

## CONTRACTS ENFORCEMENT BILL

### EXPLANATORY NOTE

This Bill brings the statutory law relating to the enforcement of certain contracts into line with English law. It repeals in New Zealand section 4 of the Statute of Frauds 1677 (which requires certain contracts to be proved by writing), and substitutes similar provisions relating only to contracts for the disposal of land and contracts of guarantee; and it repeals section 6 of the Sale of Goods Act 1908 (which was originally section 17 of the Statute of Frauds 1677).

The effect of section 4 of the Statute of Frauds 1677, as applying in New Zealand, is that a contract by an executor or administrator to answer damages out of his own estate, or a contract to answer for the debt, default, or miscarriages of another person (that is to say, a contract of guarantee), or an agreement made in consideration of marriage, or "a contract or sale" of land or any interest in land, or an agreement not to be performed within one year after its making, cannot be enforced by action (although it may be valid under the ordinary rules of the law of contract) unless the contract or agreement or a memorandum or note of it is in writing signed by the party to be charged or his agent. The section does not make the contract or agreement void, but merely prevents its enforcement unless the required written evidence exists. The part of the section relating to land was replaced in the United Kingdom by section 40 of the Law of Property Act 1925 (U.K.), but the rest of the section, except the part relating to guarantees, was repealed in the United Kingdom, with retrospective effect, by the Law Reform (Enforcement of Contracts) Act 1954 (2 and 3 Eliz. II, ch. 34).

Clause 2 of this Bill applies to—(a) contracts for the sale of land; (b) contracts to dispose of land (for example, to give a lease or to create a trust or to devise land by will), where the disposition itself is required by any enactment to be in writing; (c) contracts to enter into mortgages or charges on land; and (d) contracts of guarantee. The effect of *subclause (2)* is that no such contract is enforceable by action unless the contract or a memorandum or note of it is in writing and is signed by the defendant or his agent. *Subclause (3)* provides that the clause is not to apply to a sale of land by order of the Supreme Court or through the Registrar, or to an alienation of Maori land by a Maori that has to be confirmed by the Maori Land Court, or to a sale by order of the Maori Land Court. It also preserves the operation of the rules of law relating to part performance. Under those rules the plaintiff may prove his contract in the ordinary way without the written evidence required by the statute if he

can also prove that he has partly performed the contract by doing acts that relate only to such a contract and are such as to render it a fraud on the part of the defendant to take advantage of the absence of writing. *Subclause (4)* defines "disposition" and "land". *Subclause (5)* makes the new provisions apply only to contracts made after the passing of the Bill. *Subclause (6)* repeals in New Zealand section 4 of the Statute of Frauds, except in relation to contracts made before the passing of the Bill. The result is that any existing contract to which the Statute of Frauds now applies must still be proved by writing.

*Clause 3* re-enacts section 83 of the Judicature Act 1908, with minor drafting alterations. The effect of the clause is that where a contract of guarantee is evidenced in writing it is not necessary for the purposes of any action or other proceeding on the guarantee for the consideration to appear in writing or by necessary inference from a written document.

*Clause 4* repeals, in respect of future contracts, section 6 of the Sale of Goods Act 1908. The repealed section (which had its origin in section 17 of the Statute of Frauds 1677) makes a contract for the sale of goods of the value of £10 or more unenforceable by action unless the buyer accepts and receives part of the goods, or gives something in earnest to bind the contract or in part payment, or unless some note or memorandum in writing of the contract is signed by the party to be charged or his agent. *Subclause (2)* preserves the operation of the repealed section in respect of contracts made before the passing of the Bill, so that any existing contract for the sale of goods valued at £10 or more must still be proved under that section.

*Clause 5 (1)* consequentially repeals, in respect of future contracts, section 7 of the Sharemilking Agreements Act 1937, which exempts from section 4 of the Statute of Frauds sharemilking agreements not to be performed within one year. The exemption will be unnecessary under the new law set out in the Bill. *Subclause (2)* contains a consequential amendment.

*Clause 6* is a saving clause, applying to the repeal of section 4 of the Statute of Frauds.

*Clause 7* provides that the Bill shall bind the Crown.

---

*Hon. Mr Marshall*

## CONTRACTS ENFORCEMENT

### ANALYSIS

Title	4. Repeal of section 6 of Sale of Goods Act 1908
1. Short Title	5. Consequential repeal and amendment
2. Proof of contracts relating to land and to guarantees	6. Saving
3. Consideration for guarantee need not appear in writing	7. Act to bind the Crown

### A BILL INTITULED

**An Act to reform the law relating to the enforcement of certain contracts**

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

1. **Short Title**—This Act may be cited as the Contracts Enforcement Act 1956.

2. **Proof of contracts relating to land and to guarantees**—

10. (1) This section applies to—
- (a) Every contract for the sale of land:
  - (b) Every contract to enter into any disposition of land, being a disposition that is required by any enactment to be made by deed or instrument or in writing or to be proved by writing:
  - 15 (c) Every contract to enter into any mortgage or charge on land:
  - (d) Every contract by any person to answer to another person for the debt, default, or liability of a third person.
  - 20

(2) No contract to which this section applies shall be enforceable by action unless the contract or some memorandum or note thereof is in writing and is signed by the party to be charged therewith or by some other person lawfully authorised by him. 5

(3) Nothing in this section shall—

(a) Apply to any sale of land by order of the Supreme Court or through the Registrar of that Court:

(b) Apply to any alienation of Maori land by a Maori, being an alienation that is required by the Maori Affairs Act 1953 to be confirmed by the Maori Land Court, or to any sale of Maori land by order of that Court: 10

(c) Affect the operation of the law relating to part performance. 15

(4) For the purposes of this section,—

“Disposition” includes any conveyance, transfer, grant, partition, exchange, lease, assignment, surrender, disclaimer, appointment, settlement, or other assurance; and any declaration or creation of a trust; and any devise, bequest, or appointment by a will: 20

“Land” means any estate or interest, whether freehold or chattel, in real property.

(5) The foregoing provisions of this section apply only to contracts made after the passing of this Act. 25

(6) This section is in substitution for section four of the Statute of Frauds 1677 of the Parliament of England, and that section shall cease to be in force in New Zealand, except in respect of contracts made before the passing of this Act.

Cf. Statute of Frauds 1677, s. 4 (U.K.); Law of Property Act 1925, s. 40 (U.K.) 30

### **3. Consideration for guarantee need not appear in writing—**

(1) No contract whereby any person promises to answer to another person for the debt, default, or liability of a third person shall, if the contract or some memorandum or note thereof is in writing and is signed by the party to be charged therewith or some other person lawfully authorised by him, be deemed insufficient to support an action or other proceeding to charge the person by whom the promise was made, by reason only that the consideration for the promise does not appear in writing or by necessary inference from a written document. 35 40

(2) This section is in substitution for section eighty-three of the Judicature Act 1908, and that section is hereby repealed.

Cf. 1908, No. 89, s. 83

5 **4. Repeal of section 6 of Sale of Goods Act 1908—**(1) Section six of the Sale of Goods Act 1908 is hereby repealed.

(2) Notwithstanding the repeal of the said section six, that section shall continue to apply, as if this Act had not been passed, to contracts made before the passing of this Act.

10 **5. Consequential repeal and amendment—**(1) Section seven of the Sharemilking Agreements Act 1937 is hereby repealed. Notwithstanding the repeal of the said section seven, that section shall continue to apply, as if this Act had not  
15 been passed, to sharemilking agreements made before the passing of this Act.

(2) Section three of the Law Reform (Testamentary Promises) Act 1949 is hereby amended by inserting in paragraph (b) of subsection two, after the words "section four of the Statute of Frauds 1677", the words "or section two  
20 of the *Contracts Enforcement Act 1956*".

**6. Saving—**Subject to the provisions of this Act, it is hereby declared that the provisions of sections twenty and twenty-one of the Acts Interpretation Act 1924 shall apply with respect  
25 to section four of the Statute of Frauds 1677, as repealed by this Act, as if that section were an Act of the General Assembly of New Zealand. Subject as aforesaid, every document made or any thing done under or for the purposes of that section, so far as it is subsisting or in force at the passing  
30 of this Act and could have been made or done under or for the purposes of section two of this Act, shall continue and have effect as if it had been made or done under or for the purposes of the said section two and as if the said section two had been in force when the document was made or the thing was done.

**7. Act to bind the Crown—**This Act shall bind the Crown.