.

For this purpose an applicable law determined in accordance with the parties' agreement, or which is objectively determined in the absence of any express or implied choice, shall be treated as chosen by the parties.

5 Agreements to be in writing

(1) The provisions of this Part apply only where the arbitration agreement is in writing, and any other agreement between the parties as to any matter is effective for the purposes of this Part only if in writing. The expressions 'agreement', 'agree' and 'agreed' shall be construed accordingly.

(2) There is an agreement in writing –

- (a) if the agreement is made in writing (whether or not it is signed by the parties);
- (b) if the agreement is made by exchange of communications in writing; or
- (c) if the agreement is evidenced in writing.

(3) Where parties agree otherwise than in writing by reference to terms which are in writing, they make an agreement in writing.

(4) An agreement is evidenced in writing if an agreement made otherwise than in writing is recorded by one of the parties, or by a third party, with the authority of the parties to the agreement.

(5) An exchange of written submissions in arbitral or legal proceedings in which the existence of an agreement otherwise than in writing is alleged by one party against another party and not denied by the other party in his response constitutes as between those parties an agreement in writing to the effect alleged.

(6) References in this Part to anything being written or in writing include its being recorded by any means.

The arbitration agreement

6 Definition of arbitration agreement

(1) In this Part an 'arbitration agreement' means an agreement to submit to arbitration present or future disputes (whether they are contractual or not).

(2) The reference in an agreement to a written form of arbitration clause or to a document containing an arbitration clause constitutes an arbitration agreement if the reference is such as to make that clause part of the agreement.

7 Separability of arbitration agreement

Unless otherwise agreed by the parties, an arbitration agreement which forms or was intended to form part of another agreement (whether or not in writing) shall not be regarded as invalid, non-existent or ineffective because that other agreement is invalid, or did not come into existence or has become ineffective, and it shall for that purpose be treated as a distinct agreement.

8 Whether agreement discharged by death of a party

- (1) Unless otherwise agreed by the parties, an arbitration agreement is not discharged by the death of a party and may be enforced by or against the personal representatives of that party.
- (2) Subsection (1) does not affect the operation of any enactment or rule of law by virtue of which a substantive right or obligation is extinguished by death.

Stay of legal proceedings

9 Stay of legal proceedings

- (1) A party to an arbitration agreement against whom legal proceedings are brought (whether by way of claim or counterclaim) in respect of a matter which under the agreement is to be referred to arbitration may (upon notice to the other parties to the proceedings) apply to the court in which the proceedings have been brought to stay the proceedings so far as they concern that matter.
- (2) An application may be made notwithstanding that the matter is to be referred to arbitration only after the exhaustion of other dispute resolution procedures.
- (3) An application may not be made by a person before taking the appropriate procedural step (if any) to acknowledge the legal proceedings against him or after he has taken any step in those proceedings to answer the substantive claim.
- (4) On an application under this section the court shall grant a stay unless satisfied that the arbitration agreement is null and void, inoperative, or incapable of being performed.
- (5) If the court refuses to stay the legal proceedings, any provision that an award is a condition precedent to the bringing of legal proceedings in respect of any matter is of no effect in relation to those proceedings.

10 Reference of interpleader issue to arbitration

- (1) Where in legal proceedings relief by way of interpleader is granted and any issue between the claimants is one in respect of which there is an arbitration agreement between them, the court granting the relief shall direct that the issue be determined in accordance with the agreement unless the circumstances are such that proceedings brought by a claimant in respect of the matter would not be stayed.
- (2) Where subsection (1) applies but the court does not direct that the issue be determined in accordance with the arbitration agreement, any provision that an award is a condition precedent to the bringing of legal proceedings in respect of any matter shall not affect the determination of that issue by the court.

11 Retention of security where Admiralty proceedings stayed

- (1) Where Admiralty proceedings are stayed on the ground that the dispute in question should be submitted to arbitration, the court granting the stay may, if in those proceedings property has been arrested or bail or other security has been given to prevent or obtain release from arrest –
 - (a) order that the property arrested be retained as security for the satisfaction of any award given in the arbitration in respect of that dispute; or

(b) order that the stay of those proceedings be conditional on the provision of equivalent security for the satisfaction of any such award.

(2) Subject to any provision made by rules of court and to any necessary modifications, the same law and practice shall apply in relation to property retained in pursuance of an order as would apply if it were held for the purposes of proceedings in the court making the order.

Commencement of arbitral proceedings

12 Power of court to extend time for beginning arbitral proceedings, etc

(1) Where an arbitration agreement to refer future disputes to arbitration provides that a claim shall be barred, or the claimant's right extinguished, unless the claimant takes within a time fixed by the agreement some step –

(a) to begin arbitral proceedings; or

(b) to begin other dispute resolution procedures which must be exhausted before arbitral proceedings can be begun,

the court may by order extend the time for taking that step.

(2) Any party to the arbitration agreement may apply for such an order (upon notice to the other parties), but only after a claim has arisen and after exhausting any available arbitral process for obtaining an extension of time.

(3) The court shall make an order only if satisfied –

(a) that the circumstances are such as were outside the reasonable contemplation of the parties when they agreed the provision in question, and that it would be just to extend the time; or

(b) that the conduct of one party makes it unjust to hold the other party to the strict terms of the provision in question.

(4) The court may extend the time for such period and on such terms as it thinks fit, and may do so whether or not the time previously fixed (by agreement or by a previous order) has expired.

(5) An order under this section does not affect the operation of the Limitation Acts (see section 13).

(6) The leave of the court is required for any appeal from a decision of the court under this section.

13 Application of Limitation Acts

(1) The Limitation Acts apply to arbitral proceedings as they apply to legal proceedings.

(2) The court may order that in computing the time prescribed by the Limitation Acts for the commencement of proceedings (including arbitral proceedings) in respect of a dispute which was the subject matter –

(a) of an award which the court orders to be set aside or declares to be of no effect; or

(b) of the affected part of an award which the court orders to be set aside in part, or declares to be in part of no effect,

the period between the commencement of the arbitration and the date of the order referred to in paragraph (a) or (b) shall be excluded.

(3) In determining for the purposes of the Limitation Acts when a cause of action accrued, any provision that an award is a condition precedent to the bringing of legal proceedings in respect of a matter to which an arbitration agreement applies shall be disregarded.

(4) In this Part 'the Limitation Acts' means –

(a) in England and Wales, the Limitation Act 1980, the Foreign Limitation Periods Act

- 1984 and any other enactment (whenever passed) relating to the limitation of actions;
- (b) in Northern Ireland, the Limitation (Northern Ireland) Order 1985 and any other enactment (whenever passed) relating to the limitation of actions.

14 Commencement of arbitral proceedings

- (1) The parties are free to agree when arbitral proceedings are to be regarded as commenced for the purposes of this Part and for the purposes of the Limitation Acts.
- (2) If there is no such agreement the following provisions apply.
- (3) Where the arbitrator is named or designated in the arbitration agreement, arbitral proceedings are commenced in respect of a matter when one party serves on the other party or parties a notice in writing requiring him or them to submit that matter to the person so named or designated.
- (4) Where the arbitrator or arbitrators are to be appointed by the parties, arbitral proceedings are commenced in respect of a matter when one party serves on the other party or parties notice in writing requiring him or them to appoint an arbitrator or to agree to the appointment of an arbitrator in respect of that matter.
- (5) Where the arbitrator or arbitrators are to be appointed by a person other than a party to the proceedings, arbitral proceedings are commenced in respect of a matter when one party gives notice in writing to that person requesting him to make the appointment in respect of that matter.

The arbitral tribunal

15 The arbitral tribunal

- (1) The parties are free to agree on the number of arbitrators to form the tribunal and whether there is to be a chairman or umpire.
- (2) Unless otherwise agreed by the parties, an agreement that the number of arbitrators shall be two or any other even number shall be understood as requiring the appointment of an additional arbitrator as chairman of the tribunal.
- (3) If there is no agreement as to the number of arbitrators, the tribunal shall consist of a sole arbitrator.

16 Procedure for appointment of arbitrators

- (1) The parties are free to agree on the procedure for appointing the arbitrator or arbitrators, including the procedure for appointing any chairman or umpire.
- (2) If or to the extent that there is no such agreement, the following provisions apply.
- (3) If the tribunal is to consist of a sole arbitrator, the parties shall jointly appoint the arbitrator not later than 28 days after service of a request in writing by either party to do so.
- (4) If the tribunal is to consist of two arbitrators, each party shall appoint one arbitrator not later than 14 days after service of a request in writing by either party to do so.
- (5) If the tribunal is to consist of three arbitrators –
- (a) each party shall appoint one arbitrator not later than 14 days after service of a request in writing by either party to do so; and
 - (b) the two so appointed shall forthwith appoint a third arbitrator as the chairman of the tribunal.
- (6) If the tribunal is to consist of two arbitrators and an umpire –
- (a) each party shall appoint one arbitrator not later than 14 days after service of a request in writing by either party to do so; and

- (b) the two so appointed may appoint an umpire at any time after they themselves are appointed and shall do so before any substantive hearing or forthwith if they cannot agree on a matter relating to the arbitration.

(7) In any other case (in particular, if there are more than two parties) section 18 applies as in the case of a failure of the agreed appointment procedure.

17 Power in case of default to appoint sole arbitrator

(1) Unless the parties otherwise agree, where each of two parties to an arbitration agreement is to appoint an arbitrator and one party ('the party in default') refuses to do so, or fails to do so within the time specified, the other party, having duly appointed his arbitrator, may give notice in writing to the party in default that he proposes to appoint his arbitrator to act as sole arbitrator.

(2) If the party in default does not within 7 clear days of that notice being given –

- (a) make the required appointment; and
- (b) notify the other party that he has done so,

the other party may appoint his arbitrator as sole arbitrator whose award shall be binding on both parties as if he had been so appointed by agreement.

(3) Where a sole arbitrator has been appointed under subsection (2), the party in default may (upon notice to the appointing party) apply to the court which may set aside the appointment.

(4) The leave of the court is required for any appeal from a decision of the court under this section.

18 Failure of appointment procedure

(1) The parties are free to agree what is to happen in the event of a failure of the procedure for the appointment of the arbitral tribunal. There is no failure if an appointment is duly made under section 17 (power in case of default to appoint sole arbitrator), unless that appointment is set aside.

(2) If or to the extent that there is no such agreement any party to the arbitration agreement may (upon notice to the other parties) apply to the court to exercise its powers under this section.

(3) Those powers are –

- (a) to give directions as to the making of any necessary appointments;
- (b) to direct that the tribunal shall be constituted by such appointments (or any one or more of them) as have been made;
- (c) to revoke any appointments already made;
- (d) to make any necessary appointments itself.

(4) An appointment made by the court under this section has effect as if made with the agreement of the parties.

(5) The leave of the court is required for any appeal from a decision of the court under this section.

19 Court to have regard to agreed qualifications

In deciding whether to exercise, and in considering how to exercise, any of its powers under section 16 (procedure for appointment of arbitrators) or section 18 (failure of appointment procedure), the court shall have due regard to any agreement of the parties as to the qualifications required of the arbitrators.

20 Chairman

- (1) Where the parties have agreed that there is to be a chairman, they are free to agree what the functions of the chairman are to be in relation to the making of decisions, orders and awards.
- (2) If or to the extent that there is no such agreement, the following provisions apply.
- (3) Decisions, orders and awards shall be made by all or a majority of the arbitrators (including the chairman).
- (4) The view of the chairman shall prevail in relation to a decision, order or award in respect of which there is neither unanimity nor a majority under subsection (3).

21 Umpire

- (1) Where the parties have agreed that there is to be an umpire, they are free to agree what the functions of the umpire are to be, and in particular –
 - (a) whether he is to attend the proceedings; and
 - (b) when he is to replace the other arbitrators as the tribunal with power to make decisions, orders and awards.
- (2) If or to the extent that there is no such agreement, the following provisions apply.
- (3) The umpire shall attend the proceedings and be supplied with the same documents and other materials as are supplied to the other arbitrators.
- (4) Decisions, orders and awards shall be made by the other arbitrators unless and until they cannot agree on a matter relating to the arbitration.

In that event they shall forthwith give notice in writing to the parties and the umpire, whereupon the umpire shall replace them as the tribunal with power to make decisions, orders and awards as if he were sole arbitrator.

- (5) If the arbitrators cannot agree but fail to give notice of that fact, or if any of them fails to join in the giving of notice, any party to the arbitral proceedings may (upon notice to the other parties and to the tribunal) apply to the court which may order that the umpire shall replace the other arbitrators as the tribunal with power to make decisions, orders and awards as if he were sole arbitrator.
- (6) The leave of the court is required for any appeal from a decision of the court under this section.

22 Decision-making where no chairman or umpire

- (1) Where the parties agree that there shall be two or more arbitrators with no chairman or umpire, the parties are free to agree how the tribunal is to make decisions, orders and awards.
- (2) If there is no such agreement, decisions, orders and awards shall be made by all or a majority of the arbitrators.

23 Revocation of arbitrator's authority

- (1) The parties are free to agree in what circumstances the authority of an arbitrator may be revoked.
- (2) If or to the extent that there is no such agreement the following provisions apply.
- (3) The authority of an arbitrator may not be revoked except –
 - (a) by the parties acting jointly; or
 - (b) by an arbitral or other institution or person vested by the parties with powers in that regard.
- (4) Revocation of the authority of an arbitrator by the parties acting jointly must be agreed in writing unless the parties also agree (whether or not in writing) to terminate the arbitration agreement.

(5) Nothing in this section affects the power of the court –

- (a) to revoke an appointment under section 18 (powers exercisable in case of failure of appointment procedure); or
- (b) to remove an arbitrator on the grounds specified in section 24.

24 Power of court to remove arbitrator

(1) A party to arbitral proceedings may (upon notice to the other parties, to the arbitrator concerned and to any other arbitrator) apply to the court to remove an arbitrator on any of the following grounds –

- (a) that circumstances exist that give rise to justifiable doubts as to his impartiality;
- (b) that he does not possess the qualifications required by the arbitration agreement;
- (c) that he is physically or mentally incapable of conducting the proceedings or there are justifiable doubts as to his capacity to do so;
- (d) that he has refused or failed:
 - (i) properly to conduct the proceedings; or
 - (ii) to use all reasonable despatch in conducting the proceedings or making an award,

and that substantial injustice has been or will be caused to the applicant.

(2) If there is an arbitral or other institution or person vested by the parties with power to remove an arbitrator, the court shall not exercise its power of removal unless satisfied that the applicant has first exhausted any available recourse to that institution or person.

(3) The arbitral tribunal may continue the arbitral proceedings and make an award while an application to the court under this section is pending.

(4) Where the court removes an arbitrator, it may make such order as it thinks fit with respect to his entitlement (if any) to fees or expenses, or the repayment of any fees or expenses already paid.

(5) The arbitrator concerned is entitled to appear and be heard by the court before it makes any order under this section.

(6) The leave of the court is required for any appeal from a decision of the court under this section.

25 Resignation of arbitrator

(1) The parties are free to agree with an arbitrator as to the consequences of his resignation as regards –

- (a) his entitlement (if any) to fees or expenses; and
- (b) any liability thereby incurred by him.

(2) If or to the extent that there is no such agreement the following provisions apply.

(3) An arbitrator who resigns his appointment may (upon notice to the parties) apply to the court –

- (a) to grant him relief from any liability thereby incurred by him; and
- (b) to make such order as it thinks fit with respect to his entitlement (if any) to fees or expenses or the repayment of any fees or expenses already paid.

(4) If the court is satisfied that in all the circumstances it was reasonable for the arbitrator to resign, it may grant such relief as is mentioned in subsection (3)(a) on such terms as it thinks fit.

(5) The leave of the court is required for any appeal from a decision of the court under this section.

26 Death of arbitrator or person appointing him

(1) The authority of an arbitrator is personal and ceases on his death.

(2) Unless otherwise agreed by the parties, the death of the person by whom an arbitrator was appointed does not revoke the arbitrator's authority.

27 Filling of vacancy, etc

(1) Where an arbitrator ceases to hold office, the parties are free to agree –

- (a) whether and if so how the vacancy is to be filled;
- (b) whether and if so to what extent the previous proceedings should stand; and
- (c) what effect (if any) his ceasing to hold office has on any appointment made by him (alone or jointly).

(2) If or to the extent that there is no such agreement, the following provisions apply.

(3) The provisions of sections 16 (procedure for appointment of arbitrators) and 18 (failure of appointment procedure) apply in relation to the filling of the vacancy as in relation to an original appointment.

(4) The tribunal (when reconstituted) shall determine whether and if so to what extent the previous proceedings should stand. This does not affect any right of a party to challenge those proceedings on any ground which had arisen before the arbitrator ceased to hold office.

(5) His ceasing to hold office does not affect any appointment by him (alone or jointly) of another arbitrator, in particular any appointment of a chairman or umpire.

28 Joint and several liability of parties to arbitrators for fees and expenses

(1) The parties are jointly and severally liable to pay to the arbitrators such reasonable fees and expenses (if any) as are appropriate in the circumstances.

(2) Any party may apply to the court (upon notice to the other parties and to the arbitrators) which may order that the amount of the arbitrators' fees and expenses shall be considered and adjusted by such means and upon such terms as it may direct.

(3) If the application is made after any amount has been paid to the arbitrators by way of fees or expenses, the court may order the repayment of such amount (if any) as is shown to be excessive, but shall not do so unless it is shown that it is reasonable in the circumstances to order repayment.

(4) The above provisions have effect subject to any order of the court under sections 24(4) or 25(3)(b) (order as to entitlement to fees or expenses in case of removal or resignation of arbitrator).

(5) Nothing in this section affects any liability of a party to any other party to pay all or any of the costs of the arbitration (see sections 59 to 65) or any contractual right of an arbitrator to payment of his fees and expenses.

(6) In this section references to arbitrators include an arbitrator who has ceased to act and an umpire who has not replaced the other arbitrators.

29 Immunity of arbitrator

(1) An arbitrator is not liable for anything done or omitted in the discharge or purported discharge of his functions as arbitrator unless the act or omission is shown to have been in bad faith.

(2) Subsection (1) applies to an employee or agent of an arbitrator as it applies to the arbitrator himself.

(3) This section does not affect any liability incurred by an arbitrator by reason of his resigning (but see section 25).

Jurisdiction of the arbitral tribunal

30 Competence of tribunal to rule on its own jurisdiction

(1) Unless otherwise agreed by the parties, the arbitral tribunal may rule on its own substantive jurisdiction, that is, as to –

- (a) whether there is a valid arbitration agreement;
- (b) whether the tribunal is properly constituted; and
- (c) what matters have been submitted to arbitration in accordance with the arbitration agreement.

(2) Any such ruling may be challenged by any available arbitral process of appeal or review or in accordance with the provisions of this Part.

31 Objection to substantive jurisdiction of tribunal

(1) An objection that the arbitral tribunal lacks substantive jurisdiction at the outset of the proceedings must be raised by a party not later than the time he takes the first step in the proceedings to contest the merits of any matter in relation to which he challenges the tribunal's jurisdiction. A party is not precluded from raising such an objection by the fact that he has appointed or participated in the appointment of an arbitrator.

(2) Any objection during the course of the arbitral proceedings that the arbitral tribunal is exceeding its substantive jurisdiction must be made as soon as possible after the matter alleged to be beyond its jurisdiction is raised.

(3) The arbitral tribunal may admit an objection later than the time specified in subsection (1) or (2) if it considers the delay justified.

(4) Where an objection is duly taken to the tribunal's substantive jurisdiction and the tribunal has power to rule on its own jurisdiction, it may –

- (a) rule on the matter in an award as to jurisdiction; or
- (b) deal with the objection in its award on the merits. If the parties agree which of these courses the tribunal should take, the tribunal shall proceed accordingly.

(5) The tribunal may in any case, and shall if the parties so agree, stay proceedings whilst an application is made to the court under section 32 (determination of preliminary point of jurisdiction).

32 Determination of preliminary point of jurisdiction

(1) The court may, on the application of a party to arbitral proceedings (upon notice to the other parties), determine any question as to the substantive jurisdiction of the tribunal. A party may lose the right to object (see section 73).

(2) An application under this section shall not be considered unless –

- (a) it is made with the agreement in writing of all the other parties to the proceedings; or
- (b) it is made with the permission of the tribunal and the court is satisfied:
 - (i) that the determination of the question is likely to produce substantial savings in costs;
 - (ii) that the application was made without delay; and
 - (iii) that there is good reason why the matter should be decided by the court.

(3) An application under this section, unless made with the agreement of all the other parties to the proceedings, shall state the grounds on which it is said that the matter should be decided by the court.

(4) Unless otherwise agreed by the parties, the arbitral tribunal may continue the arbitral proceedings and make an award while an application to the court under this section is pending.

(5) Unless the court gives leave, no appeal lies from a decision of the court whether the conditions specified in subsection (2) are met.

(6) The decision of the court on the question of jurisdiction shall be treated as a judgment of the court for the purposes of an appeal. But no appeal lies without the leave of the court which shall not be given unless the court considers that the question involves a point of law which is one of general importance or is one which for some other special reason should be considered by the Court of Appeal.

The arbitral proceedings

33 General duty of the tribunal

(1) The tribunal shall –

- (a) act fairly and impartially as between the parties, giving each party a reasonable opportunity of putting his case and dealing with that of his opponent; and
- (b) adopt procedures suitable to the circumstances of the particular case, avoiding unnecessary delay or expense, so as to provide a fair means for the resolution of the matters falling to be determined.

(2) The tribunal shall comply with that general duty in conducting the arbitral proceedings, in its decisions on matters of procedure and evidence and in the exercise of all other powers conferred on it.

34 Procedural and evidential matters

(1) It shall be for the tribunal to decide all procedural and evidential matters, subject to the right of the parties to agree any matter.

(2) Procedural and evidential matters include –

- (a) when and where any part of the proceedings is to be held;
- (b) the language or languages to be used in the proceedings and whether translations of any relevant documents are to be supplied;
- (c) whether any and if so what form of written statements of claim and defence are to be used, when these should be supplied and the extent to which such statements can be later amended;
- (d) whether any and if so which documents or classes of documents should be disclosed between and produced by the parties and at what stage;
- (e) whether any and if so what questions should be put to and answered by the respective parties and when and in what form this should be done;
- (f) whether to apply strict rules of evidence (or any other rules) as to the admissibility, relevance or weight of any material (oral, written or other) sought to be tendered on any matters of fact or opinion, and the time, manner and form in which such material should be exchanged and presented;
- (g) whether and to what extent the tribunal should itself take the initiative in ascertaining the facts and the law;
- (h) whether and to what extent there should be oral or written evidence or submissions.

(3) The tribunal may fix the time within which any directions given by it are to be complied with, and may if it thinks fit extend the time so fixed (whether or not it has expired).

35 Consolidation of proceedings and concurrent hearings

(1) The parties are free to agree –

- (a) that the arbitral proceedings shall be consolidated with arbitral proceedings; or
- (b) that concurrent hearings shall be held on such terms as may be agreed.

(2) Unless the parties agree to confer such power on the tribunal, the tribunal has no power to order consolidation of proceedings or concurrent hearings.

36 Legal or other representation

Unless otherwise agreed by the parties, a party to arbitral proceedings may be represented in the proceedings by a lawyer or other person chosen by him.

37 Power to appoint experts, legal advisers or assessors

(1) Unless otherwise agreed by the parties –

(a) the tribunal may:

(i) appoint experts or legal advisers to report to it and the parties; or

(ii) appoint assessors to assist it on technical matters,

and may allow any such expert, legal adviser or assessor to attend the proceedings; and

(b) the parties shall be given a reasonable opportunity to comment on any information, opinion or advice offered by any such person.

(2) The fees and expenses of an expert, legal adviser or assessor appointed by the tribunal for which the arbitrators are liable are expenses of the arbitrators for the purposes of this Part.

38 General powers exercisable by the tribunal

(1) The parties are free to agree on the powers exercisable by the arbitral tribunal for the purposes of and in relation to the proceedings.

(2) Unless otherwise agreed by the parties the tribunal has the following powers.

(3) The tribunal may order a claimant to provide security for the costs of the arbitration.

This power shall not be exercised on the ground that the claimant is –

(a) an individual ordinarily resident outside the United Kingdom; or

(b) a corporation or association incorporated or formed under the law of a country outside the United Kingdom, or whose central management and control is exercised outside the United Kingdom.

(4) The tribunal may give directions in relation to any property which is the subject of the proceedings or as to which any question arises in the proceedings, and which is owned by or is in the possession of a party to the proceedings –

(a) for the inspection, photographing, preservation, custody or detention of the property by the tribunal, an expert or a party; or

(b) ordering that samples be taken from, or any observation be made of or experiment conducted upon, the property.

(5) The tribunal may direct that a party or witness shall be examined on oath or affirmation, and may for that purpose administer any necessary oath or take any necessary affirmation.

(6) The tribunal may give directions to a party for the preservation for the purposes of the proceedings of any evidence in his custody or control.

39 Power to make provisional awards

(1) The parties are free to agree that the tribunal shall have power to order on a provisional basis any relief which it would have power to grant in a final award.

(2) This includes, for instance, making –

(a) a provisional order for the payment of money or the disposition of property as between the parties; or

(b) an order to make an interim payment on account of the costs of the arbitration.

(3) Any such order shall be subject to the tribunal's final adjudication; and the tribunal's final award, on the merits or as to costs, shall take account of any such order.

(4) Unless the parties agree to confer such power on the tribunal, the 'tribunal has no such power. This does not affect its powers under section 47 (awards on different issues, etc).

40 General duty of parties

(1) The parties shall do all things necessary for the proper and expeditious conduct of the arbitral proceedings.

(2) This includes –

- (a) complying without delay with any determination of the tribunal as to procedural or evidential matters, or with any order or directions of the tribunal; and
- (b) where appropriate, taking without delay any necessary steps to obtain a decision of the court on a preliminary question of jurisdiction or law (see sections 32 and 45).

41 Powers of tribunal in case of party's default

(1) The parties are free to agree on the powers of the tribunal in case of a party's failure to do something necessary for the proper and expeditious conduct of the arbitration.

(2) Unless otherwise agreed by the parties, the following provisions apply.

(3) If the tribunal is satisfied that there has been inordinate and inexcusable delay on the part of the claimant in pursuing his claim and that the delay –

- (a) gives rise, or is likely to give rise, to a substantial risk that it is not possible to have a fair resolution of the issues in that claim; or
- (b) has caused, or is likely to cause, serious prejudice to the respondent,

the tribunal may make an award dismissing the claim.

(4) If without showing sufficient cause a party –

- (a) fails to attend or be represented at an oral hearing of which due notice was given; or
- (b) where matters are to be dealt with in writing, fails after due notice to submit written evidence or make written submission, the tribunal may continue the proceedings in the absence of that party or as the case may be, without any written evidence or submissions on his behalf, and may make an award on the basis of the evidence before it.

(5) If without showing sufficient cause a party fails to comply with an order or directions of the tribunal, the tribunal may make a peremptory order to the same effect, prescribing such time for compliance with it as the tribunal considers appropriate.

(6) If a claimant fails to comply with a peremptory order of the tribunal to provide security for costs, the tribunal may make an award dismissing his claim.

(7) If a party fails to comply with any other kind of peremptory order then, without prejudice to section 42 (enforcement by court of tribunal peremptory orders), the tribunal may do any of the following –

- (a) direct that the party in default shall not be entitled to rely upon any allegation or material which was the subject matter of the order;
- (b) draw such adverse inferences from the act of non-compliance as the circumstances justify;
- (c) proceed to an award on the basis of such materials as have been properly provided to it;
- (d) make such order as it thinks fit as to the payment of costs of the arbitration incurred in consequence of the non-compliance.

Powers of court in relation to arbitral proceedings .

42 Enforcement of peremptory orders of tribunal

- (1) Unless otherwise agreed by the parties the court may make an order requiring a party to comply with a peremptory order made by the tribunal.
- (2) An application for an order under this section may be made –
 - (a) by the tribunal (upon notice to the parties);
 - (b) by a party to the arbitral proceedings with the permission of the tribunal (and upon notice to the other parties); or
 - (c) where the parties have agreed that the powers of the court under this section shall be available.
- (3) The court shall not act unless it is satisfied that the applicant has exhausted any available arbitral process in respect of failure to comply with the tribunal's order.
- (4) No order shall be made under this section unless the court is satisfied that the person to whom the tribunal's order was directed has failed to comply with it within the time prescribed in the order or, if no time was prescribed, within a reasonable time.
- (5) The leave of the court is required for any appeal from a decision of the court under this section.

43 Securing the attendance of witnesses

- (1) A party to arbitral proceedings may use the same court procedures as are available in relation to legal proceedings to secure the attendance before the tribunal of a witness in order to give oral testimony or to produce documents or other material evidence.
- (2) This may only be done with the permission of the tribunal or the agreement of the other parties.
- (3) The court procedures may only be used if –
 - (a) the witness is in the United Kingdom; and
 - (b) the arbitral proceedings are being conducted in England and Wales or, as the case may be, Northern Ireland.
- (4) A person shall not be compelled by virtue of this section to produce any document or other material evidence which he could not be compelled to produce in legal proceedings.

44 Court powers exercisable in support of arbitral proceedings

- (1) Unless otherwise agreed by the parties, the court has for the purposes of and in relation to arbitral proceedings the same power of making orders about the matters listed below as it has for the purposes of and in relation to legal proceedings.
- (2) Those matters are –
 - (a) the taking of the evidence of witnesses;
 - (b) the preservation of evidence;
 - (c) making orders relating to property which is the subject of the proceedings or as to which any question arises in the proceedings:
 - (i) for the inspection, photographing, preservation, custody or detention of the property; or
 - (ii) ordering that samples be taken from, or any observation be made of or experiment conducted upon, the property; and for that purpose authorising any person to enter any premises in the possession or control of a party to the arbitration;
 - (d) the sale of any goods the subject of the proceedings;
 - (e) the granting of an interim injunction or the appointment of a receiver.

(3) If the case is one of urgency, the court may, on the application of a party or proposed party to the arbitral proceedings, make such orders as it thinks necessary for the purpose of preserving evidence or assets.

(4) If the case is not one of urgency, the court shall act only on the application of a party to the arbitral proceedings (upon notice to the other parties and to the tribunal) made with the permission of the tribunal or the agreement in writing of the other parties.

(5) In any case the court shall act only if or to the extent that the arbitral tribunal, and any arbitral or other institution or person vested by the parties with power in that regard, has no power or is unable for the time being to act effectively.

(6) If the court so orders, an order made by it under this section shall cease to have effect in whole or in part on the order of the tribunal or of any such arbitral or other institution or person having power to act in relation to the subject-matter of the order.

(7) The leave of the court is required for any appeal from a decision of the court under this section.

45 Determination of preliminary point of law

(1) Unless otherwise agreed by the parties, the court may on the application of a party to arbitral proceedings (upon notice to the other parties) determine any question of law arising in the course of the proceedings which the court is satisfied substantially affects the rights of one or more of the parties. An agreement to dispense with reasons for the tribunal's award shall be considered an agreement to exclude the court's jurisdiction under this section.

(2) An application under this section shall not be considered unless –

(a) it is made with the agreement of all the other parties to the proceedings; or

(b) it is made with the permission of the tribunal and the court is satisfied:

(i) that the determination of the question is likely to produce substantial savings in costs; and

(ii) that the application was made without delay.

(3) The application shall identify the question of law to be determined and, unless made with the agreement of all the other parties to the proceedings, shall state the grounds on which it is said that the question should be decided by the court.

(4) Unless otherwise agreed by the parties, the arbitral tribunal may continue the arbitral proceedings and make an award while an application to the court under this section is pending.

(5) Unless the court gives leave, no appeal lies from a decision of the court whether the conditions specified in subsection (2) are met.

(6) The decision of the court on the question of law shall be treated as a judgment of the court for the purposes of an appeal. But no appeal lies without the leave of the court which shall not be given unless the court considers that the question is one of general importance, or is one which for some other special reason should be considered by the Court of Appeal.

The award

46 Rules applicable to substance of dispute

(1) The arbitral tribunal shall decide the dispute –

(a) in accordance with the law chosen by the parties as applicable to the substance of the dispute; or

(b) if the parties so agree, in accordance with such other considerations as are agreed by them or determined by the tribunal.

(2) For this purpose the choice of the laws of a country shall be understood to refer to the substantive laws of that country and not its conflict of laws rules.

(3) If or to the extent that there is no such choice or agreement, the tribunal shall apply the law determined by the conflict of laws rules which it considers applicable.

47 Awards on different issues, etc

(1) Unless otherwise agreed by the parties, the tribunal may make more than one award at different times on different aspects of the matters to be determined.

(2) The tribunal may, in particular, make an award relating –

(a) to an issue affecting the whole claim; or

(b) to a part only of the claims or cross-claims submitted to it for decision.

(3) If the tribunal does so, it shall specify in its award the issue, or the claim or part of a claim, which is the subject matter of the award.

48 Remedies

(1) The parties are free to agree on the powers exercisable by the arbitral tribunal as regards remedies.

(2) Unless otherwise agreed by the parties, the tribunal has the following powers.

(3) The tribunal may make a declaration as to any matter to be determined in the proceedings.

(4) The tribunal may order the payment of a sum of money, in any currency.

(5) The tribunal has the same powers as the court –

(a) to order a party to do or refrain from doing anything;

(b) to order specific performance of a contract (other than a contract relating to land);

(c) to order the rectification, setting aside or cancellation of a deed or other document.

49 Interest

(1) The parties are free to agree on the powers of the tribunal as regards the award of interest.

(2) Unless otherwise agreed by the parties the following provisions apply.

(3) The tribunal may award simple or compound interest from such dates, at such rates and with such rests as it considers meets the justice of the case –

(a) on the whole or part of any amount awarded by the tribunal, in respect of any period up to the date of the award;

(b) on the whole or part of any amount claimed in the arbitration and outstanding at the commencement of the arbitral proceedings but paid before the award was made, in respect of any period up to the date of payment.

(4) The tribunal may award simple or compound interest from the date of the award (or any later date) until payment, at such rates and with such rests as it considers meets the justice of the case, on the outstanding amount of any award (including any award of interest under subsection (3) and any award as to costs).

(5) References in this section to an amount awarded by the tribunal include an amount payable in consequence of a declaratory award by the tribunal.

(6) The above provisions do not affect any other power of the tribunal to award interest.

50 Extension of time for making award

(1) Where the time for making an award is limited by or in pursuance of the arbitration agreement, then, unless otherwise agreed by the parties, the court may in accordance with the following provisions by order extend that time.

(2) An application for an order under this section may be made –

(a) by the tribunal (upon notice to the parties); or

(b) by any party to the proceedings (upon notice to the tribunal and the other parties),

but only after exhausting any available arbitral process for obtaining an extension of time.

(3) The court shall only make an order if satisfied that a substantial injustice would otherwise be done.

(4) The court may extend the time for such period and on such term as it thinks fit, and may do so whether or not the time previously fixed (by or under the agreement or by a previous order) has expired.

(5) The leave of the court is required for any appeal from a decision of the court under this section.

51 Settlement

(1) If during arbitral proceedings the parties settle the dispute, the following provisions apply unless otherwise agreed by the parties.

(2) The tribunal shall terminate the substantive proceedings and, if so requested by the parties and not objected to by the tribunal, shall record the settlement in the form of an agreed award.

(3) An agreed award shall state that it is an award of the tribunal and shall have the same status and effect as any other award on the merits of the case.

(4) The following provisions of this Part relating to awards (sections 52 to 58) apply to an agreed award.

(5) Unless the parties have also settled the matter of the payment of the costs of the arbitration, the provisions of this Part relating to costs (sections 59 to 65) continue to apply.

52 Form of award

(1) The parties are free to agree on the form of an award.

(2) If or to the extent that there is no such agreement, the following provisions apply.

(3) The award shall be in writing signed by all the arbitrators or all those assenting to the award.

(4) The award shall contain the reasons for the award unless it is an agreed award or the parties have agreed to dispense with reasons.

(5) The award shall state the seat of the arbitration and the date when the award is made.

53 Place where award treated as made

Unless otherwise agreed by the parties, where the seat of the arbitration is in England and Wales or Northern Ireland, any award in the proceedings shall be treated as made there, regardless of where it was signed, despatched or delivered to any of the parties.

54 Date of award

(1) Unless otherwise agreed by the parties, the tribunal may decide what is to be taken to be the date on which the award was made.

(2) In the absence of any such decision, the date of the award shall be taken to be the date on which it is signed by the arbitrator or, where more than one arbitrator signs the award, by the last of them.

55 Notification of award

(1) The parties are free to agree on the requirements as to notification of the award to the parties.

(2) If there is no such agreement, the award shall be notified to the parties by service on them of copies of the award, which shall be done without delay after the award is made.

(3) Nothing in this section affects section 56 (power to withhold award in case of non-payment).

56 Power to withhold award in case of non-payment

(1) The tribunal may refuse to deliver an award to the parties except upon full payment of the fees and expenses of the arbitrators.

(2) If the tribunal refuses on that ground to deliver an award, a party to the arbitral proceedings may (upon notice to the other parties and the tribunal) apply to the court, which may order that –

- (a) the tribunal shall deliver the award on the payment into court by the applicant of the fees and expenses demanded, or such lesser amount as the court may specify;
- (b) the amount of the fees and expenses properly payable shall be determined by such means and upon such terms as the court may direct; and
- (c) out of the money paid into court there shall be paid out such fees and expenses as may be found to be properly payable and the balance of the money (if any) shall be paid out to the applicant.

(3) For this purpose the amount of fees and expenses properly payable is the amount the applicant is liable to pay under section 28 or any agreement relating to the payment of the arbitrators.

(4) No application to the court may be made where there is any available arbitral process for appeal or review of the amount of the fees or expenses demanded.

(5) References in this section to arbitrators include an arbitrator who has ceased to act and an umpire who has not replaced the other arbitrators.

(6) The above provisions of this section also apply in relation to any arbitral or other institution or person vested by the parties with powers in relation to the delivery of the tribunal's award. As they so apply, the references to the fees and expenses of the arbitrators shall be construed as including the fees and expenses of that institution or person.

(7) The leave of the court is required for any appeal from a decision of the court under this section.

(8) Nothing in this section shall be construed as excluding an application under section 28 where payment has been made to the arbitrators in order to obtain the award.

57 Correction of award or additional award

(1) The parties are free to agree on the powers of the tribunal to correct an award or make an additional award.

(2) If or to the extent there is no such agreement, the following provisions apply.

(3) The tribunal may on its own initiative or on the application of a party –

- (a) correct an award so as to remove any clerical mistake or error arising from an accidental slip or omission or clarify or remove any ambiguity in the award; or
- (b) make an additional award in respect of any claim (including a claim for interest or costs) which was presented to the tribunal but was not dealt with in the award.

These powers shall not be exercised without first affording the other parties a reasonable opportunity to make representations to the tribunal.

(4) Any application for the exercise of those powers must be made within 28 days of the date of the award or such longer period as the parties may agree.

(5) Any correction of an award shall be made within 28 days of the date the application was received by the tribunal or, where the correction is made by the tribunal on its own initiative, within 28 days of the date of the award or, in either case, such longer period as the parties may agree.

(6) Any additional award shall be made within 56 days of the date of the original award or such longer period as the parties may agree.

(7) Any correction of an award shall form part of the award.

58 Effect of award

(1) Unless otherwise agreed by the parties, an award made by the tribunal pursuant to an arbitration agreement is final and binding both on the parties and on any persons claiming through or under them.

(2) This does not affect the right of a person to challenge the award by any available arbitral process of appeal or review or in accordance with the provisions of this Part.

Costs of the arbitration

59 Costs of the arbitration

(1) References in this Part to the costs of the arbitration are to –

- (a) the arbitrators' fees and expenses;
- (b) the fees and expenses of any arbitral institution concerned; and
- (c) the legal or other costs of the parties.

(2) Any such reference includes the costs of or incidental to any proceedings to determine the amount of the recoverable costs of the arbitration (see section 63).

60 Agreement to pay costs in any event

An agreement which has the effect that a party is to pay the whole or part of the costs of the arbitration in any event is only valid if made after the dispute in question has arisen.

61 Award of costs

(1) The tribunal may make an award allocating the costs of the arbitration as between the parties, subject to any agreement of the parties.

(2) Unless the parties otherwise agree, the tribunal shall award costs on the general principle that costs should follow the event except where it appears to the tribunal that in the circumstances this is not appropriate in relation to the whole or part of the costs.

62 Effect of agreement or award about costs

Unless the parties otherwise agree, any obligation under an effect of agreement between them as to how the costs of the arbitration are to be borne, or under an award allocating the costs of the arbitration, extends only to such costs as are recoverable.

63 The recoverable costs of the arbitration

(1) The parties are free to agree what costs of the arbitration are recoverable.

(2) If or to the extent there is no such agreement, the following provisions apply.

(3) The tribunal may determine by award the recoverable costs of the arbitration on such basis as it thinks fit. If it does so, it shall specify –

- (a) the basis on which it has acted; and
- (b) the items of recoverable costs and the amount referable to each.

(4) If the tribunal does not determine the recoverable costs of the arbitration, any party to the arbitral proceedings may apply to the court (upon notice to the other parties) which may –

- (a) determine the recoverable costs of the arbitration on such basis as it thinks fit; or
- (b) order that they shall be determined by such means and upon such terms as it may specify.

(5) Unless the tribunal or the court determines otherwise –

- (a) the recoverable costs of the arbitration shall be determined on the basis that there shall be allowed a reasonable amount in respect of all costs reasonably incurred; and

(b) any doubt as to whether costs were reasonably incurred or were reasonable in amount shall be resolved in favour of the paying party.

(6) The above provisions have effect subject to section 64 (recoverable fees and expenses of arbitrators).

(7) Nothing in this section affects any right of the arbitrators, any expert, legal adviser or assessor appointed by the tribunal, or any arbitral institution, to payment of their fees and expenses.

64 Recoverable fees and expenses of arbitrators

(1) Unless otherwise agreed by the parties, the recoverable costs of the arbitration shall include in respect of the fees and expenses of the arbitrators only such reasonable fees and expenses as are appropriate in the circumstances.

(2) If there is any question as to what reasonable fees and expenses are appropriate in the circumstances, and the matter is not already before the court on an application under section 63(4), the court may on the application of any party (upon notice to the other parties) –

(a) determine the matter; or

(b) order that it be determined by such means and upon such terms as the court may specify.

(3) Subsection (1) has effect subject to any order of the court under section 24(4) or 25(3)(b) (order as to entitlement to fees or expenses in case of removal or resignation of arbitrator).

(4) Nothing in this section affects any right of the arbitrator to payment of his fees and expenses.

65 Power to limit recoverable costs

(1) Unless otherwise agreed by the parties, the tribunal may direct that the recoverable costs of the arbitration, or of any part of the arbitral proceedings, shall be limited to a specified amount.

(2) Any direction may be made or varied at any stage, but this must be done sufficiently in advance of the incurring of costs to which it relates, or the taking of any steps in the proceedings which may be affected by it, for the limit to be taken into account.

Powers of the court in relation to award

66 Enforcement of the award

(1) An award made by the tribunal pursuant to an arbitration agreement may, by leave of the court, be enforced in the same manner as a judgment or order of the court to the same effect.

(2) Where leave is so given, judgment may be entered in terms of the award.

(3) Leave to enforce an award shall not be given where, or to the extent that, the person against whom it is sought to be enforced shows that the tribunal lacked substantive jurisdiction to make the award. The right to raise such an objection may have been lost (see section 73).

(4) Nothing in this section affects the recognition or enforcement of an award under any other enactment or rule of law, in particular under Part II of the Arbitration Act 1950 (enforcement of awards under Geneva Convention) or the provisions of Part III of this Act relating to the recognition and enforcement of awards under the New York Convention or by an action on the award.

67 Challenging the award: substantive jurisdiction

(1) A party to arbitral proceedings may (upon notice to the other parties and to the tribunal) apply to the court –

(a) challenging any award of the arbitral tribunal as to its substantive jurisdiction; or

(b) for an order declaring an award made by the tribunal on the merits to be of no effect, in whole or in part, because the tribunal did not have substantive jurisdiction.

A party may lose the right to object (see section 73) and the right to apply is subject to the restrictions in section 70(2) and (3).

(2) The arbitral tribunal may continue the arbitral proceedings and make a further award while an application to the court under this section is pending in relation to an award as to jurisdiction.

(3) On an application under this section challenging an award of the arbitral tribunal as to its substantive jurisdiction, the court may by order –

- (a) confirm the award;
- (b) vary the award; or
- (c) set aside the award in whole or in part.

(4) The leave of the court is required for any appeal from a decision of the court under this section.

68 Challenging the award: serious irregularity

(1) A party to arbitral proceedings may (upon notice to the other parties and to the tribunal) apply to the court challenging an award in the proceedings on the ground of serious irregularity affecting the tribunal, the proceedings or the award. A party may lose the right to object (see section 73) and the right to apply is subject to the restrictions in section 70(2) and (3).

(2) Serious irregularity means an irregularity of one or more of the following kinds which the court considers has caused or will cause substantial injustice to the applicant –

- (a) failure by the tribunal to comply with section 33 (general duty of tribunal);
- (b) the tribunal exceeding its powers (otherwise than by exceeding its substantive jurisdiction: see section 67);
- (c) failure by the tribunal to conduct the proceedings in accordance with the procedure agreed by the parties;
- (d) failure by the tribunal to deal with all the issues that were put to it;
- (e) any arbitral or other institution or person vested by the parties with powers in relation to the proceedings or the award exceeding its powers;
- (f) uncertainty or ambiguity as to the effect of the award;
- (g) the award being obtained by fraud or the award or the way in which it was procured being contrary to public policy;
- (h) failure to comply with the requirements as to the form of the award; or
- (i) any irregularity in the conduct of the proceedings or in the award which is admitted by the tribunal or by any arbitral or other institution or person vested by the parties with powers in relation to the proceedings or the award.

(3) If there is shown to be serious irregularity affecting the tribunal, the proceedings or the award, the court may –

- (a) remit the award to the tribunal, in whole or in part, for reconsideration;
- (b) set the award aside in whole or in part; or
- (c) declare the award to be of no effect, in whole or in part.

The court shall not exercise its power to set aside or to declare an award to be of no effect, in whole or in part, unless it is satisfied that it would be inappropriate to remit the matters in question to the tribunal for reconsideration.

(4) The leave of the court is required for any appeal from a decision of the court under this section.

69 Appeal on point of law

(1) Unless otherwise agreed by the parties, a party to arbitral proceedings may (upon notice to the other parties and to the tribunal) appeal to the court on a question of law arising out of an

award made in the proceedings. An agreement to dispense with reasons for the tribunal's award shall be considered an agreement to exclude the court's jurisdiction under this section.

- (2) An appeal shall not be brought under this section except –
- (a) with the agreement of all the other parties to the proceedings; or
 - (b) with the leave of the court.

The right to appeal is also subject to the restrictions in section 70(2).

- (3) Leave to appeal shall be given only if the court is satisfied –
- (a) that the determination of the question will substantially affect the rights of one or more of the parties;
 - (b) that the question is one which the tribunal was asked to determine;
 - (c) that, on the basis of the findings of fact in the award:
 - (i) the decision of the tribunal on the question is obviously wrong; or
 - (ii) the question is one of general public importance and the decision of the tribunal is at least open to serious doubt; and
 - (d) that, despite the agreement of the parties to resolve the matter by arbitration, it is just and proper in all the circumstances for the court to determine the question.
- (4) An application for leave to appeal under this section shall identify the question of law to be determined and state the grounds on which it is alleged that leave to appeal should be granted.

(5) The court shall determine an application for leave to appeal under this section without a hearing unless it appears to the court that a hearing is required.

(6) The leave of the court is required for any appeal from a decision of the court under this section to grant or refuse leave to appeal.

- (7) On an appeal under this section the court may by order –
- (a) confirm the award;
 - (b) vary the award;
 - (c) remit the award to the tribunal, in whole or in part, for reconsideration in the light of the court's determination; or
 - (d) set aside the award in whole or in part.

The court shall not exercise its power to set aside an award, in whole or in part, unless it is satisfied that it would be inappropriate to remit the matters in question to the tribunal for reconsideration.

(8) The decision of the court on an appeal under this section shall be treated as a judgment of the court for the purposes of a further appeal. But no such appeal lies without the leave of the court which shall not be given unless the court considers that the question is one of general importance or is one which for some other special reason should be considered by the Court of Appeal.

70 Challenge or appeal: supplementary provisions

(1) The following provisions apply to an application or appeal under sections 67, 68 or 69.

(2) An application or appeal may not be brought if the applicant or provisions appellant has not first exhausted –

- (a) any available arbitral process of appeal or review; and
- (b) any available recourse under section 57 (correction of award or additional award).

(3) Any application or appeal must be brought within 28 days of the date of the award or, if there has been any arbitral process of appeal or review, of the date when the applicant or appellant was notified of the result of that process.

(4) If on an application or appeal it appears to the court that the award –

- (a) does not contain the tribunal's reasons; or
- (b) does not set out the tribunal's reasons in sufficient detail to enable the court properly to consider the application or appeal,

the court may order the tribunal to state the reasons for its award in sufficient detail for that purpose.

(5) Where the court makes an order under subsection (4), it may make such further order as it thinks fit with respect to any additional costs of the arbitration resulting from its order.

(6) The court may order the applicant or appellant to provide security for the costs of the application or appeal, and may direct that the application or appeal be dismissed if the order is not complied with. The power to order security for costs shall not be exercised on the ground that the applicant or appellant is:

- (a) an individual ordinarily resident outside the United Kingdom; or
- (b) a corporation or association incorporated or formed under the law of a country outside the United Kingdom, or whose central management and control is exercised outside the United Kingdom.

(7) The court may order that any money payable under the award shall be brought into court or otherwise secured pending the determination of the application or appeal, and may direct that the application or appeal be dismissed if the order is not complied with.

(8) The court may grant leave to appeal subject to conditions to the same or similar effect as an order under subsection (6) or (7). This does not affect the general discretion of the court to grant leave subject to conditions.

71 Challenge or appeal: effect of order of court

(1) The following provisions have effect where the court makes an order under sections 67, 68 or 69 with respect to an award.

(2) Where the award is varied, the variation has effect as part of the tribunal's award.

(3) Where the award is remitted to the tribunal, in whole or in part, for reconsideration, the tribunal shall make a fresh award in respect of the matters remitted within three months of the date of the order for remission or such longer or shorter period as the court may direct.

(4) Where the award is set aside or declared to be of no effect, in whole or in part, the court may also order that any provision that an award is a condition precedent to the bringing of legal proceedings in respect of a matter to which the arbitration agreement applies, is of no effect as regards the subject matter of the award or, as the case may be, the relevant part of the award.

Miscellaneous

72 Saving for rights of person who takes no part in proceedings

(1) A person alleged to be a party to arbitral proceedings but who takes no part in the proceedings may question –

- (a) whether there is a valid arbitration agreement;
- (b) whether the tribunal is properly constituted; or
- (c) what matters have been submitted to arbitration in accordance with the arbitration agreement,

by proceedings in the court for a declaration or injunction or other appropriate relief.

(2) He also has the same right as a party to the arbitral proceedings to challenge an award –

- (a) by an application under section 67 on the ground of lack of substantive jurisdiction in relation to him; or

- (b) by an application under section 68 on the ground of serious irregularity (within the meaning of that section) affecting him, and section 70(2) (duty to exhaust arbitral procedures) does not apply in his case.

73 Loss of right to object

(1) If a party to arbitral proceedings takes part, or continues to take part, in the proceedings without making, either forthwith or within such time as is allowed by the arbitration agreement or the tribunal or by any provision of this Part, any objection –

- (a) that the tribunal lacks substantive jurisdiction;
- (b) that the proceedings have been improperly conducted;
- (c) that there has been a failure to comply with the arbitration agreement or with any provision of this Part; or
- (d) that there has been any other irregularity affecting the tribunal or the proceedings,

he may not raise that objection later, before the tribunal or the court, unless he shows that, at the time he took part or continued to take part in the proceedings, he did not know and could not with reasonable diligence have discovered the grounds for the objection.

(2) Where the arbitral tribunal rules that it has substantive jurisdiction and a party to arbitral proceedings who could have questioned that ruling –

- (a) by any available arbitral process of appeal or review; or
- (b) by challenging the award,

does not do so, or does not do so within the time allowed by the arbitration agreement or any provision of this Part, he may not object later to the tribunal's substantive jurisdiction on any ground which was the subject of that ruling.

74 Immunity of arbitral institutions, etc

(1) An arbitral or other institution or person designated or requested by the parties to appoint or nominate an arbitrator is not liable for anything done or omitted in the discharge or purported discharge of that function unless the act or omission is shown to have been in bad faith.

(2) An arbitral or other institution or person by whom an arbitrator is appointed or nominated is not liable, by reason of having appointed or nominated him, for anything done or omitted by the arbitrator (or his employees or agents) in the discharge or purported discharge of his functions as arbitrator.

(3) The above provisions apply to an employee or agent of an arbitral or other institution or person as they apply to the institution or person himself.

75 Charge to secure payment of solicitors' costs

The powers of the court to make declarations and orders under section 73 of the Solicitors Act 1974 or Article 71H of the Solicitors (Northern Ireland) Order 1976 (power to charge property recovered in the proceedings with the payment of solicitors' costs) may be exercised in relation to arbitral proceedings as if those proceedings were proceedings in the court.

Supplementary

76 Service of notices, etc

(1) The parties are free to agree on the manner of service of any notice or other document required or authorised to be given or served in pursuance of the arbitration agreement or for the purposes of the arbitral proceedings.

(2) If or to the extent that there is no such agreement the following provisions apply.

(3) A notice or other document may be served on a person by any effective means.

(4) If a notice or other document is addressed, pre-paid and delivered by post –

- (a) to the addressee's last known principal residence or, if he is or has been carrying on a trade, profession or business, his last known principal business address; or
- (b) where the addressee is a body corporate, to the body's registered or principal office,

it shall be treated as effectively served.

(5) This section does not apply to the service of documents for the purposes of legal proceedings, for which provision is made by rules of court.

(6) References in this Part to a notice or other document include any form of communication in writing and references to giving or serving a notice or other document shall be construed accordingly.

77 Powers of court in relation to service of documents

(1) This section applies where service of a document on a person in the manner agreed by the parties, or in accordance with provisions of section 76 having effect in default of agreement, is not reasonably practicable.

(2) Unless otherwise agreed by the parties, the court may make such order as it thinks fit –

- (a) for service in such manner as the court may direct; or
- (b) dispensing with service of the document.

(3) Any party to the arbitration agreement may apply for an order, but only after exhausting any available arbitral process for resolving the matter.

(4) The leave of the court is required for any appeal from a decision of the court under this section.

78 Reckoning periods of time

(1) The parties are free to agree on the method of reckoning periods of time for the purposes of any provision agreed by them or any provision of this Part having effect in default of such agreement.

(2) If or to the extent there is no such agreement, periods of time shall be reckoned in accordance with the following provisions.

(3) Where the act is required to be done within a specified period after or from a specified date, the period begins immediately after that date.

(4) Where the act is required to be done a specified number of clear days after a specified date, at least that number of days must intervene between the day on which the act is done and that date.

(5) Where the period is a period of seven days or less which would include a Saturday, Sunday or a public holiday in the place where anything which has to be done within the period falls to be done, that day shall be excluded.

In relation to England and Wales or Northern Ireland, a 'public holiday' means Christmas Day, Good Friday or a day which under the Banking and Financial Dealings Act 1971 is a bank holiday.

79 Power of court to extend time limits relating to arbitral proceedings

(1) Unless the parties otherwise agree, the court may by order extend any time limit agreed by them in relation to any matter relating to the arbitral proceedings or specified in any provision of this Part having effect in default of such agreement. This section does not apply to a time limit to which section 12 applies (power of court to extend time for beginning arbitral proceedings, etc).

(2) An application for an order may be made –

- (a) by any party to the arbitral proceedings (upon notice to the other parties and to the tribunal); or
- (b) by the arbitral tribunal (upon notice to the parties).

- (3) The court shall not exercise its power to extend a time limit unless it is satisfied –
- (a) that any available recourse to the tribunal, or to any arbitral or other institution or person vested by the parties with power in that regard, has first been exhausted; and
 - (b) that a substantial injustice would otherwise be done.
- (4) The court's power under this section may be exercised whether or not the time has already expired.
- (5) An order under this section may be made on such terms as the court thinks fit.
- (6) The leave of the court is required for any appeal from a decision of the court under this section.

80 Notice and other requirements in connection with legal proceedings

- (1) References in this Part to an application, appeal or other step in relation to legal proceedings being taken 'upon notice' to the other parties to the arbitral proceedings, or to the tribunal, are to such notice of the originating process as is required by rules of court and do not impose any separate requirement.
- (2) Rules of court shall be made –
- (a) requiring such notice to be given as indicated by any provision of this Part; and
 - (b) as to the manner, form and content of any such notice.
- (3) Subject to any provision made by rules of court, a requirement to give notice to the tribunal of legal proceedings shall be construed –
- (a) if there is more than one arbitrator, as a requirement to give notice to each of them; and
 - (b) if the tribunal is not fully constituted, as a requirement to give notice to any arbitrator who has been appointed.
- (4) References in this Part to making an application or appeal to the court within a specified period are to the issue within that period of the appropriate originating process in accordance with rules of court.
- (5) Where any provision of this Part requires an application or appeal to be made to the court within a specified time, the rules of court relating to the reckoning of periods, the extending or abridging of periods, and the consequences of not taking a step within the period prescribed by the rules, apply in relation to that requirement.
- (6) Provision may be made by rules of court amending the provisions of this Part –
- (a) with respect to the time within which any application or appeal to the court must be made;
 - (b) so as to keep any provision made by this Part in relation to arbitral proceedings in step with the corresponding provision of rules of court applying in relation to proceedings in the court; or
 - (c) so as to keep any provision made by this Part in relation to legal proceedings in step with the corresponding provision of rules of court applying generally in relation to proceedings in the court.
- (7) Nothing in this section affects the generality of the power to make rules of court.

81 Saving for certain matters governed by common law

- (1) Nothing in this Part shall be construed as excluding the operation of any rule of law consistent with the provisions of this Part, in particular, any rule of law as to –
- (a) matters which are not capable of settlement by arbitration;
 - (b) the effect of an oral arbitration agreement; or

(c) the refusal of recognition or enforcement of an arbitral award on grounds of public policy.

(2) Nothing in this Act shall be construed as reviving any jurisdiction of the court to set aside or remit an award on the ground of errors of fact or law on the face of the award.

82 Minor definitions

(1) In this Part –

‘arbitrator’, unless the context otherwise requires, includes an umpire;

‘available arbitral process’, in relation to any matter, includes any process of appeal to or review by an arbitral or other institution or person vested by the parties with powers in relation to that matter;

‘claimant’, unless the context otherwise requires, includes a counterclaimant, and related expressions shall be construed accordingly;

‘dispute’ includes any difference;

‘enactment’ includes an enactment contained in Northern Ireland legislation;

‘legal proceedings’ means civil proceedings in the High Court or a county court;

‘peremptory order’ means an order made under section 41(5) or made in exercise of any corresponding power conferred by the parties;

‘premises’ includes land, buildings, moveable structures, vehicles, vessels, aircraft and hovercraft;

‘question of law’ means –

(a) for a court in England and Wales, a question of the law of England and Wales, and

(b) for a court in Northern Ireland, a question of the law of Northern Ireland;

‘substantive jurisdiction’, in relation to an arbitral tribunal, refers to the matters specified in section 30(1)(a) to (c), and references to the tribunal exceeding its substantive jurisdiction shall be construed accordingly.

(2) References in this Part to a party to an arbitration agreement include any person claiming under or through a party to the agreement.

83 Index of defined expressions: Part I

In this Part the expressions listed explained by the provision indicated –

agreement, agree and agreed	section 5(1)
agreement in writing	section 5(2) to (5)
arbitration agreement	sections 6 and 5(1)
arbitrator	section 82(1)
available arbitral process	section 82(1)
claimant	section 82(1)
commencement (in relation to arbitral proceedings)	section 14
costs of the arbitration	section 59
the court	section 105
dispute	section 82(1)
enactment	section 82(1)
legal proceedings	section 82(1)
Limitation Acts	section 13(4)
notice (or other document),	section 76(6)

party –	
– in relation to an arbitration agreement	section 82(2)
– where section 106(2) or (3) applies	section 106(4)
peremptory order	section 82(1) (and see section 41(5))
premises	section 82(1)
question of law	section 82(1)
recoverable costs	sections 63 and 64
seat of the arbitration	section 3
serve and service (of notice or other document)	section 76(6)
substantive jurisdiction (in relation to an arbitral tribunal)	section 82(1) (and see section 30(1)(a) to (c))
upon notice (to the parties or the tribunal)	section 80
written and in writing	section 5(6)

84 [Omitted].

PART II

OTHER PROVISIONS RELATING TO ARBITRATION

Domestic arbitration agreements

85 Modification of Part I in relation to domestic arbitration agreement

(1) In the case of a domestic arbitration agreement the provisions of Part I are modified in accordance with the following sections.

(2) For this purpose a ‘domestic arbitration agreement’ means an arbitration agreement to which none of the parties is –

- (a) an individual who is a national of, or habitually resident in, a state other than the United Kingdom; or
- (b) a body corporate which is incorporated in, or whose central control and management is exercised in, a state other than the United Kingdom, and under which the seat of the arbitration (if the seat has been designated or determined) is in the United Kingdom.

(3) In subsection (2) ‘arbitration agreement’ and ‘seat of the arbitration’ have the same meaning as in Part I (see sections 3, 5(1) and 6).

86 Staying of legal proceedings

(1) In section 9 (stay of legal proceedings), subsection (4) (stay unless the arbitration agreement is null and void, inoperative, or incapable of being performed) does not apply to a domestic arbitration agreement.

(2) On an application under that section in relation to a domestic arbitration agreement the court shall grant a stay unless satisfied –

- (a) that the arbitration agreement is null and void, inoperative, or incapable of being performed; or
- (b) that there are other sufficient grounds for not requiring the parties to abide by the arbitration agreement.

(3) The court may treat as a sufficient ground under subsection (2)(b) the fact that the applicant is or was at any material time not ready and willing to do all things necessary for the proper

conduct of the arbitration or of any other dispute resolution procedures required to be exhausted before resorting to arbitration.

(4) For the purposes of this section the question whether an arbitration agreement is a domestic arbitration agreement shall be determined by reference to the facts at the time the legal proceedings are commenced.

87 Effectiveness of agreement to exclude court's jurisdiction

(1) In the case of a domestic arbitration agreement any agreement to exclude the jurisdiction of the court under –

- (a) section 45 (determination of preliminary point of law); or
- (b) section 69 (challenging the award: appeal on point of law), is not effective unless entered into after the commencement of the arbitral proceedings in which the question arises or the award is made.

(2) For this purpose the commencement of the arbitral proceedings has the same meaning as in Part I (see section 14).

(3) For the purposes of this section the question whether an arbitration agreement is a domestic arbitration agreement shall be determined by reference to the facts at the time the agreement is entered into.

88–92 [Omitted].

Appointment of judges as arbitrators

93 Appointment of judges as arbitrators

(1) A judge of the Commercial Court or an official referee may, if in all the circumstances he thinks fit, accept appointment as a sole arbitrator or as umpire by or by virtue of an arbitration agreement.

(2) A judge of the Commercial Court shall not do so unless the Lord Chief Justice has informed him that, having regard to the state of business in the High Court and the Crown Court, he can be made available.

(3) An official referee shall not do so unless the Lord Chief Justice has informed him that, having regard to the state of official referees' business, he can be made available.

(4) The fees payable for the services of a judge of the Commercial Court or official referee as arbitrator or umpire shall be taken in the High Court.

(5) In this section – 'arbitration agreement' has the same meaning as in Part I; and 'official referee' means a person nominated under section 68(1)(a) of the Senior Courts Act 1981 to deal with official referees' business.

(6) The provisions of Part I of this Act apply to arbitration before a person appointed under this section with the modifications specified in Schedule 2.

Statutory arbitrations

94 Application of Part I to statutory arbitrations

(1) The provisions of Part I apply to every arbitration under an enactment (a 'statutory arbitration'), whether the enactment was passed or made before or after the commencement of this Act, subject to the adaptations and exclusions specified in sections 95 to 98.

(2) The provisions of Part I do not apply to a statutory arbitration if or to the extent that their application –

- (a) is inconsistent with the provisions of the enactment concerned, with any rules or procedure authorised or recognised by it; or
- (b) is excluded by any other enactment.

- (3) In this section and the following provisions of this Part ‘enactment’ –
- (a) in England and Wales, includes an enactment contained in subordinate legislation within the meaning of the Interpretation Act 1978;
 - (b) in Northern Ireland, means a statutory provision within the meaning of section 1(f) of the Interpretation Act (Northern Ireland) 1954.

95 General adaptation of provisions in relation to statutory arbitrations

- (1) The provisions of Part I apply to a statutory arbitration –
- (a) as if the arbitration were pursuant to an arbitration agreement and as if the enactment were that agreement; and
 - (b) as if the persons by and against whom a claim subject to arbitration in pursuance of the enactment may be or has been made were parties to that agreement.
- (2) Every statutory arbitration shall be taken to have its seat in England and Wales or, as the case may be, in Northern Ireland.

96 Specific adaptations of provisions in relation to statutory arbitrations

- (1) The following provisions of Part I apply to a statutory arbitration with the following adaptations.
- (2) In section 30(1) (competence of tribunal to rule on its own relation to jurisdiction), the reference in paragraph (a) to whether there is a valid statutory arbitration agreement shall be construed as a reference to whether the arbitrations enactment applies to the dispute or difference in question.
- (3) Section 35 (consolidation of proceedings and concurrent hearings) applies only so as to authorise the consolidation of proceedings, or concurrent hearings in proceedings, under the same enactment.
- (4) Section 46 (rules applicable to substance of dispute) applies with the omission of subsection (1)(b) (determination in accordance with considerations agreed by parties).

97 Provisions excluded from applying to statutory arbitrations

The following provisions of Part I do not apply in relation to a statutory arbitration –

- (a) section 8 (whether agreement discharged by death of a party);
- (b) section 12 (power of court to extend agreed time limits);
- (c) sections 9(5), 10(2) and 71(4) (restrictions on effect of provision that award condition precedent to right to bring legal proceedings).

98 [Omitted].

PART III

RECOGNITION AND ENFORCEMENT OF CERTAIN FOREIGN AWARDS

Enforcement of Geneva Convention awards

99 Continuation of Part II of the Arbitration Act 1950

Part II of the Arbitration Act 1950 (enforcement of certain foreign awards) continues to apply in relation to foreign awards within the meaning of that Part which are not also New York Convention awards.

*Recognition and enforcement of New York Convention awards***100 New York Convention awards**

(1) In this Part a 'New York Convention award' means an award made, in pursuance of an arbitration agreement, in the territory of a state (other than the United Kingdom) which is a party to the New York Convention.

(2) For the purposes of subsection (1) and of the provisions of this Part relating to such awards –

(a) 'arbitration agreement' means an arbitration agreement in writing; and

(b) an award shall be treated as made at the seat of the arbitration, regardless of where it was signed, despatched or delivered to any of the parties. In this subsection 'agreement in writing' and 'seat of the arbitration' have the same meaning as in Part I.

(3) If Her Majesty by Order in Council declares that a state specified in the Order is a party to the New York Convention, or is a party in respect of any territory so specified, the Order shall, while in force, be conclusive evidence of that fact.

(4) In this section 'the New York Convention' means the Convention on the Recognition and Enforcement of Foreign Arbitral Awards adopted by the United Nations Conference on International Commercial Arbitration on 10th June 1958.

101 Recognition and enforcement of awards

(1) A New York Convention award shall be recognised as binding on the persons as between whom it was made, and may accordingly be relied on by those persons by way of defence, set-off or otherwise in any legal proceedings in England and Wales or Northern Ireland.

(2) A New York Convention award may, by leave of the court, be enforced in the same manner as a judgment or order of the court to the same effect. As to the meaning of 'the court' see section 105.

(3) Where leave is so given, judgment may be entered in terms of the award.

102 Evidence to be produced by party seeking recognition or enforcement

(1) A party seeking the recognition or enforcement of a New York Convention award must produce –

(a) the duly authenticated original award or a duly certified copy of it; and

(b) the original arbitration agreement or a duly certified copy of it.

(2) If the award or agreement is in a foreign language, the party must also produce a translation of it certified by an official or sworn translator or by a diplomatic or consular agent.

103 Refusal of recognition or enforcement

(1) Recognition or enforcement of a New York Convention award shall not be refused except in the following cases.

(2) Recognition or enforcement of the award may be refused if the person against whom it is invoked proves –

(a) that a party to the arbitration agreement was (under the law applicable to him) under some incapacity;

(b) that the arbitration agreement was not valid under the law to which the parties subjected it or, failing any indication thereon, under the law of the country where the award was made;

(c) that he was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case;

(d) that the award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration or contains decisions on matters beyond the scope of the submission to arbitration (but see subsection (4));

- (e) that the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties or, failing such agreement, with the law of the country in which the arbitration took place;
- (f) that the award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, it was made.

(3) Recognition or enforcement of the award may also be refused if the award is in respect of a matter which is not capable of settlement by arbitration, or if it would be contrary to public policy to recognise or enforce the award.

(4) An award which contains decisions on matters not submitted to arbitration may be recognised or enforced to the extent that it contains decisions on matters submitted to arbitration which can be separated from those on matters not so submitted.

(5) Where an application for the setting aside or suspension of the award has been made to such a competent authority as is mentioned in subsection (2)(f), the court before which the award is sought to be relied upon may, if it considers it proper, adjourn the decision on the recognition or enforcement of the award. It may also on the application of the party claiming recognition or enforcement of the award order the other party to give suitable security.

104 Saving for other bases of recognition or enforcement

Nothing in the preceding provisions of this Part affects any right to rely upon or enforce a New York Convention award at common law or under section 66.

PART IV

GENERAL PROVISIONS

105 [Omitted].

106 Crown application

(1) Part I of this Act applies to any arbitration agreement to which Her Majesty, either in right of the Crown or of the Duchy of Lancaster or otherwise, or the Duke of Cornwall, is a party.

(2) Where Her Majesty is party to an arbitration agreement otherwise than in right of the Crown, Her Majesty shall be represented for the purposes of any arbitral proceedings –

- (a) where the agreement was entered into by Her Majesty in right of the Duchy of Lancaster, by the Chancellor of the Duchy or such person as he may appoint; and
- (b) in any other case, by such person as Her Majesty may appoint in writing under the Royal Sign Manual.

(3) Where the Duke of Cornwall is party to an arbitration agreement, he shall be represented for the purposes of any arbitral proceedings by such person as he may appoint.

(4) References in Part I to a party or the parties to the arbitration agreement or to arbitral proceedings shall be construed, where subsection (2) or (3) applies, as references to the person representing Her Majesty or the Duke of Cornwall.

107–110 [Omitted].

SCHEDULE 1

MANDATORY PROVISIONS OF PART I

sections 9 to 11 (stay of legal proceedings);

section 12 (power of court to extend agreed time limits);

section 13 (application of Limitation Acts);
 section 24 (power of court to remove arbitrator);
 section 26(1) (effect of death of arbitrator);
 section 28 (liability of parties for fees and expenses of arbitrators);
 section 29 (immunity of arbitrator);
 section 31 (objection to substantive jurisdiction of tribunal);
 section 32 (determination of preliminary point of jurisdiction);
 section 33 (general duty of tribunal);
 section 37(2) (items to be treated as expenses of arbitrators);
 section 40 (general duty of parties);
 section 43 (securing the attendance of witnesses);
 section 56 (power to withhold award in case of non-payment);
 section 60 (effectiveness of agreement for payment of costs in any event);
 section 66 (enforcement of award);
 sections 67 and 68 (challenging the award: substantive jurisdiction and serious irregularity),
 and sections 70 and 71 (supplementary provisions; effect of order of court) so far as relating to
 those sections;
 section 72 (saving for rights of person who takes no part in proceedings);
 section 73 (loss of right to object);
 section 74 (immunity of arbitral institutions, etc);
 section 75 (charge to secure payment of solicitors' costs).
 section 93(6).

SCHEDULE 2

MODIFICATIONS OF PART I IN RELATION TO JUDGE- ARBITRATORS

Introductory

1. In this Schedule 'judge-arbitrator' means a judge of the Commercial Court or official referee appointed as arbitrator or umpire under section 93.

General

2. (1) Subject to the following provisions of this Schedule, references in Part I to the court shall be construed in relation to a judge-arbitrator, or in relation to the appointment of a judge-arbitrator, as references to the Court of Appeal.

(2) The references in sections 32(6), 45(6) and 69(8) to the Court of Appeal shall in such a case be construed as references to the Supreme Court.

Arbitrator's fees

3. (1) The power of the court in section 28(2) to order consideration and adjustment of the liability of a party for the fees of an arbitrator may be exercised by a judge-arbitrator.

(2) Any such exercise of the power is subject to the powers of the Court of Appeal under sections 24(4) and 25(3)(b) (directions as to entitlement to fees or expenses in case of removal or resignation).

Exercise of court powers in support of arbitration

4. (1) Where the arbitral tribunal consists of or includes a judge-arbitrator the powers of the court under sections 42 to 44 (enforcement of peremptory orders, summoning witnesses, and other court powers) are exercisable by the High Court and also by the judge-arbitrator himself.

(2) Anything done by a judge-arbitrator in the exercise of those powers shall be regarded as done by him in his capacity as judge of the High Court and have effect as if done by that court. Nothing in this sub-paragraph prejudices any power vested in him as arbitrator or umpire.

Extension of time for making award

5. (1) The power conferred by section 50 (extension of time for making award) is exercisable by the judge-arbitrator himself.

(2) Any appeal from a decision of a judge-arbitrator under that section lies to the Court of Appeal with the leave of that court.

Withholding award in case of non-payment

6. (1) The provisions of paragraph 7 apply in place of the provisions of section 56 (power to withhold award in the case of non-payment) in relation to the withholding of an award for non-payment of the fees and expenses of a judge-arbitrator.

(2) This does not affect the application of section 56 in relation to the delivery of such an award by an arbitral or other institution or person vested by the parties with powers in relation to the delivery of the award.

7. (1) A judge-arbitrator may refuse to deliver an award except upon payment of the fees and expenses mentioned in section 56(1).

(2) The judge-arbitrator may, on an application by a party to the arbitral proceedings, order that if he pays into the High Court the fees and expenses demanded, or such lesser amount as the judge-arbitrator may specify –

- (a) the award shall be delivered;
- (b) the amount of the fees and expenses, properly payable shall be determined by such means and upon such terms as he may direct; and
- (c) out of the money paid into court there shall be paid out such fees and expenses as may be found to be properly payable and the balance of the money (if any) shall be paid out to the applicant.

(3) For this purpose the amount of fees and expenses properly payable is the amount the applicant is liable to pay under section 28 or any agreement relating to the payment of the arbitrator.

(4) No application to the judge-arbitrator under this paragraph may be made where there is any available arbitral process for appeal or review of the amount of the fees or expenses demanded.

(5) Any appeal from a decision of a judge-arbitrator under this paragraph lies to the Court of Appeal with the leave of that court.

(6) Where a party to arbitral proceedings appeals under sub-paragraph (5), an arbitrator is entitled to appear and be heard.

Correction of award or additional award

8. Subsections (4) to (6) of section 57 (correction of award or additional award: time limit for application or exercise of power) do not apply to a judge-arbitrator.

Costs

9. Where the arbitral tribunal consists of or includes a judge-arbitrator the powers of the court under section 63(4) (determination of recoverable costs) shall be exercised by the High Court.

10. (1) The power of the court under section 64 to determine an arbitrator's reasonable fees and expenses may be exercised by a judge-arbitrator.

(2) Any such exercise of the power is subject to the powers of the Court of Appeal under sections 24(4) and 25(3)(b) (directions as to entitlement to fees or expenses in case of removal or resignation).

Enforcement of award

11. The leave of the court required by section 66 (enforcement of award) may in the case of an award of a judge-arbitrator be given by the judge-arbitrator himself.

Solicitors' costs

12. The powers of the court to make declarations and orders under the provisions applied by section 75 (power to charge property recovered in arbitral proceedings with the payment of solicitors' costs) may be exercised by the judge-arbitrator.

Powers of court in relation to service of documents

13. (1) The power of the court under section 77(2) (powers of court in relation to service of documents) is exercisable by the judge-arbitrator.

(2) Any appeal from a decision of a judge-arbitrator under that section lies to the Court of Appeal with the leave of that court.

Powers of court to extend time limits relating to arbitral proceedings

14. (1) The power conferred by section 79 (power of court to extend time limits relating to arbitral proceedings) is exercisable by the judge-arbitrator himself.

2) Any appeal from a decision of a judge-arbitrator under that section lies to the Court of Appeal with the leave of that court.

CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

CHAPTER 31

1 Right of third party to enforce contractual term

(1) Subject to the provisions of this Act, a person who is not a party to a contract (a 'third party') may in his own right enforce a term of the contract if –

- (a) the contract expressly provides that he may; or
- (b) subject to subsection (2), the term purports to confer a benefit on him.

(2) Subsection (1)(b) does not apply if on a proper construction of the contract it appears that the parties did not intend the term to be enforceable by the third party.

(3) The third party must be expressly identified in the contract by name, as a member of a class or as answering a particular description but need not be in existence when the contract is entered into.

(4) This section does not confer a right on a third party to enforce a term of a contract otherwise than subject to and in accordance with any other relevant terms of the contract.

(5) For the purpose of exercising his right to enforce a term of the contract, there shall be available to the third party any remedy that would have been available to him in an action for breach of contract if he had been a party to the contract (and the rules relating to damages, injunctions, specific performance and other relief shall apply accordingly).

(6) Where a term of a contract excludes or limits liability in relation to any matter references in this Act to the third party enforcing the term shall be construed as references to his availing himself of the exclusion or limitation.

(7) In this Act, in relation to a term of a contract which is enforceable by a third party –

- 'the promisor' means the party to the contract against whom the term is enforceable by the third party; and

'the promisee' means the party to the contract by whom the term is enforceable against the promisor.

2 Variation and cancellation of contract

(1) Subject to the provisions of this section, where a third party has a right under section 1 to enforce a term of the contract, the parties to the contract may not without his consent cancel the contract, or vary it in such a way as to extinguish, or alter his entitlement under, that right, if –

- (a) the third party has communicated his assent to the term to the promisor;
- (b) the promisor is aware that the third party has relied on the term; or
- (c) the promisor can reasonably be expected to have foreseen that the third party would rely on the term and the third party has in fact relied on it.

(2) The assent referred to in subsection (1)(a) –

- (a) may be by words or conduct; and
- (b) if sent to the promisor by post or other means, shall not be regarded as communicated to the promisor until received by him.

(3) Subsection (1) is subject to any express term of the contract under which –

- (a) the contract may be cancelled or varied without the consent of the third party; or
- (b) the consent of the third party is required in circumstances specified in the contract instead of those set out in subsection (1)(a) to (c).

(4) Where the consent of a third party is required under subsection (1) or (3), the court may, on the application of the parties to the contract, dispense with his consent if satisfied –

- (a) that his consent cannot be obtained because his whereabouts cannot reasonably be ascertained; or
- (b) that he is mentally incapable of giving his consent.

(5) The court may, on the application of the parties to a contract, dispense with any consent that may be required under subsection (1)(c) if satisfied that it cannot reasonably be ascertained whether or not the third party has in fact relied on the term.

(6) If the court dispenses with a third party's consent, it may impose such conditions as it thinks fit, including a condition requiring the payment of compensation to the third party.

(7) The jurisdiction conferred by subsections (4) to (6) is exercisable by both the High Court and a county court.

3 Defences, etc, available to promisor

(1) Subsections (2) to (5) apply where, in reliance on section 1, proceedings for the enforcement of a term of a contract are brought by a third party.

(2) The promisor shall have available to him by way of defence or set-off any matter that –

- (a) arises from or in connection with the contract and is relevant to the term; and
- (b) would have been available to him by way of defence or set-off if the proceedings had been brought by the promisee.

(3) The promisor shall also have available to him by way of defence or set-off any matter if –

- (a) an express term of the contract provides for it to be available to him in proceedings brought by the third party; and
- (b) it would have been available to him by way of defence or set-off if the proceedings had been brought by the promisee.

(4) The promisor shall also have available to him –

- (a) by way of defence or set-off any matter; and

(b) by way of counterclaim any matter not arising from the contract, that would have been available to him by way of defence or set-off or, as the case may be, by way of counterclaim against the third party if the third party had been a party to the contract.

(5) Subsections (2) and (4) are subject to any express term of the contract as to the matters that are not to be available to the promisor by way of defence, set-off or counterclaim.

(6) Where in any proceedings brought against him a third party seeks in reliance on section 1 to enforce a term of a contract (including, in particular, a term purporting to exclude or limit liability), he may not do so if he could not have done so (whether by reason of any particular circumstances relating to him or otherwise) had he been a party to the contract.

4 Enforcement of contract by promisee

Section 1 does not affect any right of the promisee to enforce any term of the contract.

5 Protection of promisor from double liability

Where under section 1 a term of a contract is enforceable by a third party, and the promisee has recovered from the promisor a sum in respect of –

(a) the third party's loss in respect of the term; or

(b) the expense to the promisee of making good to the third party the default of the promisor,

then, in any proceedings brought in reliance on that section by the third party, the court shall reduce any award to the third party to such extent as it thinks appropriate to take account of the sum recovered by the promisee.

6 Exceptions

(1) Section 1 confers no rights on a third party in the case of a contract on a bill of exchange, promissory note or other negotiable instrument.

(2) to (4) [Omitted].

(5) Section 1 confers no rights on a third party in the case of –

(a) a contract for the carriage of goods by sea; or

(b) a contract for the carriage of goods by rail or road, or for the carriage of cargo by air, which is subject to the rules of the appropriate international transport convention, except that a third party may in reliance on that section avail himself of an exclusion or limitation of liability in such a contract.

(6) In subsection (5) 'contract for the carriage of goods by sea' means a contract of carriage –

(a) contained in or evidenced by a bill of lading, sea waybill or a corresponding electronic transaction; or

(b) under or for the purposes of which there is given an undertaking which is contained in a ship's delivery order or a corresponding electronic transaction.

(7) For the purposes of subsection (6) –

(a) 'bill of lading', 'sea waybill' and 'ship's delivery order' have the same meaning as in the Carriage of Goods by Sea Act 1992; and

(b) a corresponding electronic transaction is a transaction within section 1(5) of that Act which corresponds to the issue, indorsement, delivery or transfer of a bill of lading, sea waybill or ship's delivery order.

(8) In subsection (5) 'the appropriate international transport convention' means –

(a) in relation to a contract for the carriage of goods by rail, the Convention which has the force of law in the United Kingdom under regulation 3 of the Railways (Convention on International Carriage by Rail) Regulations 2005;

(b) in relation to a contract for the carriage of goods by road, the Convention which has

the force of law in the United Kingdom under section 1 of the Carriage of Goods by Road Act 1965; and

- (c) in relation to a contract for the carriage of cargo by air:
 - (i) the Convention which has the force of law in the United Kingdom under section 1 of the Carriage by Air Act 1961; or
 - (ii) the Convention which has the force of law under section 1 of the Carriage by Air (Supplementary Provisions) Act 1962; or
 - (iii) either of the amended Conventions set out in Part B of Schedule 2 or 3 to the Carriage by Air Acts (Application of Provisions) Order 1967.

7 Supplementary provisions relating to third party

(1) Section 1 does not affect any right or remedy of a third party that exists or is available apart from this Act.

(2) Section 2(2) of the Unfair Contract Terms Act 1977 (restriction on exclusion etc. of liability for negligence) shall not apply where the negligence consists of the breach of an obligation arising from a term of a contract and the person seeking to enforce it is a third party acting in reliance on section 1.

(3) In sections 5 and 8 of the Limitation Act 1980 the references to an action founded on a simple contract and an action upon a specialty shall respectively include references to an action brought in reliance on section 1 relating to a simple contract and an action brought in reliance on that section relating to a specialty.

(4) A third party shall not, by virtue of section 1(5) or 3(4) or (6), be treated as a party to the contract for the purposes of any other Act (or any instrument made under any other Act).

8 Arbitration provisions

(1) Where –

- (a) a right under section 1 to enforce a term ('the substantive term') is subject to a term providing for the submission of disputes to arbitration ('the arbitration agreement'), and

- (b) the arbitration agreement is an agreement in writing for the purposes of Part I of the Arbitration Act 1996,

the third party shall be treated for the purposes of that Act as a party to the arbitration agreement as regards disputes between himself and the promisor relating to the enforcement of the substantive term by the third party.

(2) Where –

- (a) a third party has a right under section 1 to enforce a term providing for one or more descriptions of dispute between the third party and the promisor to be submitted to arbitration ('the arbitration agreement'),

- (b) the arbitration agreement is an agreement in writing for the purposes of Part I of the Arbitration Act 1996, and

- (c) the third party does not fall to be treated under subsection (1) as a party to the arbitration agreement,

the third party shall, if he exercises the right, be treated for the purposes of that Act as a party to the arbitration agreement in relation to the matter with respect to which the right is exercised, and be treated as having been so immediately before the exercise of the right.

9 and 10 [Omitted].

ELECTRONIC COMMUNICATIONS ACT 2000

CHAPTER 7

7 Electronic signatures and related certificates

(1) In any legal proceedings –

- (a) an electronic signature incorporated into or logically associated with a particular electronic communication or particular electronic data, and
 - (b) the certification by any person of such a signature,
- shall each be admissible in evidence in relation to any question as to the authenticity of the communication or data or as to the integrity of the communication or data.

(2) For the purposes of this section an electronic signature is so much of anything in electronic form as –

- (a) is incorporated into or otherwise logically associated with any electronic communication or electronic data; and
- (b) purports to be so incorporated or associated for the purpose of being used in establishing the authenticity of the communication or data, the integrity of the communication or data, or both.

(3) For the purposes of this section an electronic signature incorporated into or associated with a particular electronic communication or particular electronic data is certified by any person if that person (whether before or after the making of the communication) has made a statement confirming that –

- (a) the signature,
- (b) a means of producing, communicating or verifying the signature, or
- (c) a procedure applied to the signature,

is (either alone or in combination with other factors) a valid means of establishing the authenticity of the communication or data, the integrity of the communication or data, or both.

SECTION II
STATUTORY INSTRUMENTS

THE CIVIL PROCEDURE RULES 1998

CIVIL PROCEDURE RULES AND PRACTICE

SI 1998 NO 3132

PART 6

SERVICE OF DOCUMENTS

I GENERAL RULES ABOUT SERVICE

6.1 The rules in this Part apply to the service of documents, except where –

- (a) any other enactment, a rule in another Part, or a practice direction makes a different provision; or
- (b) the court orders otherwise.

Methods of service – general

6.2 (1) A document may be served by any of the following methods –

- (a) personal service, in accordance with rule 6.4;
- (b) first class post (or an alternative service which provides for delivery on the next working day);
- (c) leaving the document at a place specified in rule 6.5;
- (d) through a document exchange in accordance with the relevant practice direction; or
- (e) by fax or other means of electronic communication in accordance with the relevant practice direction.

(Rule 6.8 provides for the court to permit service by an alternative method.)

(2) A company may be served by any method permitted under this Part as an alternative to the methods of service set out in –

- (a) section 725 of the Companies Act 1985 (service by leaving a document at or posting it to an authorised place);
- (b) section 695 of that Act (service on overseas companies); and
- (c) section 694A of that Act (service of documents on companies incorporated outside the UK and Gibraltar and having a branch in Great Britain).

Who is to serve

6.3 (1) The court will serve a document which it has issued or prepared except where –

- (a) a rule provides that a party must serve the document in question;
- (b) the party on whose behalf the document is to be served notifies the court that he wishes to serve it himself;
- (c) a practice direction provides otherwise;
- (d) the court orders otherwise; or
- (e) the court has failed to serve and has sent a notice of non-service to the party on whose behalf the document is to be served in accordance with rule 6.11.

(2) Where the court is to serve a document, it is for the court to decide which of the methods of service specified in rule 6.2 is to be used.

(3) Where a party prepares a document which is to be served by the court, that party must file a copy for the court, and for each party to be served.

Personal service

6.4 (1) A document to be served may be served personally, except as provided in paragraphs (2) and (2A).

(2) Where a solicitor –

(a) is authorised to accept service on behalf of a party; and

(b) has notified the party serving the document in writing that he is so authorised, a document must be served on the solicitor, unless personal service is required by an enactment, rule, practice direction or court order.

(2A) In civil proceedings by or against the Crown, as defined in rule 66.1(2), documents required to be served on the Crown may not be served personally.

(3) A document is served personally on an individual by leaving it with that individual.

(4) A document is served personally on a company or other corporation by leaving it with a person holding a senior position within the company or corporation.

(The service practice direction sets out the meaning of ‘senior position’.)

(5) A document is served personally on a partnership where partners are being sued in the name of their firm by leaving it with –

(a) a partner; or

(b) a person who, at the time of service, has the control or management of the partnership business at its principal place of business.

Address for service

6.5 (1) Except as provided by Section III of this Part (service out of the jurisdiction) a document must be served within the jurisdiction.

(‘Jurisdiction’ is defined in rule 2.3.)

(2) A party must give an address for service within the jurisdiction. Such address must include a full postcode, unless the court orders otherwise.

(3) Where a party –

(a) does not give the business address of his solicitor as his address for service; and

(b) resides or carries on business within the jurisdiction,

he must give his residence or place of business as his address for service.

(4) Any document to be served –

(a) by first class post (or an alternative service which provides for delivery on the next working day);

(b) by leaving it at the place of service;

(c) through a document exchange; or

(d) by fax or by other means of electronic communication,

must be sent or transmitted to, or left at, the address for service given by the party to be served.

(5) Where –

(a) a solicitor is acting for the party to be served; and

(b) the document to be served is not the claim form;

the party’s address for service is the business address of his solicitor.

(Rule 6.13 specifies when the business address of a defendant’s solicitor may be the defendant’s address for service in relation to the claim form.)

(6) Where –

(a) no solicitor is acting for the party to be served; and

(b) the party has not given an address for service,

the document must be sent or transmitted to, or left at, the place shown in the following table.

(Rule 6.2(2) sets out the statutory methods of service on a company.)

Nature of party to be served

Individual

Proprietor of a business

Individual who is suing or being sued in the name of a firm

Corporation incorporated in England and Wales other than a company

Company registered in England and Wales

Any other company or corporation

Place of service

- Usual or last known residence.
- Usual or last known residence; or
- Place of business or last known place of business.
- Usual or last known residence; or
- Principal or last known place of business of the firm.
- Principal office of the corporation; or
- Any place within the jurisdiction where the corporation carries on its activities and which has a real connection with the claim.
- Principal office of the company; or
- Any place of business of the company within the jurisdiction which has a real connection with the claim.
- Any place within the jurisdiction where the corporation carries on its activities; or
- Any place of business of the company within the jurisdiction.

(7) This rule does not apply where an order made by the court under rule 6.8 (service by an alternative method) specifies where the document in question may be served.

(Rule 42.1 provides that if the business address of his solicitor is given that solicitor will be treated as acting for that party.)

(8) In civil proceedings by or against the Crown, as defined in rule 66.1(2) –

(a) service on the Attorney General must be effected on the Treasury Solicitor;

(b) service on a government department must be effected on the solicitor acting for that department as required by section 18 of the Crown Proceedings Act 1947.

6.6 to 6.14 [omitted].

Service of claim form by contractually agreed method

6.15 (1) Where –

(a) a contract contains a term providing that, in the event of a claim being issued in relation to the contract, the claim form may be served by a method specified in the contract; and

(b) a claim form containing only a claim in respect of that contract is issued, the claim form shall, subject to paragraph (2), be deemed to be served on the defendant if it is served by a method specified in the contract.

(2) Where the claim form is served out of the jurisdiction in accordance with the contract, it shall not be deemed to be served on the defendant unless –

(a) permission to serve it out of the jurisdiction has been granted under rule 6.20; or

(b) it may be served without permission under rule 6.19.

Service of claim form on agent of principal who is overseas

6.16 (1) Where –

(a) the defendant is overseas; and

(b) the conditions specified in paragraph (2) are satisfied,

the court may, on an application only, permit a claim form relating to a contract to be served on a defendant's agent.

(2) The court may not make an order under this rule unless it is satisfied that –

- (a) the contract to which the claim relates was entered into within the jurisdiction with or through the defendant's agent; and
- (b) at the time of the application either the agent's authority has not been terminated or he is still in business relations with his principal.

(3)–(6) [omitted].

III SPECIAL PROVISIONS ABOUT SERVICE OUT OF THE JURISDICTION

Scope of this section

6.17 This section contains rules about –

- (a) service out of the jurisdiction;
- (b) how to obtain the permission of the court to serve out of the jurisdiction; and
- (c) the procedure for serving out of the jurisdiction.

(Rule 2.3 defines 'jurisdiction'.)

Definitions

6.18 For the purposes of this Part –

- (a) 'the 1982 Act' means the Civil Jurisdiction and Judgments Act 1982;
- (b) 'the Hague Convention' means the Convention on the service abroad of judicial and extra-judicial documents in civil or commercial matters signed at the Hague on November 15, 1965;
- (c) 'Contracting State' has the meaning given by section 1(3) of the 1982 Act;
- (d) 'Convention territory' means the territory or territories of any Contracting State to which the Brussels or Lugano Conventions (as defined in section 1(1) of the 1982 Act) apply;
- (e) 'Civil Procedure Convention' means the Brussels and Lugano Conventions and any other Convention entered into by the United Kingdom regarding service outside the jurisdiction;
- (ea) 'the Service regulation' means Council Regulation (EC) No. 1348/2000 of 29 May 2000 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters;
- (f) 'United Kingdom Overseas Territory' means those territories as set out in the relevant practice direction.
- (g) 'domicile' is to be determined –
 - (i) in relation to a Convention territory, in accordance with sections 41 to 46 of the 1982 Act;
 - (ii) in relation to a Regulation State, in accordance with the Judgments Regulation and paragraphs 9 to 12 of Schedule 1 to the Civil Jurisdiction and Judgments Order 2001;
- (h) 'claim form' includes petition and application notice;
- (i) 'claim' includes petition and application;
- (j) 'the Judgments Regulation' means Council Regulation (EC) No. 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, as amended from time to time and as applied by the Agreement made on 19 October 2005 between the European Community and the

Kingdom of Denmark on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters; and

(k) 'Regulation State' means a Member State.

(Rule 6.30 provides that where an application notice is to be served out of the jurisdiction under this Part, rules 6.21(4), 6.22 and 6.23 do not apply.)

Service out of the jurisdiction where the permission of the court is not required

6.19 (1) A claim form may be served on a defendant out of the jurisdiction where each claim included in the claim form made against the defendant to be served is a claim which the court has power to determine under the 1982 Act and –

- (a) no proceedings between the parties concerning the same claim are pending in the courts of any other part of the United Kingdom or any other Convention territory; and
 - (i) the defendant is domiciled in the United Kingdom or in any Convention territory;
- (b) (ii) Article 16 of Schedule 1 or 3C to the 1982 Act, or paragraph 11 of Schedule 4 to that Act, refers to the proceedings; or
 - (iii) the defendant is a party to an agreement conferring jurisdiction to which Article 17 of Schedule 1 or 3C to the 1982 Act, or paragraph 12 of Schedule 4 to that Act, refers.

(1A) A claim form may be served on a defendant out of the jurisdiction where each claim included in the claim form made against the defendant to be served is a claim which the court has power to determine under the Judgments Regulation and –

- (a) no proceedings between the parties concerning the same claim are pending in the courts of any other part of the United Kingdom or any other Regulation State; and
 - (i) the defendant is domiciled in the United Kingdom or in any Regulation State;
- (b) (ii) Article 22 of the Judgments Regulation refers to the proceedings; or
 - (iii) the defendant is a party to an agreement conferring jurisdiction to which Article 23 of the Judgments Regulation refers.

(2) A claim form may be served on a defendant out of the jurisdiction where each claim included in the claim form made against the defendant to be served is a claim which, under any other enactment, the court has power to determine, although –

- (a) the person against whom the claim is made is not within the jurisdiction; or
- (b) the facts giving rise to the claim did not occur within the jurisdiction.

(3) Where a claim form is to be served out of the jurisdiction under this rule, it must contain a statement of the grounds on which the claimant is entitled to serve it out of the jurisdiction.

Service out of the jurisdiction where the permission of the court is required

6.20 In any proceedings to which rule 6.19 does not apply, a claim form may be served out of the jurisdiction with the permission of the court if –

General Grounds

- (1) a claim is made for a remedy against a person domiciled within the jurisdiction.
- (2) a claim is made for an injunction ordering the defendant to do or refrain from doing an act within the jurisdiction.
- (3) a claim is made against someone on whom the claim form has been or will be served (otherwise than in reliance on this paragraph) and –
 - (a) there is between the claimant and that person a real issue which it is reasonable for the court to try; and

- (b) the claimant wishes to serve the claim form on another person who is a necessary or proper party to that claim.
- (3A) a claim is a Part 20 claim and the person to be served is a necessary or proper party to the claim against the Part 20 claimant.

Claims for interim remedies

- (4) a claim is made for an interim remedy under section 25(1) of the 1982 Act.

Claims in relation to contracts

- (5) a claim is made in respect of a contract where the contract –
 - (a) was made within the jurisdiction;
 - (b) was made by or through an agent trading or residing within the jurisdiction;
 - (c) is governed by English law; or
 - (d) contains a term to the effect that the court shall have jurisdiction to determine any claim in respect of the contract.
- (6) a claim is made in respect of a breach of contract committed within the jurisdiction.
- (7) a claim is made for a declaration that no contract exists where, if the contract was found to exist, it would comply with the conditions set out in paragraph (5).

Claims in tort

- (8) a claim is made in tort where –
 - (a) damage was sustained within the jurisdiction; or
 - (b) the damage sustained resulted from an act committed within the jurisdiction.

Enforcement

- (9) a claim is made to enforce any judgment or arbitral award.

Claims about property within the jurisdiction

- (10) the whole subject matter of a claim relates to property located within the jurisdiction.

Claims about trusts etc.

- (11)–(13) [Omitted].
- (14) a claim is made for a remedy against the defendant as constructive trustee where the defendant's alleged liability arises out of acts committed within the jurisdiction.
- (15) a claim is made for restitution where the defendant's alleged liability arises out of acts committed within the jurisdiction.

Claims by HM Revenue and Customs

- (16) a claim is made by the Commissioners for HM Revenue and Customs relating to duties or taxes against a defendant not domiciled in Scotland or Northern Ireland.

Claim for costs order in favour of or against third parties

- (17) a claim is made by a party to proceedings for an order that the court exercise its power under section 51 of the Supreme Court Act 1981 to make a costs order in favour of or against a person who is not a party to those proceedings.

Admiralty claims

- (17A) a claim is –
 - (a) in the nature of salvage and any part of the services took place within the jurisdiction; or
 - (b) to enforce a claim under sections 153, 154 or 175 of the Merchant Shipping Act 1995(a).

Claims under various enactments

(18) a claim is made under an enactment specified in the relevant practice direction.

Application for permission to serve claim form out of jurisdiction

6.21 (1) An application for permission under rule 6.20 must be supported by written evidence stating –

- (a) the grounds on which the application is made and the paragraph or paragraphs of rule 6.20 relied on;
- (b) that the claimant believes that his claim has a reasonable prospect of success; and
- (c) the defendant's address or, if not known, in what place or country the defendant is, or is likely, to be found.

(2) Where the application is made in respect of a claim referred to in rule 6.20(3), the written evidence must also state the grounds on which the witness believes that there is between the claimant and the person on whom the claim form has been, or will be served, a real issue which it is reasonable for the court to try.

(2A) The court will not give permission unless satisfied that England and Wales is the proper place in which to bring the claim.

(3) Where –

- (a) the application is for permission to serve a claim form in Scotland or Northern Ireland; and
- (b) it appears to the court that the claimant may also be entitled to a remedy there, the court, in deciding whether to give permission, shall –
 - (i) compare the cost and convenience of proceeding there or in the jurisdiction; and
 - (ii) (where relevant) have regard to the powers and jurisdiction of the Sheriff court in Scotland or the county courts or courts of summary jurisdiction in Northern Ireland.

(4) An order giving permission to serve a claim form out of the jurisdiction must specify the periods within which the defendant may –

- (a) file an acknowledgment of service;
- (b) file or serve an admission; and
- (c) file a defence.

THE COMMERCIAL AGENTS (COUNCIL DIRECTIVE) REGULATIONS 1993

SI 1993 NO 3053

ARRANGEMENT OF REGULATIONS

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THE SCHEDULE

PART I

GENERAL

Citation, commencement and applicable law

1. (1) These Regulations may be cited as the Commercial Agents (Council Directive) Regulations 1993 and shall come into force on 1st January 1994.
- (2) These Regulations govern the relations between commercial agents and their principals and, subject to paragraph (3), apply in relation to the activities of commercial agents in Great Britain.
- (3) A court or tribunal shall –
 - (a) apply the law of the other Member State concerned in place of regulations 3 to 22 where the parties have agreed that the agency contract is to be governed by the law of that Member State;
 - (b) (whether or not it is required to do so) apply these regulations where the law of another Member State corresponding to these regulations enables the parties to agree

that the agency contract is to be governed by the law of a different Member State and the parties have agreed that it is to be governed by the law of England and Wales or Scotland.

Interpretation, application and extent

2. (1) In these Regulations –

‘commercial agent’ means a self-employed intermediary who has continuing authority to negotiate the sale or purchase of goods on behalf of another person (the ‘principal’), or to negotiate and conclude the sale or purchase of goods on behalf of and in the name of that principal; but shall be understood as not including in particular:

- (i) a person who, in his capacity as an officer of a company or association, is empowered to enter into commitments binding on that company or association;
- (ii) a partner who is lawfully authorised to enter into commitments binding on his partners;
- (iii) a person who acts as an insolvency practitioner (as that expression is defined in section 388 of the Insolvency Act 1986) or the equivalent in any other jurisdiction;

‘commission’ means any part of the remuneration of a commercial agent which varies with the number or value of business transactions;

‘EEA Agreement’ means the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 as adjusted by the Protocol signed at Brussels on 17th March 1993;

‘Member State’ includes a State which is a contracting party to the EEA Agreement;

‘restraint of trade clause’ means an agreement restricting the business activities of a commercial agent following termination of the agency contract.

(2) These Regulations do not apply to –

- (a) commercial agents whose activities are unpaid;
- (b) commercial agents when they operate on commodity exchanges or in the commodity market;
- (c) the Crown Agents for Overseas Governments and Administrations, as set up under the Crown Agents Act 1979 or its subsidiaries.

(3) The provisions of the Schedule to these Regulations have effect for the purpose of determining the persons whose activities as commercial agents are to be considered secondary.

(4) These Regulations shall not apply to the persons referred to in paragraph (3) above.

(5) These Regulations do not extend to Northern Ireland.

PART II

RIGHTS AND OBLIGATIONS

Duties of a commercial agent to his principal

3. (1) In performing his activities a commercial agent must look after the interests of his principal and act dutifully and in good faith.

(2) In particular, a commercial agent must –

- (a) make proper efforts to negotiate and, where appropriate, conclude the transactions he is instructed to take care of;
- (b) communicate to his principal all the necessary information available to him;
- (c) comply with reasonable instructions given by his principal.

Duties of a principal to his commercial agent

4. (1) In his relations with his commercial agent a principal must act dutifully and in good faith.

- (2) In particular, a principal must –
- (a) provide his commercial agent with the necessary documentation relating to the goods concerned;
 - (b) obtain for his commercial agent the information necessary for the performance of the agency contract, and in particular notify his commercial agent within a reasonable period once he anticipates that the volume of commercial transactions will be significantly lower than that which the commercial agent could normally have expected.
- (3) A principal shall, in addition, inform his commercial agent within a reasonable period of his acceptance or refusal of, and of any non-execution by him of, a commercial transaction which the commercial agent has procured for him.

Prohibition on derogation from regulations 3 and 4 and consequence of breach

5. (1) The parties may not derogate from regulations 3 and 4 above.
- (2) The law applicable to the contract shall govern the consequence of breach of the rights and obligations under regulations 3 and 4 above.

PART III

REMUNERATION

Form and amount of remuneration in absence of agreement

6. (1) In the absence of any agreement as to remuneration between the parties, a commercial agent shall be entitled to the remuneration that commercial agents appointed for the goods forming the subject of his agency contract are customarily allowed in the place where he carries on his activities and, if there is no such customary practice, a commercial agent shall be entitled to reasonable remuneration taking into account all the aspects of the transaction.
- (2) This regulation is without prejudice to the application of any enactment or rule of law concerning the level of remuneration.
- (3) Where a commercial agent is not remunerated (wholly or in part) by commission, regulations 7 to 12 below shall not apply.

Entitlement to commission on transactions concluded during agency contract

7. (1) A commercial agent shall be entitled to commission on commercial transactions concluded during the period covered by the agency contract –
- (a) where the transaction has been concluded as a result of his action; or
 - (b) where the transaction is concluded with a third party whom he has previously acquired as a customer for transactions of the same kind.
- (2) A commercial agent shall also be entitled to commission on transactions concluded during the period covered by the agency contract where he has an exclusive right to a specific geographical area or to a specific group of customers and where the transaction has been entered into with a customer belonging to that area or group.

Entitlement to commission on transactions concluded after agency contract has terminated

8. Subject to regulation 9 below, a commercial agent shall be entitled to commission on commercial transactions concluded after the agency contract has terminated if –
- (a) the transaction is mainly attributable to his efforts during the period covered by the agency contract and if the transaction was entered into within a reasonable period after that contract terminated; or

- (b) in accordance with the conditions mentioned in regulation 7 above, the order of the third party reached the principal or the commercial agent before the agency contract terminated.

Apportionment of commission between new and previous commercial agents

9. (1) A commercial agent shall not be entitled to the commission referred to in regulation 7 above if that commission is payable, by virtue of regulation 8 above, to the previous commercial agent, unless it is equitable because of the circumstances for the commission to be shared between the commercial agents.

(2) The principal shall be liable for any sum due under paragraph (1) above to the person entitled to it in accordance with that paragraph, and any sum which the other commercial agent receives to which he is not entitled shall be refunded to the principal.

When commission due and date for payment

10. (1) Commission shall become due as soon as, and to the extent that one of the following circumstances occurs –

- (a) the principal has executed the transaction; or
- (b) the principal should, according to his agreement with the third party, have executed the transaction; or
- (c) the third party has executed the transaction.

(2) Commission shall become due at the latest when the third party has executed his part of the transaction or should have done so if the principal had executed his part of the transaction, as he should have.

(3) The commission shall be paid not later than on the last day of the month following the quarter in which it became due, and, for the purposes of these Regulations, unless otherwise agreed between the parties, the first quarter period shall run from the date the agency contract takes effect, and subsequent periods shall run from that date in the third month thereafter or the beginning of the fourth month, whichever is the sooner.

(4) Any agreement to derogate from paragraphs (2) and (3) above to the detriment of the commercial agent shall be void.

Extinction of right to commission

11. (1) The right to commission can be extinguished only if and to the extent that –

- (a) it is established that the contract between the third party and the principal will not be executed; and
- (b) that fact is due to a reason for which the principal is not to blame.

(2) Any commission which the commercial agent has already received shall be refunded if the right to it is extinguished.

(3) Any agreement to derogate from paragraph (1) above to the detriment of the commercial agent shall be void.

Periodic supply of information as to commission due and right of inspection of principal's books

12. (1) The principal shall supply his commercial agent with a statement of the commission due, not later than the last day of the month following the quarter in which the commission has become due, and such statement shall set out the main components used in calculating the amount of the commission.

(2) A commercial agent shall be entitled to demand that he be provided with all the information (and in particular an extract from the books) which is available to his principal and which he needs in order to check the amount of the commission due to him.

(3) Any agreement to derogate from paragraphs (1) and (2) above shall be void.

(4) Nothing in this regulation shall remove or restrict the effect of, or prevent reliance upon, any enactment or rule of law which recognises the right of an agent to inspect the books of a principal.

PART IV

CONCLUSION AND TERMINATION OF THE AGENCY CONTRACT

Right to signed written statement of terms of agency contract

13. (1) The commercial agent and principal shall each be entitled to receive from the other, on request, a signed written document setting out the terms of the agency contract including any terms subsequently agreed.

(2) Any purported waiver of the right referred to in paragraph (1) above shall be void.

Conversion of agency contract after expiry of fixed period

14. An agency contract for a fixed period which continues to be performed by both parties after that period has expired shall be deemed to be converted into an agency contract for an indefinite period.

Minimum periods of notice for termination of agency contract

15. (1) Where an agency contract is concluded for an indefinite period either party may terminate it by notice.

(2) The period of notice shall be –

(a) 1 month for the first year of the contract;

(b) 2 months for the second year commenced;

(c) 3 months for the third year commenced and for the subsequent years, and the parties may not agree on any shorter periods of notice.

(3) If the parties agree on longer periods than those laid down in paragraph (2) above, the period of notice to be observed by the principal must not be shorter than that to be observed by the commercial agent.

(4) Unless otherwise agreed by the parties, the end of the period of notice must coincide with the end of a calendar month.

(5) The provisions of this regulation shall also apply to an agency contract for a fixed period where it is converted under regulation 14 above into an agency contract for an indefinite period subject to the proviso that the earlier fixed period must be taken into account in the calculation of the period of notice.

Savings with regard to immediate termination

16. These Regulations shall not affect the application of any enactment or rule of law which provides for the immediate termination of the agency contract –

(a) because of the failure of one party to carry out all or part of his obligations under that contract; or

(b) where exceptional circumstances arise.

Entitlement of commercial agent to indemnity or compensation on termination of agency contract

17. (1) This regulation has effect for the purpose of ensuring that the commercial agent is, after termination of the agency contract, indemnified in accordance with paragraphs (3) to (5) below or compensated for damage in accordance with paragraphs (6) and (7) below.

(2) Except where the agency contract otherwise provides, the commercial agent shall be entitled to be compensated rather than indemnified.

(3) Subject to paragraph (9) and to regulation 18 below, the commercial agent shall be entitled to an indemnity if and to the extent that –

- (a) he has brought the principal new customers or has significantly increased the volume of business with existing customers and the principal continues to derive substantial benefits from the business with such customers; and
- (b) the payment of this indemnity is equitable having regard to all the circumstances and, in particular, the commission lost by the commercial agent on the business transacted with such customers.

(4) The amount of the indemnity shall not exceed a figure equivalent to an indemnity for one year calculated from the commercial agent's average annual remuneration over the preceding five years and if the contract goes back less than five years the indemnity shall be calculated on the average for the period in question.

(5) The grant of an indemnity as mentioned above shall not prevent the commercial agent from seeking damages.

(6) Subject to paragraph (9) and to regulation 18 below, the commercial agent shall be entitled to compensation for the damage he suffers as a result of the termination of his relations with his principal.

(7) For the purpose of these Regulations such damage shall be deemed to occur particularly when the termination takes place in either or both of the following circumstances, namely circumstances which –

- (a) deprive the commercial agent of the commission which proper performance of the agency contract would have procured for him whilst providing his principal with substantial benefits linked to the activities of the commercial agent; or
- (b) have not enabled the commercial agent to amortize the costs and expenses that he had incurred in the performance of the agency contract on the advice of his principal.

(8) Entitlement to the indemnity or compensation for damage as provided for under paragraphs (2) to (7) above shall also arise where the agency contract is terminated as a result of the death of the commercial agent.

(9) The commercial agent shall lose his entitlement to the indemnity or compensation for damage in the instances provided for in paragraphs (2) to (8) above if within one year following termination of his agency contract he has not notified his principal that he intends pursuing his entitlement.

Grounds for excluding payment of indemnity or compensation under regulation 17

18. The indemnity or compensation referred to in regulation 17 above shall not be payable to the commercial agent where –

- (a) the principal has terminated the agency contract because of default attributable to the commercial agent which would justify immediate termination of the agency contract pursuant to regulation 16 above; or
- (b) the commercial agent has himself terminated the agency contract, unless such termination is justified:
 - (i) by circumstances attributable to the principal; or
 - (ii) on grounds of the age, infirmity or illness of the commercial agent in consequence of which he cannot reasonably be required to continue his activities; or
- (c) the commercial agent, with the agreement of his principal, assigns his rights and duties under the agency contract to another person.

Prohibition on derogation from regulations 17 and 18

19. The parties may not derogate from regulations 17 and 18 to the detriment of the commercial agent before the agency contract expires.

Restraint of trade clauses

20. (1) A restraint of trade clause shall be valid only if and to the extent that –

- (a) it is concluded in writing; and
- (b) it relates to the geographical area or the group of customers and the geographical area entrusted to the commercial agent and to the kind of goods covered by his agency under the contract.

(2) A restraint of trade clause shall be valid for not more than two years after termination of the agency contract.

(3) Nothing in this regulation shall affect any enactment or rule of law which imposes other restrictions on the validity or enforceability of restraint of trade clauses or which enables a court to reduce the obligations on the parties resulting from such clauses.

PART V

MISCELLANEOUS AND SUPPLEMENTAL

Disclosure of information

21. Nothing in these Regulations shall require information to be given where such disclosure would be contrary to public policy.

Service of notice, etc

22. (1) Any notice, statement or other document to be given or supplied to a commercial agent or to be given or supplied to the principal under these Regulations may be so given or supplied –

- (a) by delivering it to him;
- (b) by leaving it at his proper address addressed to him by name;
- (c) by sending it by post to him addressed either to his registered address or to the address of his registered or principal office,

or by any other means provided for in the agency contract.

(2) Any such notice, statement or document may –

- (a) in the case of a body corporate, be given or served on the secretary or clerk of that body;
- (b) in the case of a partnership, be given to or served on any partner or on any person having the control or management of the partnership business.

Transitional provisions

23. (1) Notwithstanding any provision in an agency contract made before 1st January 1994, these Regulations shall apply to that contract after that date and, accordingly any provision which is inconsistent with these Regulations shall have effect subject to them.

(2) Nothing in these Regulations shall affect the rights and liabilities of a commercial agent or a principal which have accrued before 1st January 1994.

THE SCHEDULE

Regulation 2(3)

1. The activities of a person as a commercial agent are to be considered secondary where it may reasonably be taken that the primary purpose of the arrangement with his principal is other than as set out in paragraph 2 below.
2. An arrangement falls within this paragraph if –
 - (a) the business of the principal is the sale, or as the case may be purchase, of goods of a particular kind; and
 - (b) the goods concerned are such that:
 - (i) transactions are normally individually negotiated and concluded on a commercial basis; and
 - (ii) procuring a transaction on one occasion is likely to lead to further transactions in those goods with that customer on future occasions, or to transactions in those goods with other customers in the same geographical area or among the same group of customers, and
that accordingly it is in the commercial interests of the principal in developing the market in those goods to appoint a representative to such customers with a view to the representative devoting effort, skill and expenditure from his own resources to that end.
3. The following are indications that an arrangement falls within paragraph 2 above, and the absence of any of them is an indication to the contrary –
 - (a) the principal is the manufacturer, importer or distributor of the goods;
 - (b) the goods are specifically identified with the principal in the market in question rather than, or to a greater extent than, with any other person;
 - (c) the agent devotes substantially the whole of his time to representative activities (whether for one principal or for a number of principals whose interests are not conflicting);
 - (d) the goods are not normally available in the market in question other than by means of the agent;
 - (e) the arrangement is described as one of commercial agency.
4. The following are indications that an arrangement does not fall within paragraph 2 above –
 - (a) promotional material is supplied direct to potential customers;
 - (b) persons are granted agencies without reference to existing agents in a particular area or in relation to a particular group;
 - (c) customers normally select the goods for themselves and merely place their orders through the agent.
5. The activities of the following categories of persons are presumed, unless the contrary is established, not to fall within paragraph 2 above – Mail order catalogue agents for consumer goods. Consumer credit agents.

THE CIVIL JURISDICTION AND JUDGMENTS ACT 1982 (INTERIM RELIEF) ORDER 1997

SI 1997 NO 302

2. The High Court in England and Wales or Northern Ireland shall have power to grant interim relief under section 25(1) of the Civil Jurisdiction and Judgments Act 1982 in relation to proceedings of the following descriptions, namely –

- (a) proceedings commenced or to be commenced otherwise than in a Brussels or Lugano Contracting State or Regulation State;
- (b) proceedings whose subject-matter is not within the scope of the Regulation as determined by Article 1 thereof.

THE CIVIL JURISDICTION AND JUDGMENTS ORDER 2001

SI 2001 NO 3929

1 [Omitted].

2 **Interpretation**

(1) In this Order –

‘the Act’ means the Civil Jurisdiction and Judgments Act 1982;

‘the 2005 Agreement’ means the Agreement made on 19th October 2005 between the European Community and the Kingdom of Denmark on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters;

‘the Regulation’ means Council Regulation (EC) No. 44/2001 of 22nd December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, as amended from time to time and as applied by the 2005 Agreement;

‘Regulation State’ in any provision, in the application of that provision in relation to the Regulation, means a Member State.

(2) In Schedule 2 to this Order, a section, Part, Schedule or paragraph referred to by number alone is a reference to the section, Part, Schedule or paragraph so numbered in the Act.

3 [Omitted].

3A **The 2005 agreement**

The Regulation shall have effect as regards Denmark in accordance with the 2005 Agreement.

4 to 6 [Omitted].

SCHEDULE 1

Article 3

THE REGULATION

1 **Interpretation**

(1) In this Schedule –

- 'court', without more, includes a tribunal;
- 'judgment' has the meaning given by Article 32 of the Regulation;
- 'magistrates' court', in relation to Northern Ireland, means a court of summary jurisdiction;
- 'maintenance order' means a maintenance judgment within the meaning of the Regulation;
- 'part of the United Kingdom' means England and Wales, Scotland or Northern Ireland;
- 'payer', in relation to a maintenance order, means the person liable to make the payments for which the order provides;
- 'prescribed' means prescribed by rules of court.

(2) In this Schedule, any reference to a numbered Article or Annex is a reference to the Article or Annex so numbered in the Regulation, and any reference to a sub-division of a numbered Article shall be construed accordingly.

(3) References in paragraphs 2 to 8 to a judgment registered under the Regulation include, to the extent of its registration, references to a judgment so registered to a limited extent only.

(4) Anything authorised or required by the Regulation or paragraphs 2 to 8 to be done by, to or before a particular magistrates' court may be done by, to or before any magistrates' court acting in the same local justice area (or, in Northern Ireland, acting for the same petty sessions district) as that court.

2 Enforcement of judgments other than maintenance orders (section 4)

(1) Where a judgment is registered under the Regulation, the reasonable costs or expenses of and incidental to its registration shall be recoverable as if they were sums recoverable under the judgment.

(2) A judgment registered under the Regulation shall, for the purposes of its enforcement, be of the same force and effect, the registering court shall have in relation to its enforcement the same powers, and proceedings for or with respect to its enforcement may be taken, as if the judgment had been originally given by the registering court and had (where relevant) been entered.

(3) Sub-paragraph (2) is subject to Article 47 (restriction on enforcement where appeal pending or time for appeal unexpired), to paragraph 5 and to any provision made by rules of court as to the manner in which and conditions subject to which a judgment registered under the Regulation may be enforced.

3 and 4 [Omitted].

5 Interest on registered judgments (section 7)

(1) Subject to sub-paragraph (3), where in connection with an application for registration of a judgment under the Regulation the applicant shows –

- (a) that the judgment provides for the payment of a sum of money; and
- (b) that in accordance with the law of the Regulation State in which the judgment was given interest on that sum is recoverable under the judgment from a particular date or time,

the rate of interest and the date or time from which it is so recoverable shall be registered with the judgment and, subject to rules of court, the debt resulting, apart from paragraph 2(1), from the registration of the judgment shall carry interest in accordance with the registered particulars.

(2) Costs or expenses recoverable by virtue of paragraph 2(1) shall carry interest as if they were the subject of an order for the payment of costs or expenses made by the registering court on the date of registration.

(3) Interest on arrears of sums payable under a maintenance order registered under the Regulation in a magistrates' court in England and Wales or Northern Ireland shall not be recoverable in that court, but without prejudice to the operation in relation to any such order of section 2A of the Maintenance Orders Act 1958 or section IIA of the Maintenance and Affiliation Orders Act (Northern Ireland) 1966 (which enable interest to be recovered if the order is re-registered for enforcement in the High Court).

(4) Except as mentioned in sub-paragraph (3), debts under judgments registered under the Regulation shall carry interest only as provided by this paragraph.

6 and 7 [Omitted].

8 Proof and admissibility of certain judgments and related documents (section II)

(1) For the purposes of the Regulation –

- (a) a document, duly authenticated, which purports to be a copy of a judgment given by a court of a Regulation State other than the United Kingdom shall without further proof be deemed to be a true copy, unless the contrary is shown; and
- (b) a certificate obtained in accordance with Article 54 and Annex V shall be evidence, and in Scotland sufficient evidence, that the judgment is enforceable in the Regulation State of origin.

(2) A document purporting to be a copy of a judgment given by any such court as is mentioned in sub-paragraph (1)(a) is duly authenticated for the purposes of this paragraph if it purports –

- (a) to bear the seal of that court; or
- (b) to be certified by any person in his capacity as a judge or officer of that court to be a true copy of a judgment given by that court.

(3) Nothing in this paragraph shall prejudice the admission in evidence of any document which is admissible apart from this paragraph.

9 Domicile of individuals (section 41)

(1) Subject to Article 59 (which contains provisions for determining whether a party is domiciled in a Regulation State), the following provisions of this paragraph determine, for the purposes of the Regulation, whether an individual is domiciled in the United Kingdom or in a particular part of, or place in, the United Kingdom or in a state other than a Regulation State.

(2) An individual is domiciled in the United Kingdom if and only if –

- (a) he is resident in the United Kingdom; and
- (b) the nature and circumstances of his residence indicate that he has a substantial connection with the United Kingdom.

(3) Subject to sub-paragraph (5), an individual is domiciled in a particular part of the United Kingdom if and only if –

- (a) he is resident in that part; and
- (b) the nature and circumstances of his residence indicate that he has a substantial connection with that part.

(4) An individual is domiciled in a particular place in the United Kingdom if and only if he –

- (a) is domiciled in the part of the United Kingdom in which that place is situated; and
- (b) is resident in that place.

(5) An individual who is domiciled in the United Kingdom but in whose case the requirements of sub-paragraph (3)(b) are not satisfied in relation to any particular part of the United Kingdom shall be treated as domiciled in the part of the United Kingdom in which he is resident.

(6) In the case of an individual who –

(a) is resident in the United Kingdom, or in a particular part of the United Kingdom; and

(b) has been so resident for the last three months or more,

the requirements of sub-paragraph (2)(b) or, as the case may be, sub-paragraph (3)(b) shall be presumed to be fulfilled unless the contrary is proved.

(7) An individual is domiciled in a state other than a Regulation State if and only if –

(a) he is resident in that state; and

(b) the nature and circumstances of his residence indicate that he has a substantial connection with that state.

10 Seat of company, or other legal person or association for purposes of Article 22(2) (section 43)

(1) The following provisions of this paragraph determine where a company, legal person or association has its seat for the purposes of Article 22(2) (which confers exclusive jurisdiction over proceedings relating to the formation or dissolution of such bodies, or to the decisions of their organs).

(2) A company, legal person or association has its seat in the United Kingdom if and only if –

(a) it was incorporated or formed under the law of a part of the United Kingdom; or

(b) its central management and control is exercised in the United Kingdom.

(3) Subject to sub-paragraph (4), a company, legal person or association has its seat in a Regulation State other than the United Kingdom if and only if –

(a) it was incorporated or formed under the law of that state; or

(b) its central management and control is exercised in that state.

(4) A company, legal person or association shall not be regarded as having its seat in a Regulation State other than the United Kingdom if –

(a) it has its seat in the United Kingdom by virtue of sub-paragraph (2)(a); or

(b) it is shown that the courts of that other state would not regard it for the purposes of Article 22(2) as having its seat there.

11 Persons deemed to be domiciled in the United Kingdom for certain purposes (section 44)

(1) This paragraph applies to –

(a) proceedings within Section 3 of Chapter 11 of the Regulation (insurance contracts),

(b) proceedings within Section 4 of Chapter 11 of the Regulation (consumer contracts), and

(c) proceedings within Section 5 of Chapter 11 of the Regulation (employment contracts).

(2) A person who, for the purposes of proceedings to which this paragraph applies arising out of the operations of a branch, agency or other establishment in the United Kingdom, is deemed for the purposes of the Regulation to be domiciled in the United Kingdom by virtue of –

(a) Article 9(2) (insurers); or

(b) Article 15(2) (suppliers of goods, services or credit to consumers); or

(c) Article 18(2) (employers),

shall, for the purposes of those proceedings, be treated as so domiciled and as domiciled in the part of the United Kingdom in which the branch, agency or establishment in question is situated.

12 Domicile of trusts (section 45)

(1) The following provisions of this paragraph determine for the purposes of the Regulation where a trust is domiciled.

(2) A trust is domiciled in the United Kingdom if and only if it is by virtue of subparagraph (3) domiciled in a part of the United Kingdom.

(3) A trust is domiciled in a part of the United Kingdom if and only if the system of law of that part is the system of law with which the trust has its closest and most real connection.

THE FINANCIAL SERVICES AND MARKETS ACT 2000 (LAW APPLICABLE TO CONTRACTS OF INSURANCE) REGULATIONS 2001

SI 2001 NO 2635

PART I

GENERAL

1 [Omitted].

2 Interpretation

(1) In these Regulations –

‘the Act’ means the Financial Services and Markets Act 2000;

‘the 1990 Act’ means the Contracts (Applicable Law) Act 1990;

‘applicable law’, in relation to a contract of insurance, means the law that is applicable to that contract;

‘contract of general insurance’ and ‘contract of long-term insurance’ have the meanings given by the Regulated Activities Order;

‘EEA State of the commitment’ means, in relation to a contract of long-term insurance entered into on a date –

(a) if the policyholder is an individual, the EEA State in which he resides on that date; or

(b) otherwise, the EEA State in which the establishment of the policyholder to which the contract relates is situated on that date;

‘establishment’, in relation to a person (‘A’), means –

(a) A’s head office;

(b) any of A’s agencies;

(c) any of A’s branches; or

(d) any permanent presence of A in an EEA State, which need not take the form of a branch or agency and which may consist of an office managed by A’s staff or by a person who is independent of A but has permanent authority to act for A as if he were an agency;

‘large risk’ has the meaning given by Article 5(d) of the first non-life insurance directive and includes risks specified by paragraph (iii) of that definition insured by professional associations, joint ventures or temporary groups;

‘mandatory rules’ means the rules from which the law allows no derogation by way of contract;

‘the Regulated Activities Order’ means the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001.

(2) References to the EEA State where the risk covered by a contract of insurance is situated are to –

- (a) if the contract relates to buildings or to buildings and their contents (in so far as the contents are covered by the same contract of insurance), the EEA State in which the property is situated;
- (b) if the contract relates to vehicles of any type, the EEA State of registration;
- (c) if the contract covers travel or holidays risks and has a duration of four months or less, the EEA State in which the policyholder entered into the contract;
- (d) in any other case –
 - (i) if the policyholder is an individual, the EEA State in which he resides on the date the contract is entered into;
 - (ii) otherwise, the EEA State in which the establishment of the policyholder to which the contract relates is situated on that date.

(3) References to the country in which a person resides are to –

- (a) if he is an individual, the country in which he has his habitual residence;
- (b) in any other case, the country in which he has his central administration.

(4) Where an EEA State (including the United Kingdom) includes several territorial units, each of which has its own laws concerning contractual obligations, each unit is to be considered as a separate state for the purposes of identifying the applicable law under these Regulations.

3 Scope of these Regulations

- (1) These Regulations do not apply to contracts of reinsurance.
- (2) [Omitted].

PART II

CONTRACTS OF GENERAL INSURANCE

4 Applicable law

- (1) This Part applies to a contract of general insurance which covers risks situated in an EEA State.
- (2) If the policyholder resides in the EEA State in which the risk is situated, the applicable law is the law of that EEA State unless, if such a choice is permitted under the law of that EEA State, the parties to the contract choose the law of another country.
- (3) If the policyholder does not reside in the EEA State in which the risk is situated, the parties to the contract may choose as the applicable law either –
 - (a) the law of the EEA State in which the risk is situated; or
 - (b) the law of the country in which the policyholder resides.
- (4) If the policyholder carries on a business (including a trade or profession) and the contract covers two or more risks relating to that business which are situated in different EEA States, the freedom of the parties to choose the applicable law conferred by this regulation extends to the law of any of those EEA States and of the country in which the policyholder resides.
- (5) If any of the EEA States referred to in paragraph (3) or (4) grant greater freedom of choice of the applicable law, the parties to the contract may take advantage of that freedom.
- (6) Notwithstanding paragraphs (2) to (4), if the risks covered by the contract are limited to events occurring in one EEA State other than the EEA State in which the risk is situated, the parties may choose the law of the former EEA State as the applicable law.
- (7) Notwithstanding paragraphs (2) to (4), if the risk covered by the contract is a large risk the parties may choose any law as the applicable law.

(8) Where the foregoing provisions of this regulation allow the parties to the contract to choose the applicable law and if no choice has been made, or no choice has been made which satisfies the requirement set out in regulation 6(1), the applicable law is the law of the country, from amongst those considered in the relevant paragraph ('the relevant countries'), which is most closely connected with the contract; however, where a severable part of the contract has a closer connection with another relevant country, the law applicable to that part is, by way of exception, the law of that relevant country.

(9) For the purposes of paragraph (8), the contract is rebuttably presumed to be most closely connected with the EEA State in which the risk is situated.

5 Mandatory rules

(1) Nothing in regulation 4 restricts the application of the mandatory rules of any part of the United Kingdom, irrespective of the applicable law of the contract.

(2) If the parties to the contract choose the applicable law under regulation 4 and if all the other elements relevant to the situation at the time when the parties make their choice are connected with one EEA State only, the application of the mandatory rules of that EEA State is not prejudiced.

6 Choice of law

(1) Any choice made by the parties under regulation 4 must be expressed or demonstrated with reasonable certainty by the terms of the contract or the circumstances of the case.

(2) Where the parties to the contract may choose the applicable law under regulation 4, and where the risk to which the contract relates is covered by Community coinsurance (within the meaning of Council Directive 78/4737 EEC on the coordination of laws, regulations and administrative provisions relating to Community co-insurance), co-insurers other than the leading insurer (within the meaning of that Directive) are not to be treated as parties to the contract.

7 The 1990 Act

(1) Subject to the preceding provisions of this Part, the 1990 Act is to be treated as applying to the contract for the purposes of determining the applicable law.

(2) In determining whether the mandatory rules of another EEA State should be applied in accordance with regulation 5(2) where the parties have chosen the law of a part of the United Kingdom as the applicable law, the 1990 Act is to be treated as applying to the contract.

(3) In determining what freedom of choice the parties have under the law of a part of the United Kingdom, the 1990 Act is to be treated as applying to the contract.

PART III

CONTRACTS OF LONG-TERM INSURANCE

8 Applicable law

(1) This Part applies to a contract of long-term insurance if –

(a) where the policyholder is an individual, he resides in an EEA State;

(b) otherwise, the establishment of the policyholder to which the contract relates is situated in an EEA State.

(2) The applicable law is the law of the EEA State of the commitment unless, if such a choice is permitted under the law of that EEA State, the parties choose the law of another country.

(3) If the policyholder is an individual and resides in one EEA State but is a national or citizen of another, the parties to the contract may choose the law of the EEA State of which he is a national or citizen as the applicable law.

9 Mandatory rules

Nothing in regulation 8 affects the application of the mandatory rules of any part of the United Kingdom, irrespective of the applicable law of the contract.

10 The 1990 Act

- (1) Subject to the preceding provisions of this Part, the 1990 Act is to be treated as applying to the contract for the purposes of determining the applicable law.
- (2) In determining what freedom of choice the parties have under the law of a part of the United Kingdom, the 1990 Act is to be treated as applying to the contract.

THE ELECTRONIC COMMERCE (EC DIRECTIVE) REGULATIONS 2002

SI 2002 NO 2013

1 [Omitted].

Interpretation

2 – (1) In these Regulations and in the Schedule –

‘commercial communication’ means a communication, in any form, designed to promote, directly or indirectly, the goods, services or image of any person pursuing a commercial, industrial or craft activity or exercising a regulated profession, other than a communication –

- (a) consisting only of information allowing direct access to the activity of that person including a geographic address, a domain name or an electronic mail address; or
- (b) relating to the goods, services or image of that person provided that the communication has been prepared independently of the person making it (and for this purpose, a communication prepared without financial consideration is to be taken to have been prepared independently unless the contrary is shown);

‘the Commission’ means the Commission of the European Communities;

‘consumer’ means any natural person who is acting for purposes other than those of his trade, business or profession;

‘coordinated field’ means requirements applicable to information society service providers or information society services, regardless of whether they are of a general nature or specifically designed for them, and covers requirements with which the service provider has to comply in respect of –

- (a) the taking up of the activity of an information society service, such as requirements concerning qualifications, authorisation or notification, and
- (b) the pursuit of the activity of an information society service, such as requirements concerning the behaviour of the service provider, requirements regarding the quality or content of the service including those applicable to advertising and contracts, or requirements concerning the liability of the service provider,

but does not cover requirements such as those applicable to goods as such, to the delivery of goods or to services not provided by electronic means;

‘the Directive’ means Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce);

'EEA Agreement' means the Agreement on the European Economic Area signed at Oporto on 2 May 1992 as adjusted by the Protocol signed at Brussels on 17 March 1993; 'enactment' includes an enactment comprised in Northern Ireland legislation and comprised in, or an instrument made under, an Act of the Scottish Parliament;

'enforcement action' means any form of enforcement action including, in particular –

- (a) in relation to any legal requirement imposed by or under any enactment, any action taken with a view to or in connection with imposing any sanction (whether criminal or otherwise) for failure to observe or comply with it; and
- (b) in relation to a permission or authorisation, anything done with a view to removing or restricting that permission or authorisation;

'enforcement authority' does not include courts but, subject to that, means any person who is authorised, whether by or under an enactment or otherwise, to take enforcement action;

'established service provider' means a service provider who is a national of a member State or a company or firm as mentioned in Article 48 of the Treaty and who effectively pursues an economic activity by virtue of which he is a service provider using a fixed establishment in a member State for an indefinite period, but the presence and use of the technical means and technologies required to provide the information society service do not, in themselves, constitute an establishment of the provider; in cases where it cannot be determined from which of a number of places of establishment a given service is provided, that service is to be regarded as provided from the place of establishment where the provider has the centre of his activities relating to that service; references to a service provider being established or to the establishment of a service provider shall be construed accordingly;

'information society services' (which is summarised in recital 17 of the Directive as covering 'any service normally provided for remuneration, at a distance, by means of electronic equipment for the processing (including digital compression) and storage of data, and at the individual request of a recipient of a service') has the meaning set out in Article 2(a) of the Directive, (which refers to Article 1(2) of Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations, as amended by Directive 98/48/EC of 20 July 1998);

'member State' includes a State which is a contracting party to the EEA Agreement;

'recipient of the service' means any person who, for professional ends or otherwise, uses an information society service, in particular for the purposes of seeking information or making it accessible;

'regulated profession' means any profession within the meaning of either Article 1(d) of Council Directive 89/48/EEC of 21 December 1988 on a general system for the recognition of higher-education diplomas awarded on completion of professional education and training of at least three years' duration or of Article 1(f) of Council Directive 92/51/EEC of 18 June 1992 on a second general system for the recognition of professional education and training to supplement Directive 89/48/EEC;

'service provider' means any person providing an information society service;

'the Treaty' means the treaty establishing the European Community.

(2) In regulation 4 and 5, 'requirement' means any legal requirement under the law of the United Kingdom, or any part of it, imposed by or under any enactment or otherwise.

(3) Terms used in the Directive other than those in paragraph (1) above shall have the same meaning as in the Directive.

Exclusions

3 – (1) Nothing in these Regulations shall apply in respect of –

- (a) the field of taxation;
- (b) questions relating to information society services covered by the Data Protection Directive and the Telecommunications Data Protection Directive and Directive 2002/58/EC of the European Parliament and of the Council of 12th July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications);
- (c) questions relating to agreements or practices governed by cartel law; and
- (d) the following activities of information society services –
 - (i) the activities of a public notary or equivalent professions to the extent that they involve a direct and specific connection with the exercise of public authority,
 - (ii) the representation of a client and defence of his interests before the courts, and
 - (iii) betting, gaming or lotteries which involve wagering a stake with monetary value.

(2) These Regulations shall not apply in relation to any Act passed on or after the date these Regulations are made or in relation to the exercise of a power to legislate after that date.

(3) In this regulation –

‘cartel law’ means so much of the law relating to agreements between undertakings, decisions by associations of undertakings or concerted practices as relates to agreements to divide the market or fix prices;

‘Data Protection Directive’ means Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data; and

‘Telecommunications Data Protection Directive’ means Directive 97/66/EC of the European Parliament and of the Council of 15 December 1997 concerning the processing of personal data and the protection of privacy in the telecommunications sector.

Internal market

4 – (1) Subject to paragraph (4) below, any requirement which falls within the coordinated field shall apply to the provision of an information society service by a service provider established in the United Kingdom irrespective of whether that information society service is provided in the United Kingdom or another member State.

(2) Subject to paragraph (4) below, an enforcement authority with responsibility in relation to any requirement in paragraph (1) shall ensure that the provision of an information society service by a service provider established in the United Kingdom complies with that requirement irrespective of whether that service is provided in the United Kingdom or another member State and any power, remedy or procedure for taking enforcement action shall be available to secure compliance.

(3) Subject to paragraphs (4), (5) and (6) below, any requirement shall not be applied to the provision of an information society service by a service provider established in a member State other than the United Kingdom for reasons which fall within the coordinated field where its application would restrict the freedom to provide information society services to a person in the United Kingdom from that member State.

(4) Paragraphs (1), (2) and (3) shall not apply to those fields in the annex to the Directive set out in the Schedule.

(5) The reference to any requirements the application of which would restrict the freedom to provide information society services from another member State in paragraph (3) above does

not include any requirement maintaining the level of protection for public health and consumer interests established by Community acts.

(6) To the extent that anything in these Regulations creates any new criminal offence, it shall not be punishable with imprisonment for more than two years or punishable on summary conviction with imprisonment for more than three months or with a fine of more than level 5 on the standard scale (if not calculated on a daily basis) or with a fine of more than £100 a day.

Derogations from regulation 4

5 – (1) Notwithstanding regulation 4(3), an enforcement authority may take measures, including applying any requirement which would otherwise not apply by virtue of regulation 4(3) in respect of a given information society service, where those measures are necessary for reasons of –

- (a) public policy, in particular the prevention, investigation, detection and prosecution of criminal offences, including the protection of minors and the fight against any incitement to hatred on grounds of race, sex, religion or nationality, and violations of human dignity concerning individual persons;
- (b) the protection of public health;
- (c) public security, including the safeguarding of national security and defence, or
- (d) the protection of consumers, including investors,

and proportionate to those objectives.

(2) Notwithstanding regulation 4(3), in any case where an enforcement authority with responsibility in relation to the requirement in question is not party to the proceedings, a court may, on the application of any person or of its own motion, apply any requirement which would otherwise not apply by virtue of regulation 4(3) in respect of a given information society service, if the application of that enactment or requirement is necessary for and proportionate to any of the objectives set out in paragraph (1) above.

(3) Paragraphs (1) and (2) shall only apply where the information society service prejudices or presents a serious and grave risk of prejudice to an objective in paragraph (1)(a) to (d).

(4) Subject to paragraphs (5) and (6), an enforcement authority shall not take the measures in paragraph (1) above, unless it –

- (a) asks the member State in which the service provider is established to take measures and the member State does not take such measures or they are inadequate; and
- (b) notifies the Commission and the member State in which the service provider is established of its intention to take such measures.

(5) Paragraph (4) shall not apply to court proceedings, including preliminary proceedings and acts carried out in the course of a criminal investigation.

(6) If it appears to the enforcement authority that the matter is one of urgency, it may take the measures under paragraph (1) without first asking the member State in which the service provider is established to take measures and notifying the Commission and the member State in derogation from paragraph (4).

(7) In a case where a measure is taken pursuant to paragraph (6) above, the enforcement authority shall notify the measures taken to the Commission and to the member State concerned in the shortest possible time thereafter and indicate the reasons for urgency.

(8) In paragraph (2), ‘court’ means any court or tribunal.

General information to be provided by a person providing an information society service

6 – (1) A person providing an information society service shall make available to the recipient of the service and any relevant enforcement authority, in a form and manner which is easily, directly and permanently accessible, the following information –

- (a) the name of the service provider;
- (b) the geographic address at which the service provider is established;
- (c) the details of the service provider, including his electronic mail address, which make it possible to contact him rapidly and communicate with him in a direct and effective manner;
- (d) where the service provider is registered in a trade or similar register available to the public, details of the register in which the service provider is entered and his registration number, or equivalent means of identification in that register;
- (e) where the provision of the service is subject to an authorisation scheme, the particulars of the relevant supervisory authority;
- (f) where the service provider exercises a regulated profession –
 - (i) the details of any professional body or similar institution with which the service provider is registered;
 - (ii) his professional title and the member State where that title has been granted;
 - (iii) a reference to the professional rules applicable to the service provider in the member State of establishment and the means to access them; and
- (g) where the service provider undertakes an activity that is subject to value added tax, the identification number referred to in Article 22(1) of the sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the member States relating to turnover taxes – Common system of value added tax: uniform basis of assessment.

(2) Where a person providing an information society service refers to prices, these shall be indicated clearly and unambiguously and, in particular, shall indicate whether they are inclusive of tax and delivery costs.

Commercial communications

7 A service provider shall ensure that any commercial communication provided by him and which constitutes or forms part of an information society service shall –

- (a) be clearly identifiable as a commercial communication;
- (b) clearly identify the person on whose behalf the commercial communication is made;
- (c) clearly identify as such any promotional offer (including any discount, premium or gift) and ensure that any conditions which must be met to qualify for it are easily accessible, and presented clearly and unambiguously; and
- (d) clearly identify as such any promotional competition or game and ensure that any conditions for participation are easily accessible and presented clearly and unambiguously.

Unsolicited commercial communications

8 A service provider shall ensure that any unsolicited commercial communication sent by him by electronic mail is clearly and unambiguously identifiable as such as soon as it is received.

Information to be provided where contracts are concluded by electronic means

9 – (1) Unless parties who are not consumers have agreed otherwise, where a contract is to be concluded by electronic means a service provider shall, prior to an order being placed by the recipient of a service, provide to that recipient in a clear, comprehensible and unambiguous manner the information set out in (a) to (d) below –

- (a) the different technical steps to follow to conclude the contract;
- (b) whether or not the concluded contract will be filed by the service provider and whether it will be accessible;

- (c) the technical means for identifying and correcting input errors prior to the placing of the order; and
 - (d) the languages offered for the conclusion of the contract.
- (2) Unless parties who are not consumers have agreed otherwise, a service provider shall indicate which relevant codes of conduct he subscribes to and give information on how those codes can be consulted electronically.
- (3) Where the service provider provides terms and conditions applicable to the contract to the recipient, the service provider shall make them available to him in a way that allows him to store and reproduce them.
- (4) The requirements of paragraphs (1) and (2) above shall not apply to contracts concluded exclusively by exchange of electronic mail or by equivalent individual communications.

Other information requirements

10 Regulations 6, 7, 8 and 9(1) have effect in addition to any other information requirements in legislation giving effect to Community law.

Placing of the order

- 11 – (1) Unless parties who are not consumers have agreed otherwise, where the recipient of the service places his order through technological means, a service provider shall –
- (a) acknowledge receipt of the order to the recipient of the service without undue delay and by electronic means; and
 - (b) make available to the recipient of the service appropriate, effective and accessible technical means allowing him to identify and correct input errors prior to the placing of the order.
- (2) For the purposes of paragraph (1)(a) above –
- (a) the order and the acknowledgement of receipt will be deemed to be received when the parties to whom they are addressed are able to access them; and
 - (b) the acknowledgement of receipt may take the form of the provision of the service paid for where that service is an information society service.
- (3) The requirements of paragraph (1) above shall not apply to contracts concluded exclusively by exchange of electronic mail or by equivalent individual communications.

Meaning of the term ‘order’

12 Except in relation to regulation 9(1)(c) and regulation 11(1)(b) where ‘order’ shall be the contractual offer, ‘order’ may be but need not be the contractual offer for the purposes of regulations 9 and 11.

Liability of the service provider

13 The duties imposed by regulations 6, 7, 8, 9(1) and 11(1)(a) shall be enforceable, at the suit of any recipient of a service, by an action against the service provider for damages for breach of statutory duty.

Compliance with regulation 9(3)

14 Where on request a service provider has failed to comply with the requirement in regulation 9(3), the recipient may seek an order from any court having jurisdiction in relation to the contract requiring that service provider to comply with that requirement.

Right to rescind contract

- 15 Where a person –
- (a) has entered into a contract to which these Regulations apply; and

- (b) the service provider has not made available means of allowing him to identify and correct input errors in compliance with regulation 11(1)(b),
he shall be entitled to rescind the contract unless any court having jurisdiction in relation to the contract in question orders otherwise on the application of the service provider.

16 [Omitted]

Mere conduit

17 – (1) Where an information society service is provided which consists of the transmission in a communication network of information provided by a recipient of the service or the provision of access to a communication network, the service provider (if he otherwise would) shall not be liable for damages or for any other pecuniary remedy or for any criminal sanction as a result of that transmission where the service provider –

- (a) did not initiate the transmission;
- (b) did not select the receiver of the transmission; and
- (c) did not select or modify the information contained in the transmission.

(2) The acts of transmission and of provision of access referred to in paragraph (1) include the automatic, intermediate and transient storage of the information transmitted where:

- (a) this takes place for the sole purpose of carrying out the transmission in the communication network; and
- (b) the information is not stored for any period longer than is reasonably necessary for the transmission.

Caching

18 Where an information society service is provided which consists of the transmission in a communication network of information provided by a recipient of the service, the service provider (if he otherwise would) shall not be liable for damages or for any other pecuniary remedy or for any criminal sanction as a result of that transmission where –

- (a) the information is the subject of automatic, intermediate and temporary storage where that storage is for the sole purpose of making more efficient onward transmission of the information to other recipients of the service upon their request; and
- (b) the service provider –
 - (i) does not modify the information;
 - (ii) complies with conditions on access to the information;
 - (iii) complies with any rules regarding the updating of the information, specified in a manner widely recognised and used by industry;
 - (iv) does not interfere with the lawful use of technology, widely recognised and used by industry, to obtain data on the use of the information; and
 - (v) acts expeditiously to remove or to disable access to the information he has stored upon obtaining actual knowledge of the fact that the information at the initial source of the transmission has been removed from the network, or access to it has been disabled, or that a court or an administrative authority has ordered such removal or disablement.

Hosting

19 Where an information society service is provided which consists of the storage of information provided by a recipient of the service, the service provider (if he otherwise would) shall not be liable for damages or for any other pecuniary remedy or for any criminal sanction as a result of that storage where –

- (a) the service provider –
 - (i) does not have actual knowledge of unlawful activity or information and, where a claim for damages is made, is not aware of facts or circumstances from which it would have been apparent to the service provider that the activity or information was unlawful; or
 - (ii) upon obtaining such knowledge or awareness, acts expeditiously to remove or to disable access to the information, and
- (b) the recipient of the service was not acting under the authority or the control of the service provider.

Protection of rights

20 – (1) Nothing in regulations 17, 18 and 19 shall –

- (a) prevent a person agreeing different contractual terms; or
- (b) affect the rights of any party to apply to a court for relief to prevent or stop infringement of any rights.

(2) Any power of an administrative authority to prevent or stop infringement of any rights shall continue to apply notwithstanding regulations 17, 18 and 19.

Defence in criminal proceedings: burden of proof

21 – (1) This regulation applies where a service provider charged with an offence in criminal proceedings arising out of any transmission, provision of access or storage falling within regulation 17, 18 or 19 relies on a defence under any of regulations 17, 18 and 19.

(2) Where evidence is adduced which is sufficient to raise an issue with respect to that defence, the court or jury shall assume that the defence is satisfied unless the prosecution proves beyond reasonable doubt that it is not.

Notice for the purposes of actual knowledge

22 In determining whether a service provider has actual knowledge for the purposes of regulations 18(b)(v) and 19(a)(i), a court shall take into account all matters which appear to it in the particular circumstances to be relevant and, among other things, shall have regard to –

- (a) whether a service provider has received a notice through a means of contact made available in accordance with regulation 6(1)(c), and
- (b) the extent to which any notice includes –
 - (i) the full name and address of the sender of the notice;
 - (ii) details of the location of the information in question; and
 - (iii) details of the unlawful nature of the activity or information in question.

SCHEDULE

Regulation 4(4)

1. Copyright, neighbouring rights, rights referred to in Directive 87/54/EEC and Directive 96/9/EC and industrial property rights.
2. The freedom of the parties to a contract to choose the applicable law.
3. Contractual obligations concerning consumer contracts.
4. Formal validity of contracts creating or transferring rights in real estate where such contracts are subject to mandatory formal requirements of the law of the member State where the real estate is situated.
5. The permissibility of unsolicited commercial communications by electronic mail.

THE RAILWAYS (CONVENTION ON INTERNATIONAL CARRIAGE BY RAIL) REGULATIONS 2005

SI 2005 NO 2092

1 [Omitted].

2 Interpretation

(1) [Omitted].

(2) In these Regulations –

‘the 1933 Act’ means the Foreign Judgments (Reciprocal Enforcement) Act 1933;

‘the 1976 Act’ means the Fatal Accidents Act 1976;

‘the committees’ means any of the following –

(a) the Revision Committee as described in Article 17;

(b) the RID Expert Committee as described in Article 18; and

(c) the Committee of Technical Experts as described in Article 20;

‘the Convention’ means the version of the ‘Convention concerning International Carriage by Rail (COTIF) of 9th May 1980’ as set out after Article 7 of the Protocol and forming an integral part of the Protocol and comprising –

(a) the Convention itself;

(b) the Protocol on the Privileges and Immunities of the Intergovernmental Organisation for International Carriage by Rail referred to in paragraph 4 of Article 1; and

(c) Appendices A to G to the Convention, including the Annexes to Appendices C and F;

as modified in accordance with its provisions from time to time by a decision of one of the committees under paragraph 4, 5 or 6 of Article 33, as the case may be, whether such modification occurs before or after the coming into force of these Regulations; and

‘the Protocol’ means the Protocol signed at Vilnius on 3rd June 1999 to modify the ‘Convention concerning International Carriage by Rail (COTIF) of 9th May 1980’.

3 Convention to have the force of law

(1) The Convention shall have the force of law in the United Kingdom, and judicial notice shall be taken of it.

(2) For the avoidance of doubt any question arising as to whether the Convention applies in the circumstances of a particular case falls to be determined in accordance with the provisions of paragraph 2 of Article 3.

4 [Omitted].

5 Fatal accidents

(1) Where by virtue of the Convention any person has a right of action in respect of the death of a passenger by reason of his being a person whom the passenger was under a legal duty to maintain –

(a) subject to paragraph (2), no action in respect of the passenger’s death shall be brought for the benefit of that person under the 1976 Act, but

(b) nothing in section 2(3) of that Act (not more than one action in respect of the same subject matter of complaint) shall prevent an action being brought under that Act for the benefit of any other person.

(2) Nothing in paragraph (1)(a) affects the right of any person to claim damages for bereavement under section 1A of the 1976 Act.

(3) Section 4 of the 1976 Act (exclusion of certain benefits in assessment of damages) shall apply in relation to an action brought by any person under the Convention as it applies in relation to an action under that Act.

(4) Where separate proceedings are brought under the Convention and under the 1976 Act in respect of the death of a passenger, a court, in awarding damages under that Act, shall take into account any damages awarded in the proceedings brought under the Convention and shall have jurisdiction to make any part of its award conditional on the result of those proceedings.

(5) In the application of this regulation to Northern Ireland references to the 1976 Act and to sections 1A, 2(3) and 4 of that Act shall be construed as references to the Fatal Accidents (Northern Ireland) Order 1977 and Articles 3A, 4(3) and 6 of that Order.

(6) The provisions of Schedule 1 to these Regulations shall, as respects Scotland, have effect in lieu of paragraphs (1) to (5).

6 Power of court to take account of other proceedings

(1) A court before which proceedings are brought to enforce a liability which is limited by any of the provisions of the Convention may at any stage of the proceedings make any such order as appears to the court to be just and equitable in view of those provisions and of any other proceedings which have been, or are likely to be, commenced in the United Kingdom or elsewhere to enforce the liability in whole or in part.

(2) Without prejudice to paragraph (1), a court before which proceedings are brought to enforce a liability which is so limited shall, where the liability is or may be partly enforceable in other proceedings in the United Kingdom or elsewhere, have jurisdiction to award an amount less than the court would have awarded if the limitation applied solely to the proceedings before the court, or to make any part of its award conditional on the result of any other proceedings.

7 [Omitted].

8 Enforcement of judgments

(1) Subject to paragraph (2), Part I of the 1933 Act shall apply, whether or not it would otherwise have applied, to any judgment which –

(a) has been pronounced as mentioned in paragraph 1 of Article 12 by a court or tribunal in a State which is a party to the Convention for the time being, other than the United Kingdom; and

(b) has become enforceable under the law applied by that court or tribunal.

(2) In the application of Part I of the 1933 Act in relation to any such judgment section 4 of that Act shall have effect with the omission of subsections (2) and (3).

(3) The registration, in accordance with Part I of the 1933 Act, of any such judgment shall constitute compliance with the required formalities referred to in paragraph 1 of Article 12.

9 [Omitted].

SECTION III
EUROPEAN UNION MATERIALS

COUNCIL REGULATION NO 44/2001 ON JURISDICTION AND THE RECOGNITION AND ENFORCEMENT IN CIVIL AND COMMERCIAL MATTERS

OJ 2001 L12/1 (16/1/2001)

CHAPTER I

SCOPE

Article 1

- (1) This Regulation shall apply in civil and commercial matters whatever the nature of the court or tribunal. It shall not extend, in particular, to revenue, customs or administrative matters.
- (2) The Regulation shall not apply to –
 - (a) the status or legal capacity of natural persons, rights in property arising out of a matrimonial relationship, wills and succession;
 - (b) bankruptcy, proceedings related to the winding up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings;
 - (c) social security;
 - (d) arbitration.
- (3) In this Regulation the term ‘Member State’ shall mean Member State with the exception of Denmark.

CHAPTER II

JURISDICTION

SECTION 1

GENERAL PROVISIONS

Article 2

- (1) Subject to the provisions of this Regulation, persons domiciled in a Member State shall, whatever their nationality, be sued in the courts of that Member State.
- (2) Persons who are not nationals of the Member State in which they are domiciled shall be governed by the rules of jurisdiction applicable to nationals of that State.

Article 3

- (1) Persons domiciled in a Member State may be sued in the courts of another Member State only by virtue of the rules set out in Sections 2 to 7 of this Chapter.
- (2) In particular the rules of national jurisdiction set out in Annex 1 shall not be applicable as against them.

Article 4

- (1) If the defendant is not domiciled in a Member State, the jurisdiction of the courts of each Member State shall, subject to the provisions of Articles 22 and 23, be determined by the law of that Member State.
- (2) As against such a defendant, any person domiciled in a Member State may, whatever his

nationality, avail himself in that State of the rules of jurisdiction there in force, and in particular those specified in Annex 1, in the same way as the nationals of that State.

SECTION 2

SPECIAL JURISDICTION

Article 5

A person domiciled in a Member State may, in another Member State, be sued –

- (1) (a) in matters relating to a contract, in the courts for the place of performance of the obligation in question;
 - (b) for the purpose of this provision and unless otherwise agreed, the place of performance of the obligation in question shall be:
 - in the case of the sale of goods, the place in a Member State where, under the contract, the goods were delivered or should have been delivered;
 - in the case of the provision of services, the place in a Member State where, under the contract, the services were provided or should have been provided;
 - (c) if subparagraph (b) does not apply then subparagraph (a) applies.
- (2) In matters relating to maintenance, in the courts for the place where the maintenance creditor is domiciled or habitually resident or, if the matter is ancillary to proceedings concerning the status of a person, in the court which, according to its own law, has jurisdiction to entertain those proceedings, unless that jurisdiction is based solely on the nationality of one of the parties.
- (3) In matters relating to tort, delict or quasi-delict, in the courts for the place where the harmful event occurred.
- (4) As regards a civil claim for damages or restitution which is based on an act giving rise to criminal proceedings, in the court seised of those proceedings, to the extent that that court has jurisdiction under its own law to entertain civil proceedings.
- (5) As regards a dispute arising out of the operations of a branch, agency or other establishment, in the courts for the place in which the branch, agency or other establishment is situated.
- (6) As settlor, trustee or beneficiary of a trust created by the operation of a statute, or by a written instrument, or created orally and evidenced in writing, in the courts of the Contracting State in which the trust is domiciled.
- (7) As regards a dispute concerning the payment of remuneration claimed in respect of the salvage of cargo or freight, in the court under the authority of which the cargo and freight in question –
 - (a) has been arrested to secure such payment; or
 - (b) could have been so arrested, but bail or other security has been given, provided that this provision shall apply only if it is claimed that the defendant has an interest in the cargo or freight or had such an interest at the time of salvage.

Article 6

A person domiciled in a Member State may also be sued –

- (1) Where he is one of a number of defendants, in the courts for the place where any one of them is domiciled, provided the claims are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings.
- (2) As a third party in an action on a warranty or guarantee or in any other third party proceedings, in the court seised of the original proceedings, unless these were instituted solely

with the objective of removing him from the jurisdiction of the court which would be competent in his case.

(3) On a counter-claim arising from the same contract or facts on which the original claim was based, in the court in which the original claim is pending.

(4) In matters relating to a contract, if the action may be combined with an action against the same defendant in matters relating to rights *in rem* in immovable property, in the court of the Member State in which the property is situated.

Article 7

Where by virtue of this Regulation a court of a Member State has jurisdiction in actions relating to liability from the use or operation of a ship, that court, or any other court substituted for this purpose by the internal law of that Member State, shall also have jurisdiction over claims for limitation of such liability.

SECTION 3

JURISDICTION IN MATTERS RELATING TO INSURANCE

Article 8

In matters relating to insurance, jurisdiction shall be determined by this section, without prejudice to the provisions of Articles 4 and 5(5).

Article 9

(1) An insurer domiciled in a Member State may be sued –

- (a) in the courts of the Member State where he is domiciled; or
- (b) in another Member State, in the case of actions brought by the policyholder, the insured or a beneficiary, in the courts for the place where the plaintiff is domiciled;
- (c) if he is a co-insurer, in the courts of a Member State in which proceedings are brought against the leading insurer.

(2) An insurer who is not domiciled in a Member State but has a branch, agency or other establishment in one of the Member States shall, in disputes arising out of the operations of the branch, agency or establishment, be deemed to be domiciled in that Member State.

Article 10

In respect of liability insurance or insurance of immovable property, the insurer may in addition be sued in the courts for the place where the harmful event occurred. The same applies if moveable and immovable property are covered by the same insurance policy and both are adversely affected by the same contingency.

Article 11

(1) In respect of liability insurance, the insurer may also, if the law of the court permits it, be joined in proceedings which the injured party had brought against the insured.

(2) The provisions of Articles 8, 9 and 10 shall apply to actions brought by the insured party directly against the insurer, where such direct actions are permitted.

(3) If the law governing such direct actions provides that the policy-holder or the insured may be joined as a party to the action, the same court shall have jurisdiction over them.

Article 12

(1) Without prejudice to the provisions of Article 11(3), an insurer may bring proceedings only in the courts of the Member State in which the defendant is domiciled, irrespective of whether he is the policy-holder, the insured or a beneficiary.

(2) The provisions of this section should not affect the right to bring a counterclaim in the court in which, in accordance with this Section, the original claim is pending.

Article 13

The provisions of this Section may be departed from only by an agreement –

- (1) which is entered into after the dispute has arisen; or
- (2) which allows the policy-holder, the insured or a beneficiary to bring proceedings in courts other than those indicated in this Section; or
- (3) which is concluded between a policy-holder and an insurer, both of whom are domiciled in the same Member State, and which has the effect of conferring jurisdiction on the courts of that State even if the harmful event were to occur abroad, provided that such an agreement is not contrary to the law of that State; or
- (4) which is concluded with a policy-holder who is not domiciled in a Member State, except in so far as the insurance is compulsory or relates to immovable property in a Member State; or
- (5) which relates to a contract of insurance in so far as it covers one or more of the risks set out in Article 14.

Article 14

The following are the risks referred to in Article 13(5) –

- (1) Any loss or damage to –
 - (a) sea-going ships, installations situated offshore or on the high seas, or aircraft, arising from perils which relate to their use for commercial purposes;
 - (b) goods in transit other than passengers' baggage where the transit consists of or includes carriage by such ships or aircraft.
- (2) Any liability, other than for bodily injury to passengers or loss of or damage to their baggage –
 - (a) arising out of the use or operation of ships, installations or aircraft as referred to in point 1(a) above in so far as the law of the Member State in which such aircraft are registered does not prohibit agreements on jurisdiction regarding insurance of such risks;
 - (b) for loss or damage caused by goods in transit as described in point 1(b) above.
- (3) Any financial loss connected with the use or operation of ships, installations or aircraft as referred to in 1(a) above, in particular loss of freight or charter-hire.
- (4) Any risk or interest connected with any of those referred to in points 1 to 3 above.
- (5) Notwithstanding points 1 to 4, all 'large risks' as defined in Council Directive 73/239/EEC(7), as amended by Council Directives 88/357/EEC(8) and 90/618/EEC(9), as they may be amended.

SECTION 4

JURISDICTION OVER CONSUMER CONTRACTS

Article 15

(1) In matters relating to a contract concluded by a person, the consumer, for a purpose which can be regarded as being outside his trade or profession, jurisdiction shall be determined by this Section, without prejudice to the provisions of Article 4 and Article 5(5), if it is –

- (a) a contract for the sale of goods on instalment credit terms; or
- (b) it is a contract for a loan repayable by instalments, or for any other form of credit, made to finance the sale of goods; or

(c) in all other cases, the contract has been concluded with a person who pursues commercial or professional activities in the Member State of the consumer's domicile or, by any means, directs such activities to that Member State or to several States including that Member State, and the contract falls within the scope of such activities.

(2) Where a consumer enters into a contract with a party who is not domiciled in the Member State but has a branch, agency or other establishment in one of the Member States, that party shall, in disputes arising out of the operations of the branch, agency or establishment, be deemed to be domiciled in that State.

(3) This Section shall not apply to a contract of transport other than a contract which, for an inclusive price, provides for a combination of travel and accommodation.

Article 16

(1) A consumer may bring proceedings against the other party to a contract either in the courts of the Member State in which that party is domiciled or in the courts of the Member State in which he is himself domiciled.

(2) Proceedings may be brought against a consumer by the other party to the contract only in the courts of the Member State in which the consumer is domiciled.

(3) This Article shall not affect the right to bring a counter-claim in the court in which, in accordance with this section, the original claim is pending.

Article 17

The provisions of this section may be departed from only by an agreement –

(1) which is entered into after the dispute has arisen; or

(2) which allows the consumer to bring proceedings in courts other than those indicated in this Section; or

(3) which is entered into by the consumer and the other party to the contract, both of whom are at the time of conclusion of the contract domiciled or habitually resident in the same Member State, and which confers jurisdiction on the courts of that Member State, provided that such an agreement is not contrary to the law of that Member State.

SECTION 5

JURISDICTION OVER INDIVIDUAL CONTRACTS OF EMPLOYMENT

Article 18

(1) In matters relating to individual contracts of employment, jurisdiction shall be determined by this Section, without prejudice to Article 4 and point 5 of Article 5.

(2) Where an employee enters into an individual contract of employment with an employer who is not domiciled in a Member State but has a branch, agency or other establishment in one of the Member States, the employer shall, in disputes arising out of the operations of the branch, agency or establishment, be deemed to be domiciled in that Member State.

Article 19

An employer domiciled in a Member State may be sued:

(1) in the courts of the Member State where he is domiciled; or

(2) in another Member State:

(a) in the courts for the place where the employee habitually carries out his work or in the courts for the last place where he did so, or

- (b) if the employee does not or did not habitually carry out his work in any one country, in the courts for the place where the business which engaged the employee is or was situated.

Article 20

- (1) An employer may bring proceedings only in the courts of the Member State in which the employee is domiciled.
- (2) The provisions of this Section shall not affect the right to bring a counter-claim in the court in which, in accordance with this Section, the original claim is pending.

Article 21

The provisions of this Section may be departed from only by an agreement on jurisdiction:

- (1) which is entered into after the dispute has arisen; or
- (2) which allows the employee to bring proceedings in courts other than those indicated in this Section.

SECTION 6

EXCLUSIVE JURISDICTION

Article 22

The following courts shall have exclusive jurisdiction, regardless of domicile –

- (1) In proceedings which have as their object rights *in rem* in immovable property or tenancies of immovable property, the courts of the Member State in which the property is situated. However, in proceedings which have as their object tenancies of immovable property concluded for temporary private use for a maximum period of six consecutive months, the courts of the Member State in which the defendant is domiciled shall also have jurisdiction, provided that the landlord and the tenant are natural persons and are domiciled in the same Member State.
- (2) In proceedings which have as their object the validity of the constitution, the nullity or the dissolution of companies or other legal persons or associations of natural or legal persons, or the decisions of their organs, the courts of the Member State in which the company, legal person or association has its seat. In order to determine that seat, the court shall apply its rules of private international law.
- (3) In proceedings which have as their object the validity of entries in public registers, the courts of the Member State in which the register is kept.
- (4) In proceedings concerned with the registration or validity of patents, trademarks, designs, or other similar rights required to be deposited or registered, the courts of the Member State in which the deposit or registration has been applied for, has taken place or is under the terms of an international convention deemed to have taken place. Without prejudice to the jurisdiction of the European Patent Office under the Convention on the Grant of European Patents, signed at Munich on 5 October 1973, the courts of each Member State shall have exclusive jurisdiction, regardless of domicile, in proceedings concerned with the registration or validity of any European patent granted for that State.
- (5) In proceedings concerned with the enforcement of judgments, the courts of the Member State in which the judgment has been or is to be enforced.

SECTION 7

PROROGATION OF JURISDICTION

Article 23

(1) If the parties, one or more of whom is domiciled in a Member State, have agreed that a court or the courts of a Member State are to have jurisdiction to settle any disputes which have arisen or which may arise in connection with a particular legal relationship, that court or those courts shall have jurisdiction. Such jurisdiction shall be exclusive unless the parties have agreed otherwise. Such an agreement conferring jurisdiction shall be either:

- (a) in writing or evidenced in writing; or
- (b) in a form which accords with practices which the parties have established between themselves; or
- (c) in international trade or commerce, in a form which accords with a usage of which the parties are or ought to have been aware and which in such trade or commerce is widely known to, and regularly observed by, parties to contracts of the type involved in the particular trade or commerce concerned.

(2) Any communication by electronic means which provides a durable record of the agreement shall be equivalent to 'writing'.

(3) Where such an agreement is concluded by parties, none of whom is domiciled in a Member State, the courts of other Member States shall have no jurisdiction over their disputes unless the court or courts chosen have declined jurisdiction.

(4) The court or courts of a Member State on which a trust instrument has conferred jurisdiction shall have exclusive jurisdiction in any proceedings brought against a settlor, trustee or beneficiary, if relations between these persons or their rights or obligations under the trust are involved.

(5) Agreements or provisions of a trust instrument conferring jurisdiction shall have no legal force if they are contrary to Articles 13, 17 or 21, or if the courts whose jurisdiction they purport to exclude have exclusive jurisdiction by virtue of Article 22.

Article 24

Apart from jurisdiction derived from other provisions of this Regulation, a court of a Member State before whom a defendant enters an appearance shall have jurisdiction. This rule shall not apply where appearance was entered solely to contest the jurisdiction, or where another court has exclusive jurisdiction by virtue of Article 22.

SECTION 8

EXAMINATION AS TO JURISDICTION AND ADMISSIBILITY

Article 25

Where a court of a Member State is seised of a claim which is principally concerned with a matter over which the courts of another Member State have exclusive jurisdiction by virtue of Article 22, it shall declare of its own motion that it has no jurisdiction.

Article 26

(1) Where a defendant domiciled in one Member State is sued in a court of another Member State and does not enter an appearance, the court shall declare of its own motion that it has no jurisdiction unless its jurisdiction is derived from the provisions of this Regulation.

(2) The court shall stay the proceedings so long as it is not shown that the defendant has been able to receive the document instituting the proceedings or an equivalent document in sufficient time to enable him to arrange for his defence, or that all necessary steps have been taken to this end.

(3) Article 19 of Council Regulation (EC) No 1348/2000 of 29 May 2000 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters shall apply instead of the provisions of paragraph 2 if the document instituting the proceedings or an equivalent document had to be transmitted from one Member State to another pursuant to this Regulation.

(4) Where the provisions of Regulation (EC) No 1348/2000 are not applicable, Article 15 of the Hague Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters shall apply if the document instituting the proceedings or an equivalent document had to be transmitted pursuant to that Convention.

SECTION 9

LIS PENDENS-RELATED ACTIONS

Article 27

(1) Where proceedings involving the same cause of action and between the same parties are brought in the courts of different Member States, any court other than the court first seised shall of its own motion stay its proceedings until such time as the jurisdiction of the court first seised is established.

(2) Where the jurisdiction of the court first seised is established, any court other than the court first seised shall decline jurisdiction in favour of that court.

Article 28

(1) Where related actions are brought in the courts of different Member States, any court other than the court first seised may, while the actions are pending at first instance, stay its proceedings.

(2) Where these actions are pending at first instance, any court other than the court first seised may also, on the application of one of the parties, decline jurisdiction if the court first seised has jurisdiction over the actions in question and its law permits the consolidation thereof.

(3) For the purposes of this Article, actions are deemed to be related where they are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings.

Article 29

Where actions come within the exclusive jurisdiction of several courts, any court other than the court first seised shall decline jurisdiction in favour of that court.

Article 30

For the purposes of this Section, a court shall be deemed to be seised:

(1) at the time when the document instituting the proceedings or an equivalent document is lodged with the court, provided that the plaintiff has not subsequently failed to take the steps he was required to take to have service effected on the defendant, or

(2) if the document has to be served before being lodged with the court, at the time when it is received by the authority responsible for service, provided that the plaintiff has not subsequently failed to take the steps he was required to take to have the document lodged with the court.

SECTION 10

PROVISIONAL, INCLUDING PROTECTIVE, MEASURES

Article 31

Application may be made to the courts of a Member State for such provisional, including protective, measures as may be available under the law of that State, even if, under this Regulation, the courts of another Member State have jurisdiction as to the substance of the matter.

CHAPTER III

RECOGNITION AND ENFORCEMENT

Article 32

For the purposes of this Regulation, 'judgment' means any judgment given by a court or tribunal of a Member State, whatever the judgment may be called, including a decree, order, decision or writ of execution, as well as the determination of costs or expenses by an officer of the court.

SECTION 1

RECOGNITION

Article 33

(1) A judgment given in a Member State shall be recognised in the other Member States without any special procedure being required.

(2) Any interested party who raises the recognition of a judgment as the principal issue in a dispute may, in accordance with the procedures provided for in Sections 2 and 3 of this Chapter, apply for a decision that the judgment be recognised. If the outcome of proceedings in a court of a Member State depends on the determination of an incidental question of recognition that court shall have jurisdiction over that question.

Article 34

A judgment shall not be recognised –

(1) If such recognition is manifestly contrary to public policy in the Member State in which recognition is sought.

(2) Where it was given in default of appearance, if the defendant was not duly served with the document which instituted the proceedings or with an equivalent document in sufficient time to enable him to arrange for his defence unless the defendant failed to commence proceedings to challenge the judgment when it was possible for him to do so.

(3) If it is irreconcilable with a judgment given in a dispute between the same parties in the Member State in which recognition is sought.

(4) If it is irreconcilable with an earlier judgment given in another Member State or in a third State involving the same cause of action and between the same parties, provided that the earlier judgment fulfils the conditions necessary for its recognition in the Member State addressed.

Article 35

(1) Moreover, a judgment shall not be recognised if it conflicts with the provisions of Sections 3, 4 or 5 of Chapter II, or in a case provided for in Article 72.

(2) In its examination of the grounds of jurisdiction referred to in the foregoing paragraph, the court or authority applied to shall be bound by the findings of fact on which the court of the Member State of origin based its jurisdiction.

(3) Subject to paragraph 1, the jurisdiction of the court of the Member State of origin may not be reviewed. The test of public policy referred to in Article 34 may not be applied to the rules relating to jurisdiction.

Article 36

Under no circumstances may a foreign judgment be reviewed as to its substance.

Article 37

(1) A court of a Member State in which recognition is sought of a judgment given in another Member State may stay the proceedings if an ordinary appeal against the judgment has been lodged.

(2) A court of a Member State in which recognition is sought of a judgment given in Ireland or the United Kingdom may stay the proceedings if enforcement is suspended in the State of origin, by reason of an appeal.

SECTION 2

ENFORCEMENT

Article 38

(1) A judgment given in a Member State and enforceable in that State shall be enforced in another Member State when, on the application of any interested party, it has been declared enforceable there.

(2) However, in the United Kingdom, such a judgment shall be enforced in England and Wales, in Scotland, or in Northern Ireland when, on the application of any interested party, it has been registered for enforcement in that part of the United Kingdom.

Articles 35–58 [Omitted].

CHAPTER V

GENERAL PROVISIONS

Article 59

(1) In order to determine whether a party is domiciled in the Member State whose courts are seised of a matter, the Court shall apply its internal law.

(2) If a party is not domiciled in the Member State whose courts are seised of the matter, then, in order to determine whether the party is domiciled in another Member State, the court shall apply the law of that Member State.

Article 60

(1) For the purposes of this Regulation, a company or other legal person or association of natural or legal persons is domiciled at the place where it has its:

- (a) statutory seat, or
- (b) central administration, or
- (c) principal place of business.

(2) For the purposes of the United Kingdom and Ireland 'statutory seat' means the registered

office or, where there is no such office anywhere, the place of incorporation or, where there is no such place anywhere, the place under the law of which the formation took place.

(3) In order to determine whether a trust is domiciled in the Member State whose courts are seised of the matter, the court shall apply its rules of private international law.

Article 61

Without prejudice to any more favourable provisions of national laws, persons domiciled in a Member State who are being prosecuted in the criminal courts of another Member State of which they are not nationals for an offence which was not intentionally committed may be defended by persons qualified to do so, even if they do not appear in person. However, the court seised of the matter may order appearance in person; in the case of failure to appear, a judgment given in the civil action without the person concerned having had the opportunity to arrange for his defence need not be recognised or enforced in the other Member States.

Articles 62–66 [Omitted].

CHAPTER VII

RELATIONS WITH OTHER INSTRUMENTS

Article 67

This Regulation shall not prejudice the application of provisions governing jurisdiction and the recognition and enforcement of judgments in specific matters which are contained in Community instruments or in national legislation harmonised pursuant to such instruments.

Article 68

(1) This Regulation shall, as between the Member States, supersede the Brussels Convention, except as regards the territories of the Member States which fall within the territorial scope of that Convention and which are excluded from this Regulation pursuant to Article 299 of the Treaty.

(2) In so far as this Regulation replaces the provisions of the Brussels Convention between Member States, any reference to the Convention shall be understood as a reference to this Regulation.

Articles 69–76 [Omitted].

DIRECTIVE 1999/93/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

OF 13 DECEMBER 1999

**ON A COMMUNITY FRAMEWORK FOR ELECTRONIC
SIGNATURES OJ 2000/L13/12 (19/1/2000)**

Article 1 Scope

The purpose of this Directive is to facilitate the use of electronic signatures and to contribute to their legal recognition. It establishes a legal framework for electronic signatures and certain certification-services in order to ensure the proper functioning of the internal market.

It does not cover aspects related to the conclusion and validity of contracts or other legal obligations where there are requirements as regards form prescribed by national or Community law nor does it affect rules and limits, contained in national or Community law, governing the use of documents.

Article 2 Definitions

For the purpose of this Directive:

1. 'electronic signature' means data in electronic form which are attached to or logically associated with other electronic data and which serve as a method of authentication;
2. 'advanced electronic signature' means an electronic signature which meets the following requirements:
 - (a) it is uniquely linked to the signatory;
 - (b) it is capable of identifying the signatory;
 - (c) it is created using means that the signatory can maintain under his sole control; and
 - (d) it is linked to the data to which it relates in such a manner that any subsequent change of the data is detectable;
3. 'signatory' means a person who holds a signature-creation device and acts either on his own behalf or on behalf of the natural or legal person or entity he represents;
4. 'signature-creation data' means unique data, such as codes or private cryptographic keys, which are used by the signatory to create an electronic signature;
5. 'signature-creation device' means configured software or hardware used to implement the signature-creation data;
6. 'secure-signature-creation device' means a signature-creation device which meets the requirements laid down in Annex III;
7. 'signature-verification-data' means data, such as codes or public cryptographic keys, which are used for the purpose of verifying an electronic signature;
8. 'signature-verification device' means configured software or hardware used to implement the signature-verification-data;
9. 'certificate' means an electronic attestation which links signature-verification data to a person and confirms the identity of that person;
10. 'qualified certificate' means a certificate which meets the requirements laid down in Annex I and is provided by a certification-service-provider who fulfils the requirements laid down in Annex II;
11. 'certification-service-provider' means an entity or a legal or natural person who issues certificates or provides other services related to electronic signatures;
12. 'electronic-signature product' means hardware or software, or relevant components thereof, which are intended to be used by a certification-service-provider for the provision of electronic-signature services or are intended to be used for the creation or verification of electronic signatures;
13. 'voluntary accreditation' means any permission, setting out rights and obligations specific to the provision of certification services, to be granted upon request by the certification-service-provider concerned, by the public or private body charged with the elaboration of, and supervision of compliance with, such rights and obligations, where the certification-service-provider is not entitled to exercise the rights stemming from the permission until it has received the decision by the body.

Article 3 Market access

1. Member States shall not make the provision of certification services subject to prior authorisation.
2. Without prejudice to the provisions of paragraph 1, Member States may introduce or maintain voluntary accreditation schemes aiming at enhanced levels of certification-service provision. All conditions related to such schemes must be objective, transparent, proportionate and non-discriminatory. Member States may not limit the number of accredited certification-service-providers for reasons which fall within the scope of this Directive.
3. Each Member State shall ensure the establishment of an appropriate system that allows for supervision of certification-service-providers which are established on its territory and issue qualified certificates to the public.
4. The conformity of secure signature-creation-devices with the requirements laid down in Annex III shall be determined by appropriate public or private bodies designated by Member States. The Commission shall, pursuant to the procedure laid down in Article 9, establish criteria for Member States to determine whether a body should be designated. A determination of conformity with the requirements laid down in Annex III made by the bodies referred to in the first subparagraph shall be recognised by all Member States.
5. The Commission may, in accordance with the procedure laid down in Article 9, establish and publish reference numbers of generally recognised standards for electronic-signature products in the *Official Journal of the European Communities*. Member States shall presume that there is compliance with the requirements laid down in Annex II, point (f), and Annex III when an electronic signature product meets those standards.
6. Member States and the Commission shall work together to promote the development and use of signature-verification devices in the light of the recommendations for secure signature-verification laid down in Annex IV and in the interests of the consumer.
7. Member States may make the use of electronic signatures in the public sector subject to possible additional requirements. Such requirements shall be objective, transparent, proportionate and non-discriminatory and shall relate only to the specific characteristics of the application concerned. Such requirements may not constitute an obstacle to cross-border services for citizens.

Article 4 Internal market principles

1. Each Member State shall apply the national provisions which it adopts pursuant to this Directive to certification-service-providers established on its territory and to the services which they provide. Member States may not restrict the provision of certification-services originating in another Member State in the fields covered by this Directive.
2. Member States shall ensure that electronic-signature products which comply with this Directive are permitted to circulate freely in the internal market.

Article 5 Legal effects of electronic signatures

1. Member States shall ensure that advanced electronic signatures which are based on a qualified certificate and which are created by a secure-signature-creation device:
 - (a) satisfy the legal requirements of a signature in relation to data in electronic form in the same manner as a hand-written signature satisfies those requirements in relation to paper-based data; and
 - (b) are admissible as evidence in legal proceedings.
2. Member States shall ensure that an electronic signature is not denied legal effectiveness and admissibility as evidence in legal proceedings solely on the grounds that it is:

- in electronic form, or
- not based upon a qualified certificate, or
- not based upon a qualified certificate issued by an accredited certification-service-provider, or
- not created by a secure signature-creation device.

Article 6 Liability

1. As a minimum, Member States shall ensure that by issuing a certificate as a qualified certificate to the public or by guaranteeing such a certificate to the public a certification-service-provider is liable for damage caused to any entity or legal or natural person who reasonably relies on that certificate;

- (a) as regards the accuracy at the time of issuance of all information contained in the qualified certificate and as regards the fact that the certificate contains all the details prescribed for a qualified certificate;
- (b) for assurance that at the time of the issuance of the certificate, the signatory identified in the qualified certificate held the signature-creation data corresponding to the signature-verification data given or identified in the certificate;
- (c) for assurance that the signature-creation data and the signature-verification data can be used in a complementary manner in cases where the certification-service-provider generates them both;

unless the certification-service-provider proves that he has not acted negligently.

2. As a minimum Member States shall ensure that a certification-service-provider who has issued a certificate as a qualified certificate to the public is liable for damage caused to any entity or legal or natural person who reasonably relies on the certificate for failure to register revocation of the certificate unless the certification-service-provider proves that he has not acted negligently.

3. Member States shall ensure that a certification-service-provider may indicate in a qualified certificate limitations on the use of that certificate, provided that the limitations are recognisable to third parties. The certification-service-provider shall not be liable for damage arising from use of a qualified certificate which exceeds the limitations placed on it.

4. Member States shall ensure that a certification-service-provider may indicate in the qualified certificate a limit on the value of transactions for which the certificate can be used, provided that the limit is recognisable to third parties. The certification-service-provider shall not be liable for damage resulting from this maximum limit being exceeded.

5. The provisions of paragraphs 1 to 4 shall be without prejudice to Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts.

Article 7 International aspects

1. Member States shall ensure that certificates which are issued as qualified certificates to the public by a certification-service-provider established in a third country are recognised as legally equivalent to certificates issued by a certification-service-provider established within the Community if:

- (a) the certification-service-provider fulfils the requirements laid down in this Directive and has been accredited under a voluntary accreditation scheme established in a Member State; or
- (b) a certification-service-provider established within the Community which fulfils the requirements laid down in this Directive guarantees the certificate; or

- (c) the certificate or the certification-service-provider is recognised under a bilateral or multilateral agreement between the Community and third countries or international organisations.
2. In order to facilitate cross-border certification services with third countries and legal recognition of advanced electronic signatures originating in third countries, the Commission shall make proposals, where appropriate, to achieve the effective implementation of standards and international agreements applicable to certification services. In particular, and where necessary, it shall submit proposals to the Council for appropriate mandates for the negotiation of bilateral and multilateral agreements with third countries and international organisations. The Council shall decide by qualified majority.
3. Whenever the Commission is informed of any difficulties encountered by Community undertakings with respect to market access in third countries, it may, if necessary, submit proposals to the Council for an appropriate mandate for the negotiation of comparable rights for Community undertakings in these third countries. The Council shall decide by qualified majority. Measures taken pursuant to this paragraph shall be without prejudice to the obligations of the Community and of the Member States under relevant international agreements.

Article 8 Data protection

1. Member States shall ensure that certification-service-providers and national bodies responsible for accreditation or supervision comply with the requirements laid down in Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data.
2. Member States shall ensure that a certification-service-provider which issues certificates to the public may collect personal data only directly from the data subject, or after the explicit consent of the data subject, and only insofar as it is necessary for the purposes of issuing and maintaining the certificate. The data may not be collected or processed for any other purposes without the explicit consent of the data subject.
3. Without prejudice to the legal effect given to pseudonyms under national law, Member States shall not prevent certification service providers from indicating in the certificate a pseudonym instead of the signatory's name.

Articles 9–15 [Omitted].

ANNEX I

REQUIREMENTS FOR QUALIFIED CERTIFICATES

Qualified certificates must contain:

- (a) an indication that the certificate is issued as a qualified certificate;
- (b) the identification of the certification-service-provider and the State in which it is established;
- (c) the name of the signatory or a pseudonym, which shall be identified as such;
- (d) provision for a specific attribute of the signatory to be included if relevant, depending on the purpose for which the certificate is intended;
- (e) signature-verification data which correspond to signature-creation data under the control of the signatory;
- (f) an indication of the beginning and end of the period of validity of the certificate;
- (g) the identity code of the certificate;

- (h) the advanced electronic signature of the certification-service-provider issuing it;
- (i) limitations on the scope of use of the certificate, if applicable; and
- (j) limits on the value of transactions for which the certificate can be used, if applicable.

ANNEX II

REQUIREMENTS FOR CERTIFICATION-SERVICE-PROVIDERS ISSUING QUALIFIED CERTIFICATES

Certification-service-providers must:

- (a) demonstrate the reliability necessary for providing certification services;
- (b) ensure the operation of a prompt and secure directory and a secure and immediate revocation service;
- (c) ensure that the date and time when a certificate is issued or revoked can be determined precisely;
- (d) verify, by appropriate means in accordance with national law, the identity and, if applicable, any specific attributes of the person to which a qualified certificate is issued;
- (e) employ personnel who possess the expert knowledge, experience, and qualifications necessary for the services provided, in particular competence at managerial level, expertise in electronic signature technology and familiarity with proper security procedures; they must also apply administrative and management procedures which are adequate and correspond to recognised standards;
- (f) use trustworthy systems and products which are protected against modification and ensure the technical and cryptographic security of the process supported by them;
- (g) take measures against forgery of certificates, and, in cases where the certification-service-provider generates signature-creation data, guarantee confidentiality during the process of generating such data;
- (h) maintain sufficient financial resources to operate in conformity with the requirements laid down in the Directive, in particular to bear the risk of liability for damages, for example, by obtaining appropriate insurance;
- (i) record all relevant information concerning a qualified certificate for an appropriate period of time, in particular for the purpose of providing evidence of certification for the purposes of legal proceedings. Such recording may be done electronically;
- (j) not store or copy signature-creation data of the person to whom the certification-service-provider provided key management services;
- (k) before entering into a contractual relationship with a person seeking a certificate to support his electronic signature inform that person by a durable means of communication of the precise terms and conditions regarding the use of the certificate, including any limitations on its use, the existence of a voluntary accreditation scheme and procedures for complaints and dispute settlement. Such information, which may be transmitted electronically, must be in writing and in readily understandable language. Relevant parts of this information must also be made available on request to third-parties relying on the certificate;
- (l) use trustworthy systems to store certificates in a verifiable form so that:
 - only authorised persons can make entries and changes,
 - information can be checked for authenticity,

- certificates are publicly available for retrieval in only those cases for which the certificate-holder's consent has been obtained, and
- any technical changes compromising these security requirements are apparent to the operator.

ANNEX III

REQUIREMENTS FOR SECURE SIGNATURE-CREATION DEVICES

1. Secure signature-creation devices must, by appropriate technical and procedural means, ensure at the least that:
 - (a) the signature-creation-data used for signature generation can practically occur only once, and that their secrecy is reasonably assured;
 - (b) the signature-creation-data used for signature generation cannot, with reasonable assurance, be derived and the signature is protected against forgery using currently available technology;
 - (c) the signature-creation-data used for signature generation can be reliably protected by the legitimate signatory against the use of others.
2. Secure signature-creation devices must not alter the data to be signed or prevent such data from being presented to the signatory prior to the signature process.

ANNEX IV

RECOMMENDATIONS FOR SECURE SIGNATURE VERIFICATION

During the signature-verification process it should be ensured with reasonable certainty that:

- (a) the data used for verifying the signature correspond to the data displayed to the verifier;
- (b) the signature is reliably verified and the result of that verification is correctly displayed;
- (c) the verifier can, as necessary, reliably establish the contents of the signed data;
- (d) the authenticity and validity of the certificate required at the time of signature verification are reliably verified;
- (e) the result of verification and the signatory's identity are correctly displayed;
- (f) the use of a pseudonym is clearly indicated; and
- (g) any security-relevant changes can be detected.

