

An Act to provide for rights to cancel certain agreements about timeshare accommodation.

[16th March 1992]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:-

Application of Act.

1.-(1) In this Act-

(a) "timeshare accommodation" means any living accommodation, in the United Kingdom or elsewhere, used or intended to be used, wholly or partly, for leisure purposes by a class of persons (referred to below in this section as "timeshare users") all of whom have rights to use, or participate in arrangements under which they may use, that accommodation, or accommodation within a pool of accommodation to which that accommodation belongs, for intermittent periods of short duration, and

(b) "timeshare rights" means rights by virtue of which a person becomes or will become a timeshare user, being rights exercisable during a period of not less than three years.

(2) For the purposes of subsection (1)(a) above-

(a) "accommodation" means accommodation in a building or in a caravan (as defined in section 29(1) of the [1960 c. 62.] Caravan Sites and Control of Development Act 1960), and

(b) a period of not more than one month, or such other period as may be prescribed, is a period of short duration.

(3) Subsection (1)(b) above does not apply to a person's rights-

(a) as the owner of any shares or securities,

(b) under a contract of employment (as defined in section 153 of the [1978 c. 44.] Employment Protection (Consolidation) Act 1978) or a policy of insurance, or

(c) by virtue of his taking part in a collective investment scheme (as defined in section 75 of the [1986 c. 60.] Financial Services Act 1986), or to such rights as may be prescribed.

(4) In this Act "timeshare agreement" means, subject to subsection (6) below, an agreement under which timeshare rights are conferred or purport to be conferred on any person and in this Act, in relation to a timeshare agreement-

(a) references to the offeree are to the person on whom timeshare rights are conferred, or purport to be conferred, and

(b) references to the offeror are to the other party to the agreement,

and, in relation to any time before the agreement is entered into, references in this Act to the offeree or the offeror are to the persons who become the offeree and offeror when it is entered into.

(5) In this Act "timeshare credit agreement" means, subject to subsection (6) below, an agreement, not being a timeshare agreement—

(a) under which a person (referred to in this Act as the "creditor") provides or agrees to provide credit for or in respect of a person who is the offeree under a timeshare agreement, and

(b) when the credit agreement is entered into, the creditor knows or has reasonable cause to believe that the whole or part of the credit is to be used for the purpose of financing the offeree's entering into a timeshare agreement.

(6) An agreement is not a timeshare agreement or a timeshare credit agreement if, when entered into, it may be cancelled by virtue of section 67 of the [1974 c. 39.] Consumer Credit Act 1974.

(7) This Act applies to any timeshare agreement or timeshare credit agreement if—

(a) the agreement is to any extent governed by the law of the United Kingdom or of a part of the United Kingdom, or

(b) when the agreement is entered into, one or both of the parties are in the United Kingdom.

(8) In the application of this section to Northern Ireland—

(a) for the reference in subsection (2)(a) above to section 29(1) of the [1960 c. 62.] Caravan Sites and Control of Development Act 1960 there is substituted a reference to section 25(1) of the [1963. c. 17. (N.I.)] Caravans Act (Northern Ireland) 1963, and

(b) for the reference in subsection (3)(b) above to section 153 of the [1978 c. 44.] Employment Protection (Consolidation) Act 1978 there is substituted a reference to article 2(2) of the [S.I. 1976/1043 (N.I. 16)] Industrial Relations (Northern Ireland) Order 1976.

Obligation to give notice of right to cancel timeshare agreement.

2.—(1) A person must not in the course of a business enter into a timeshare agreement to which this Act applies as offeror unless the offeree has received, together with a document setting out the terms of the agreement or the substance of those terms, notice of his right to cancel the agreement.

(2) A notice under this section must state—

(a) that the offeree is entitled to give notice of cancellation of the agreement to the offeror at any time on or before the date specified in the notice, being a day falling not less than fourteen days after the day on which the agreement is entered into, and

(b) that if the offeree gives such a notice to the offeror on or before that date he will have no further rights or obligations under the agreement, but will have the right to recover any sums paid under or in contemplation of the agreement.

(3) A person who contravenes this section is guilty of an offence and liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum, and

(b) on conviction on indictment, to a fine.

Obligation to give notice of right to cancel timeshare credit agreement.

3.—(1) A person must not in the course of a business enter into a timeshare credit agreement to which this Act applies as creditor unless the

offeree has received, together with a document setting out the terms of the agreement or the substance of those terms, notice of his right to cancel the agreement.

(2) A notice under this section must state—

(a) that the offeree is entitled to give notice of cancellation of the agreement to the creditor at any time on or before the date specified in the notice, being a day falling not less than fourteen days after the day on which the agreement is entered into, and

(b) that, if the offeree gives such a notice to the creditor on or before that date, then—

(i) so far as the agreement relates to repayment of credit and payment of interest, it shall have effect subject to section 7 of this Act, and

(ii) subject to sub-paragraph (i) above, the offeree will have no further rights or obligations under the agreement.

Provisions supplementary to sections 2 and 3.

4.—(1) Sections 2 and 3 of this Act do not apply where, in entering into the agreement, the offeree is acting in the course of a business.

(2) A notice under section 2 or 3 must be accompanied by a blank notice of cancellation and any notice under section 2 or 3 of this Act or blank notice of cancellation must—

(a) be in such form as may be prescribed, and

(b) comply with such requirements (whether as to type, size, colour or disposition of lettering, quality or colour of paper, or otherwise) as may be prescribed for securing that the notice is prominent and easily legible.

(3) An agreement is not invalidated by reason of a contravention of section 2 or 3.

Right to cancel timeshare agreement.

5.—(1) Where a person—

(a) has entered, or proposes to enter, into a timeshare agreement to which this Act applies as offeree, and

(b) has received the notice required under section 2 of this Act before entering into the agreement, the agreement may not be enforced against him on or before the date specified in the notice in pursuance of subsection (2) (a) of that section and he may give notice of cancellation of the agreement to the offeror at any time on or before that date.

(2) Subject to subsection (3) below, where a person who enters into a timeshare agreement to which this Act applies as offeree has not received the notice required under section 2 of this Act before entering into the agreement, the agreement may not be enforced against him and he may give notice of cancellation of the agreement to the offeror at any time.

(3) If in a case falling within subsection (2) above the offeree affirms the agreement at any time after the expiry of the period of fourteen days beginning with the day on which the agreement is entered into—

(a) subsection (2) above does not prevent the agreement being enforced against him, and

(b) he may not at any subsequent time give notice of cancellation of the agreement to the offeror.

(4) The offeree's giving, within the time allowed under this section, notice of cancellation of the agreement to the offeror at a time when the agreement has been entered into shall have the effect of cancelling the agreement.

(5) The offeree's giving notice of cancellation of the agreement to the offeror before the agreement has been entered into shall have the effect of withdrawing any offer to enter into the agreement.

(6) Where a timeshare agreement is cancelled under this section, then, subject to subsection (9) below—

(a) the agreement shall cease to be enforceable, and

(b) subsection (8) below shall apply.

(7) Subsection (8) below shall also apply where giving a notice of cancellation has the effect of withdrawing an offer to enter into a timeshare agreement.

(8) Where this subsection applies—

(a) any sum which the offeree has paid under or in contemplation of the agreement to the offeror, or to any person who is the offeror's agent for the purpose of receiving that sum, shall be recoverable from the offeror by the offeree and shall be due and payable at the time the notice of cancellation is given, but

(b) no sum may be recovered by or on behalf of the offeror from the offeree in respect of the agreement.

(9) Where a timeshare agreement includes provision for providing credit for or in respect of the offeree, then, notwithstanding the giving of notice of cancellation under this section, so far as the agreement relates to repayment of the credit and payment of interest—

(a) it shall continue to be enforceable, subject to section 7 of this Act, and

(b) the notice required under section 2 of this Act must also state that fact.

Right to cancel timeshare credit agreement.

6.—(1) Where a person—

(a) has entered into a timeshare credit agreement to which this Act applies as offeree, and

(b) has received the notice required under section 3 of this Act before entering into the agreement, he may give notice of cancellation of the agreement to the creditor at any time on or before the date specified in the notice in pursuance of subsection (2) (a) of that section.

(2) Subject to subsection (3) below, where a person who enters into a timeshare credit agreement to which this Act applies as offeree has not received the notice required under section 3 of this Act before entering into the agreement, he may give notice of cancellation of the agreement to the creditor at any time.

(3) If in a case falling within subsection (2) above the offeree affirms the agreement at any time after the expiry of the period of fourteen days beginning with the day on which the agreement is entered into, he may not at any subsequent time give notice of cancellation of the agreement to the creditor.

(4) The offeree's giving, within the time allowed under this section, notice of cancellation of the agreement to the creditor at a time when the agreement has been entered into shall have the effect of cancelling the agreement.

(5) Where a timeshare credit agreement is cancelled under this section—
(a) the agreement shall continue in force, subject to section 7 of this Act, so far as it relates to repayment of the credit and payment of interest, and
(b) subject to paragraph (a) above, the agreement shall cease to be enforceable.

Repayment of credit and interest.

7.—(1) This section applies following—

(a) the giving of notice of cancellation of a timeshare agreement in accordance with section 5 of this Act in a case where subsection (9) of that section applies, or

(b) the giving of notice of cancellation of a timeshare credit agreement in accordance with section 6 of this Act.

(2) If the offeree repays the whole or a portion of the credit—

(a) before the expiry of one month following the giving of the notice, or

(b) in the case of a credit repayable by instalments, before the date on which the first instalment is due,
no interest shall be payable on the amount repaid.

(3) If the whole of a credit repayable by instalments is not repaid on or before the date specified in subsection (2) (b) above, the offeree shall not be liable to repay any of the credit except on receipt of a request in writing in such form as may be prescribed, signed by or on behalf of the offeror or (as the case may be) creditor, stating the amounts of the remaining instalments (recalculated by the offeror or creditor as nearly as may be in accordance with the agreement and without extending the repayment period), but excluding any sum other than principal and interest.

Defence of due diligence.

8.—(1) In proceedings against a person for an offence under section 2(3) of this Act it shall be a defence for that person to show that he took all reasonable steps and exercised all due diligence to avoid committing the offence.

(2) Where in proceedings against a person for such an offence the defence provided by subsection (1) above involves an allegation that the commission of the offence was due—

(a) to the act or default of another, or

(b) to reliance on information given by another,
that person shall not, without the leave of the court, be entitled to rely on the defence unless he has served a notice under subsection (3) below on the person bringing the proceedings not less than seven clear days before the hearing of the proceedings or, in Scotland, the diet of trial.

(3) A notice under this subsection shall give such information identifying or assisting in the identification of the person who committed the act or default or gave the information as is in the possession of the person serving the notice at the time when he serves it.

Liability of persons other than principal offender.

9.—(1) Where the commission by a person of an offence under section 2(3) of this Act is due to the act or default of some other person, that other person is guilty of the offence and may be proceeded against and punished by virtue of

this section whether or not proceedings are taken against the first-mentioned person.

(2) Where a body corporate is guilty of an offence under section 2(3) of this Act (including where it is so guilty by virtue of subsection (1) above) in respect of an act or default which is shown to have been committed with the consent or connivance of, or to be attributable to neglect on the part of, a director, manager, secretary or other similar officer of the body corporate or a person who was purporting to act in such a capacity, he (as well as the body corporate) is guilty of the offence and liable to be proceeded against and punished accordingly.

(3) Where the affairs of a body corporate are managed by its members, subsection (2) above applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

(4) Where an offence under section 2(3) of this Act committed in Scotland by a Scottish partnership is proved to have been committed with the consent or connivance of, or to be attributable to neglect on the part of, a partner, he (as well as the partnership) is guilty of the offence and liable to be proceeded against and punished accordingly.

Enforcement.

10. The Schedule to this Act (which makes provision about enforcement) shall have effect.

Prosecution time limit.

11.—(1) No proceedings for an offence under section 2(3) of this Act or paragraph 4(3) or 5(1) of the Schedule to this Act shall be commenced after—

(a) the end of the period of three years beginning with the date of the commission of the offence, or

(b) the end of the period of one year beginning with the date of the discovery of the offence by the prosecutor, whichever is the earlier.

(2) For the purposes of this section a certificate signed by or on behalf of the prosecutor and stating the date on which the offence was discovered by him shall be conclusive evidence of that fact; and a certificate stating that matter and purporting to be so signed shall be treated as so signed unless the contrary is proved.

(3) In relation to proceedings in Scotland, subsection (3) of section 331 of the [1975 c. 21.] Criminal Procedure (Scotland) Act 1975 (date of commencement of proceedings) shall apply for the purposes of this section as it applies for the purposes of that.

General provisions.

12.—(1) For the purposes of this Act, a notice of cancellation of an agreement is a notice (however expressed) showing that the offeree wishes unconditionally to cancel the agreement, whether or not it is in a prescribed form.

(2) The rights conferred and duties imposed by sections 2 to 7 of this Act are in addition to any rights conferred or duties imposed by or under any other Act.

(3) For the purposes of this Act, if the offeree sends a notice by post in a properly addressed and pre-paid letter the notice is to be treated as given at the time of posting.

(4) This Act shall have effect in relation to any timeshare agreement or timeshare credit agreement notwithstanding any agreement or notice.

(5) For the purposes of the [1974 c. 39.] Consumer Credit Act 1974, a transaction done under or for the purposes of a timeshare agreement is not, in relation to any regulated agreement (within the meaning of that Act), a linked transaction.

(6) In this Act—
"credit" includes a cash loan and any other form of financial accommodation,
"notice" means notice in writing,
"order" means an order made by the Secretary of State, and
"prescribed" means prescribed by an order.

(7) An order under this Act may make different provision for different cases or circumstances.

(8) Any power under this Act to make an order shall be exercisable by statutory instrument and a statutory instrument containing an order under this Act (other than an order made for the purposes of section 13(2) of this Act) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Short title, etc.

13.—(1) This Act may be cited as the Timeshare Act 1992.

(2) This Act shall come into force on such day as may be prescribed.

(3) This Act extends to Northern Ireland.

Other UK Acts | Home | Scotland Legislation | Wales Legislation | Northern Ireland Legislation | Her Majesty's Stationery Office

We welcome your comments on this site © Crown copyright 1992 Prepared 20th September 2000