



Draft Consumer Rights Bill

Presented to Parliament
by the Secretary of State for Business, Innovation and Skills
by Command of Her Majesty

June 2013



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TO

Amend the law relating to the rights of consumers and protection of their interests, to make provision about investigatory powers for enforcing the regulation of traders, to make provision about private actions in competition law, and for connected purposes.

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: –

PART 1

CONSUMER CONTRACTS FOR GOODS, DIGITAL CONTENT AND SERVICES

CHAPTER 1

INTRODUCTION

1 Principles of this Part

- (1) This Part applies where a trader supplies or agrees to supply goods or provides or agrees to provide digital content or services to a consumer, if they are supplied or provided under a contract or the agreement to supply or provide is in a contract.
- (2) It applies whether the contract is made in writing or spoken or partly made in writing and partly spoken or is implied from the conduct of the parties (but that does not affect any rule that requires writing in order for a contract to be made).
- (3) Any of Chapters 2, 3 and 4 may apply to a contract –
 - (a) if the trader supplies or agrees to supply goods see Chapter 2;
 - (b) if the trader provides or agrees to provide digital content see Chapter 3;
 - (c) if the trader provides or agrees to provide a service see Chapter 4.

- (4) In each case the Chapter applies even if under the contract the trader also supplies or provides, or agrees to supply or provide, something covered by another Chapter (a mixed contract).
- (5) Two or all three of those Chapters may apply to a mixed contract.
- (6) For other rules that may apply see in particular –
 - (a) Part 2 (for provision about unfair terms in contracts);
 - (b) the Sale of Goods Act 1979 (for further provision about contracts of sale of goods, as defined by that Act);
 - (c) common law rules.

2 Key definitions

- (1) These definitions apply in this Part.
- (2) “Trader” means a person acting (personally or through an agent) for purposes relating to that person’s trade, business, craft or profession.
- (3) “Consumer” means an individual acting for purposes that are wholly or mainly outside that individual’s trade, business, craft or profession.
- (4) A trader claiming that an individual was not acting for purposes wholly or mainly outside the individual’s trade, business, craft or profession must prove it.
- (5) Subsection (6) applies for the purposes of Chapter 2, except –
 - (a) sections 10(4), 11, 29 and 30, and
 - (b) the other provisions of that Chapter so far as they relate to those sections.
- (6) For those purposes, a person is not a consumer in relation to a sales contract if –
 - (a) the goods are second hand goods sold at public auction, and
 - (b) individuals have the opportunity of attending the sale in person.
- (7) “Goods” means any tangible moveable items, but that includes water, gas and electricity if and only if they are put up for supply in a limited volume or set quantity.
- (8) “Digital content” means data which are produced and supplied in digital form.

CHAPTER 2

GOODS

What goods contracts are covered?

3 Contracts covered by this Chapter

- (1) This Chapter applies to a contract under which a trader supplies or agrees to supply goods to a consumer.
- (2) It does not apply –
 - (a) to a contract under which a trader supplies or agrees to supply coins or notes to a consumer for use as currency;

- (b) to a contract under which goods are sold by way of execution or otherwise by authority of law;
 - (c) to a contract intended to operate as a mortgage, pledge, charge or other security;
 - (d) in relation to England and Wales or Northern Ireland, to a contract made by deed and for which the only consideration is the presumed consideration imported by the deed;
 - (e) in relation to Scotland, to a contract for which there is no consideration.
- (3) A contract to which this Chapter applies is referred to in this Part as a “contract for the supply of goods”.
- (4) Contracts for the supply of goods include –
- (a) contracts entered into between one part owner and another;
 - (b) contracts for the transfer of an undivided share in goods;
 - (c) contracts that are absolute and contracts that are conditional.
- (5) Subsection (1) is subject to any provision of this Chapter that applies a section or part of a section to some kinds of contracts only.
- (6) The kinds of contracts referred to in those provisions are –
- (a) a sales contract,
 - (b) a contract for the hire of goods,
 - (c) a hire-purchase agreement, and
 - (d) a contract for a non-money transfer of goods.
- (7) Those kinds of contracts are defined in sections 4 to 7, and in each case they include mixed contracts (see section 1(4)).

4 Sales contracts

- (1) For the purposes of this Part a contract is a sales contract if under it the trader transfers or agrees to transfer ownership of goods to the consumer and the consumer pays or agrees to pay the price.
- (2) A sales contract under which ownership of the goods is transferred from the trader to the consumer is referred to in this Part as a “sale”.
- (3) A sales contract under which ownership of the goods is to be transferred from the trader to the consumer at a future time or subject to a condition to be met later is referred to in this Part as an “agreement to sell”.
- (4) An agreement to sell becomes a sale when the time elapses or the conditions are met subject to which ownership of the goods is to be transferred.

5 Contracts for the hire of goods

- (1) For the purposes of this Part in its application to England and Wales and Northern Ireland, a contract is for the hire of goods if under the contract the trader bails or agrees to bail the goods to the consumer by way of hire.
- (2) For the purposes of this Part in its application to Scotland, a contract is for the hire of goods if under the contract the trader hires or agrees to hire the goods to the consumer.

- (3) It makes no difference to the application of subsection (1) or (2) to a contract what consideration is given for the bailment or hire or agreement to bail or hire.
- (4) But a contract is not for the hire of goods if it is a hire-purchase agreement.
- (5) A contract for the hire of goods under which the goods are bailed or hired by the trader to the consumer is referred to in this Part as a “hire”.
- (6) A contract for the hire of goods under which the goods are to be bailed or hired by the trader to the consumer at a future time or subject to some condition to be met later is referred to in this Part as an “agreement to hire”.
- (7) An agreement to hire becomes a hire when the time elapses or the conditions are met subject to which the goods are to be bailed or hired.

6 Hire-purchase agreements

- (1) For the purposes of this Part, a contract is a hire-purchase agreement if it meets the two conditions set out below.
- (2) The first condition is that under the contract goods are hired by the trader in return for periodical payments by the consumer.
- (3) The second condition is that under the contract ownership of the goods will transfer to the consumer if the terms of the contract are complied with and –
 - (a) the consumer exercises an option to buy the goods,
 - (b) any party to the contract does an act specified in it, or
 - (c) an event specified in the contract occurs.
- (4) But a contract is not a hire-purchase agreement if it is a sales contract under which –
 - (a) the price for the goods or part of it is payable by instalments, and
 - (b) the trader retains ownership of the goods until the conditions specified in the contract (for the payment of instalments or otherwise) are met.
- (5) It makes no difference to the application of subsection (4) to a contract whether or not the consumer possesses the goods.
- (6) In the application of this section to England and Wales and Northern Ireland “hired” means “bailed”.

7 Contracts for a non-money transfer of goods

- (1) For the purposes of this Part, a contract for the supply of goods is for a non-money transfer of goods if –
 - (a) under the contract, the trader transfers or agrees to transfer ownership of the goods to the consumer, but
 - (b) the contract is not a sales contract or a hire-purchase agreement.
- (2) A contract for a non-money transfer under which ownership of the goods is transferred from the trader to the consumer is referred to in this Part as a “transfer”.
- (3) A contract for a non-money transfer under which ownership of the goods is to be transferred from the trader to the consumer at a future time or subject to a condition to be met later is referred to in this Part as an “agreement to transfer”.

- (4) An agreement to transfer becomes a transfer when the time elapses or the conditions are met subject to which ownership of the goods is to be transferred.

What statutory rights are there under a goods contract?

8 Goods to be of satisfactory quality

- (1) Every contract for the supply of goods is to be treated as including a term that the quality of the goods is satisfactory.
- (2) The quality of goods is satisfactory if they meet the standard that a reasonable person would consider satisfactory, taking account of –
- (a) any description of the goods,
 - (b) the price or other consideration for the goods (if relevant), and
 - (c) all the other relevant circumstances (see subsection (5)).
- (3) The quality of goods includes their state and condition; and the following aspects (among others) are in appropriate cases aspects of the quality of goods –
- (a) fitness for all the purposes for which goods of that kind are usually supplied;
 - (b) appearance and finish;
 - (c) freedom from minor defects;
 - (d) safety;
 - (e) durability.
- (4) The term mentioned in subsection (1) does not cover anything which makes the quality of the goods unsatisfactory –
- (a) which is specifically drawn to the consumer’s attention before the contract is made,
 - (b) where the consumer examines the goods before the contract is made, which that examination ought to reveal, or
 - (c) in the case of a contract for the supply of goods by sample, which would have been apparent on a reasonable examination of the sample.
- (5) The relevant circumstances mentioned in subsection (2)(c) include any public statement about the specific characteristics of the goods made by the trader, the producer or any representative of the trader or the producer.
- (6) That includes, in particular, any public statement made in advertising or labelling.
- (7) But a public statement is not a relevant circumstance for the purposes of subsection (2)(c) if the trader shows that –
- (a) when the contract was made, the trader was not, and could not reasonably have been, aware of the statement,
 - (b) before the contract was made, the statement had been publicly withdrawn or, to the extent that it contained anything which was incorrect or misleading, it had been publicly corrected, or
 - (c) the consumer’s decision to contract for the goods could not have been influenced by the statement.

- (8) Subsections (5) to (7) do not prevent a public statement from being a relevant circumstance for the purposes of subsection (2)(c) if the statement would have been a relevant circumstance apart from those subsections.
- (9) This section also applies to a supply of goods by a person who in the course of a business is acting as agent for another person as it applies to a supply by a principal in the course of a business unless –
 - (a) the other person is not supplying the goods in the course of a business, and
 - (b) the consumer knows that fact or reasonable steps are taken to bring it to the consumer’s attention before the contract is made.
- (10) In a contract for the supply of goods a term about the quality of the goods may be treated as included as a matter of custom.
- (11) See section 18 for a consumer’s rights if the trader is in breach of a term that this section requires to be treated as included in a contract.

9 Goods to be fit for particular purpose

- (1) Subsection (3) applies to a contract for the supply of goods if before the contract is made the consumer makes known to the trader (expressly or by implication) any particular purpose for which the consumer is contracting for the goods.
- (2) Subsection (3) also applies to a contract for the supply of goods if –
 - (a) the goods were previously sold by a credit-broker to the trader,
 - (b) in the case of a sales contract or a non-money transfer of goods, the consideration or part of it is a sum payable by instalments, and
 - (c) before the contract is made, the consumer makes known to the credit-broker (expressly or by implication) any particular purpose for which the consumer is contracting for the goods.
- (3) The contract is to be treated as including a term that the goods are reasonably fit for that purpose, whether or not that is a purpose for which goods of that kind are usually supplied.
- (4) Subsection (3) does not apply if the circumstances show that the consumer does not rely, or it is unreasonable for the consumer to rely, on the skill or judgment of the trader or credit-broker.
- (5) This section also applies to a supply of goods by a person who in the course of a business is acting as agent for another person as it applies to a supply by a principal in the course of a business unless –
 - (a) the other person is not supplying the goods in the course of a business, and
 - (b) the consumer knows that fact or reasonable steps are taken to bring it to the consumer’s attention before the contract is made.
- (6) In a contract for the supply of goods a term about the fitness of the goods for a particular purpose may be treated as included as a matter of custom.
- (7) See section 18 for a consumer’s rights if the trader is in breach of a term that this section requires to be treated as included in a contract.

10 Goods to be as described

- (1) Every contract for the supply of goods by description is to be treated as including a term that the goods will match the description.
- (2) If the supply is by sample as well as by description, it is not sufficient that the bulk of the goods matches the sample if the goods do not also match the description.
- (3) A supply of goods is not prevented from being a supply by description just because—
 - (a) the goods are exposed for supply, and
 - (b) they are selected by the consumer.
- (4) Any information about the goods provided by the trader in accordance with provision giving effect to paragraph 1(a) of Article 5 or 6 of the Consumer Rights Directive (main characteristics of goods) is to be treated as included as a term of the contract.
- (5) Subsection (4) does not prevent the trader and consumer expressly agreeing a change to the contract.
- (6) See section 18 for a consumer's rights if the trader is in breach of a term that this section requires to be treated as included in a contract.

11 Other pre-contract information included in contract

- (1) This section applies to any contract for the supply of goods.
- (2) Where provision giving effect to Article 5 or 6 of the Consumer Rights Directive, other than paragraph 1(a) of either Article, required the trader to provide information to the consumer before the contract became binding, any information provided by the trader under that requirement is to be treated as included as a term of the contract.
- (3) Subsection (2) does not prevent the trader and consumer expressly agreeing a change to the contract.
- (4) See section 18 for a consumer's rights if the trader is in breach of a term that this section requires to be treated as included in the contract.

12 Goods to match a sample

- (1) Every contract for the supply of goods by sample is to be treated as including a term that—
 - (a) the bulk of the goods will match the sample in quality, and
 - (b) the goods will be free from any defect that makes their quality unsatisfactory and that would not be apparent on a reasonable examination of the sample.
- (2) A contract for the supply of goods is a contract for the supply of goods by sample if it provides that it is such a contract, or is to be treated as such a contract.
- (3) See section 18 for a consumer's rights if the trader is in breach of a term that this section requires to be treated as included in a contract.

13 Goods to match a model seen or examined

- (1) This section applies to a contract for the supply of goods by reference to a model of the goods that is seen or examined by the consumer before the contract is made.
- (2) Every contract for the supply of goods to which this section applies is to be treated as including a term that the goods will match the model except to the extent that any differences between the model and the goods are brought to the consumer's attention before the contract is made.
- (3) See section 18 for a consumer's rights if the trader is in breach of a term that this section requires to be treated as included in a contract.

14 Installation as part of conformity of the goods with the contract

- (1) Goods do not conform to a contract for the supply of goods if –
 - (a) installation of the goods forms part of the contract, and
 - (b) the goods were installed by the trader, or under the trader's responsibility, in breach of a term that section 51 or 52 requires to be treated as included in the contract.
- (2) See section 18 for the effect of goods not conforming to the contract.

15 Goods not conforming to contract if digital content does not conform

- (1) Goods (whether or not they conform otherwise to a contract for the supply of goods) do not conform to it if –
 - (a) the goods are an item that includes digital content, and
 - (b) the digital content does not conform to the contract to provide that content (for which see section 44(2)).
- (2) See section 18 for the effect of goods not conforming to the contract.

16 Trader to have right to supply the goods etc

- (1) Every contract for the supply of goods, except one within subsection (4), is to be treated as including a term that –
 - (a) in the case of a sale or transfer, the trader has the right to sell or transfer the goods,
 - (b) in the case of an agreement to sell or transfer, the trader will have that right when ownership of the goods is to be transferred,
 - (c) in the case of a hire, the trader has the right to transfer possession of the goods by way of hire for the period of the hire,
 - (d) in the case of an agreement to hire, the trader will have that right at the beginning of the period of the hire, and
 - (e) in the case of a hire-purchase agreement, the trader will have the right to sell the goods when ownership of them is to be transferred.
- (2) Every contract for the supply of goods, except a contract for the hire of goods or a contract within subsection (4), is to be treated as including a term that –
 - (a) the goods are free from any charge or encumbrance not disclosed or known to the consumer before the contract is made,
 - (b) the goods will remain free from any such charge or encumbrance until ownership of them is to be transferred, and

- (c) the consumer 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) Every contract for the hire of goods is to be treated as including a term that the consumer will enjoy quiet possession of the goods for the period of the hire except so far as the possession may be disturbed by the owner or other person entitled to the benefit of any charge or encumbrance disclosed or known to the consumer before the contract is made.
- (4) This subsection applies to a contract if there appears from the contract or is to be inferred from its circumstances an intention that the trader should transfer only such title as the trader or a third person may have.
- (5) Every contract within subsection (4) is to be treated as including a term that all charges or encumbrances known to the trader and not known to the consumer have been disclosed to the consumer before the contract is made.
- (6) Every contract within subsection (4) is to be treated as including a term that the consumer’s quiet possession of the goods will not be disturbed by –
 - (a) the trader,
 - (b) in a case where the trader and consumer intend that the trader should transfer only such title as a third person may have, that person, and
 - (c) anyone claiming through or under the trader or that third person otherwise than under a charge or encumbrance disclosed or known to the consumer before the contract is made.
- (7) In the case of a contract for the hire of goods, this section does not affect the right of the trader to repossess the goods where the contract provides or is to be treated as providing for this.
- (8) In the application of this section to England and Wales and Northern Ireland, references to the period of hire are to the period of bailment.
- (9) See section 18 for a consumer’s rights if the trader is in breach of a term that this section requires to be treated as included in a contract.

17 No other requirement to treat term about quality or fitness as included

- (1) Except as provided by sections 8, 9 and 12, a contract for the supply of goods is not to be treated as including any term about the quality of the goods or their fitness for any particular purpose, unless the term is expressly included in the contract.
- (2) Subsection (1) is subject to provision made by any other enactment (whenever passed or made).

What remedies are there if statutory rights under a goods contract are not met?

18 Consumer’s rights to enforce terms about goods

- (1) In this section and sections 23 to 25 references to goods conforming to a contract are references to –
 - (a) the goods conforming to the terms described in sections 8, 9, 10, 12 and 13,

- (b) the goods not failing to conform to the contract under section 14 or 15, and
 - (c) the goods conforming to requirements that are stated in the contract.
- (2) If the goods do not conform to the contract because of a breach of any of the terms described in sections 8, 9, 10, 12 and 13, or if they do not conform to the contract under section 15, the consumer's rights (and the provisions about them and when they are available) are –
 - (a) the early right to reject (sections 19 to 22);
 - (b) the right to repair or replacement (section 23); and
 - (c) the right to a price reduction or the final right to reject (sections 19 and 24).
- (3) If the goods do not conform to the contract under section 14 or because of a breach of requirements that are stated in the contract, the consumer's rights (and the provisions about them and when they are available) are –
 - (a) the right to repair or replacement (section 23); and
 - (b) the right to a price reduction or the final right to reject (sections 19 and 24).
- (4) If the trader is in breach of a term that section 11 requires to be treated as included in the contract, but it is not a breach by which the goods do not conform to the contract, the consumer has the right to a price reduction (see section 24 for provisions about that right and when it is available).
- (5) If the trader is in breach of the term that section 16(1) (right to supply etc) requires to be treated as included in the contract, the consumer has a right to reject (see section 19 for provisions about that right and when it is available).
- (6) Subsections (2) to (5) are subject to sections 26 and 27.
- (7) This Chapter does not prevent the consumer seeking other remedies for a breach, whether of a term that this Chapter requires to be treated as included in a contract or of a requirement that is stated in a contract, including (where it is open to the consumer to do so) –
 - (a) claiming damages (see section 61 for the measure of damages),
 - (b) claiming interest or special damages,
 - (c) seeking specific performance (see section 62),
 - (d) seeking an order for specific implement, or
 - (e) relying on the breach against a claim by the trader for the price;but the consumer may not recover twice for the same loss.
- (8) For the purposes of subsections (2)(b) and (c) and (3), goods which do not conform to the contract at any time within the period of six months beginning with the day on which the goods were delivered to the consumer must be taken not to have conformed to it on that day.
- (9) Subsection (8) does not apply if –
 - (a) it is established that the goods did conform to the contract on that day, or
 - (b) its application is incompatible with the nature of the goods or with how they fail to conform to the contract.

19 Right to reject

- (1) A right to reject gives the consumer –
 - (a) the right to reject the goods,
 - (b) the right to treat the contract as at an end, and
 - (c) the right to receive a refund from the trader (subject to subsections (7) to (12)).
- (2) The early right to reject is a right to reject which is subject to sections 20 to 22.
- (3) The final right to reject is a right to reject which is subject to section 24.
- (4) To reject the goods the consumer must indicate to the trader that they are rejected, and –
 - (a) from that time, must make the goods available for collection by the trader, or
 - (b) if there is an agreement to return rejected goods, must return them as agreed.
- (5) To treat the contract as at an end, the consumer must indicate to the trader that the contract is ended.
- (6) For the purposes of subsections (4) and (5) the indication may be something the consumer says or does, but it must be clear.
- (7) If the consumer paid money under the contract, the right to receive a refund is the right to receive back the same amount of money.
- (8) If the consumer transferred anything else under the contract, the right to receive a refund is the right to receive back the same amount of what the consumer transferred, unless subsection (9) applies.
- (9) If the consumer transferred under the contract something for which the same amount of the same thing cannot be substituted, the right to receive a refund is the right to receive back in its original state whatever the consumer transferred.
- (10) If the contract is for the hire of goods, the right to receive a refund extends only to anything paid or otherwise transferred, for a period of hire that the consumer does not get because the contract is treated as at an end.
- (11) If the contract is a hire-purchase agreement or a conditional sales contract and the contract is treated as at an end before the whole of the price has been paid, the right to receive a refund extends only to the part of the price paid.
- (12) There is no right to receive a refund if –
 - (a) none of subsections (7) to (9) applies,
 - (b) subsection (9) applies but the thing transferred cannot be given back in its original state, or
 - (c) subsection (10) applies, but what the consumer transferred under the contract cannot be divided so as to give back only the amount to which the consumer is entitled.

20 Losing the early right to reject

- (1) A consumer who has the early right to reject loses it if the time limit for rejecting the goods passes without the consumer rejecting them (see section 21).

- (2) A consumer who has the early right to reject loses it before that time limit if the consumer accepts the goods (see section 22).
- (3) An agreement between the consumer and the trader –
 - (a) cannot take away the early right to reject before it is lost under this section, but
 - (b) can allow the consumer to exercise it later.

21 Time limit for early rejection

- (1) Under the early right to reject, the time limit for rejecting goods (unless subsection (2) applies) is the end of 30 days beginning with the first day after these have all happened –
 - (a) ownership or (in the case of a contract for the hire of goods or a hire-purchase agreement) possession of the goods has been transferred to the consumer,
 - (b) the goods have been delivered, and
 - (c) the contract has been completed.
- (2) For any kind of goods that can reasonably be expected to perish after a shorter period, the time limit for rejecting them is the end of that shorter period.
- (3) If the consumer requests or agrees to the repair or replacement of goods, the period mentioned in subsection (1) or (2) stops running for the length of the waiting period.
- (4) The time limit for rejecting goods supplied by the trader in response to that request or agreement is then either –
 - (a) 7 days after the waiting period ends, or
 - (b) if later, whatever the time limit for rejecting the original goods would have been, extended by the waiting period.
- (5) The waiting period begins –
 - (a) if the consumer has to return the goods for repair or replacement, with the day the consumer takes the goods back to the trader or sends them off to the trader, or (if earlier) the day the trader makes an arrangement with the consumer to collect the goods or to provide the consumer with anything to be used to return them;
 - (b) if the consumer does not have to return the goods but has to provide evidence of what is wrong with them, with the day the consumer provides the evidence;
 - (c) if the consumer does not have to return the goods or to provide evidence, with the day the consumer requests or agrees to the repair or replacement of the goods.
- (6) The waiting period ends with the day before the consumer receives goods supplied by the trader in response to the request or agreement for repair or replacement.

22 Losing the early right to reject by accepting the goods

- (1) A consumer accepts goods for the purposes of section 20(2) only if the consumer indicates to the trader that the consumer accepts the goods, after having a reasonable chance to examine the goods to find out if they conform to

the contract (or, where they were supplied by sample, after having a reasonable chance to compare them with the sample).

- (2) The indication may be something the consumer says or does, but it must be clear.
- (3) In particular, if the consumer gives or sells the goods to another person, this is not an indication that the consumer accepts the goods.
- (4) The following rules apply unless the trader and the consumer have agreed otherwise in the contract –
 - (a) if the consumer accepts some of the goods, that is not an indication that the consumer accepts the rest, or any of them;
 - (b) in the case of an instalment of goods, if the consumer accepts some of the goods in the instalment, that is not an indication that the consumer accepts the rest of the goods in the instalment, or any of them.
- (5) In a case where a breach that gives a consumer a right to reject goods does not affect all of the goods, references in subsection (4)(a) and (b) to the consumer accepting some of the goods are references to the consumer accepting all of the goods that are not affected by the breach and not accepting some or all of the others.
- (6) If any goods supplied under the contract form a commercial unit, then if some of the goods in the unit are accepted all the goods in the unit are treated as accepted.
- (7) A unit is a “commercial unit” if division of the unit would materially impair the value of the goods or the character of the unit.

23 Right to repair or replacement

- (1) This section applies if the consumer has the right to repair or replacement (see section 18(2) and (3)).
- (2) If the consumer requires the trader to repair or replace the goods, the trader must –
 - (a) do so within a reasonable time but without causing significant inconvenience to the consumer; and
 - (b) bear any necessary costs incurred in doing so (including in particular the cost of any labour, materials or postage).
- (3) The consumer cannot require the trader to repair or replace the goods if that remedy (the repair or the replacement) –
 - (a) is impossible, or
 - (b) is disproportionate compared to the other of those remedies.
- (4) Either of those remedies is disproportionate compared to the other if it imposes costs on the trader which, compared to those imposed by the other, are unreasonable, taking into account –
 - (a) the value which the goods would have if they conformed to the contract,
 - (b) the significance of the lack of conformity, and
 - (c) whether the other remedy could be effected without significant inconvenience to the consumer.

- (5) Any question as to what is a reasonable time or significant inconvenience is to be determined taking account of –
 - (a) the nature of the goods, and
 - (b) the purpose for which the goods were acquired.
- (6) A consumer who requires or agrees to the repair of goods cannot require the trader to replace them, or exercise a right to reject them, without giving the trader a reasonable time to repair them.
- (7) A consumer who requires or agrees to the replacement of goods cannot require the trader to repair them, or exercise a right to reject them, without giving the trader a reasonable time to replace them.
- (8) In this Chapter, “repair” in relation to goods that do not conform to a contract, means making them conform.

24 Right to price reduction or final right to reject

- (1) The right to a price reduction is the right to –
 - (a) require the trader to reduce by an appropriate amount the price the consumer is required to pay under the contract, or anything else the consumer is required to transfer under the contract, and
 - (b) receive a refund from the trader (in accordance with section 19(7) to (12)) for anything already paid or otherwise transferred by the consumer above the reduced amount.
- (2) The right to a price reduction does not apply if the consumer has not paid a price but has transferred under the contract something that cannot be divided so as to give back only the amount to which the consumer is entitled.
- (3) A consumer who has the right to a price reduction and the final right to reject may only exercise one (not both), and may only do so in one of these situations –
 - (a) after one repair or one replacement, the goods do not conform to the contract;
 - (b) because of section 23(3) the consumer can require neither repair nor replacement of the goods; or
 - (c) the consumer has required the trader to repair or replace the goods, but the trader is in breach of the requirement of section 23(2)(a) to do so within a reasonable time and without significant inconvenience to the consumer.
- (4) There has been a repair or replacement for the purposes of subsection (3)(a) if –
 - (a) the consumer has requested or agreed to a repair or replacement, and
 - (b) the trader has delivered goods to the consumer, or made goods available to the consumer, in response to the request or agreement.
- (5) If the consumer exercises the final right to reject, any refund to the consumer may (subject to subsection (6)) be reduced by a deduction for use, to take account of the use the consumer has had of the goods in the period since they were delivered.
- (6) Any deduction for use is limited as follows –
 - (a) if the goods have a proven second-hand value (see subsections (7) and (8)), the deduction cannot reduce the refund to below that value;

- (b) if the goods do not have a proven second-hand value, and the final right to reject is exercised in the first six months after the goods were delivered (or after they were purchased or the contract was completed, if those happen later), no deduction may be made;
 - (c) no deduction may be made to take account of use in any period when the consumer had the goods only because the trader failed to collect them at an agreed time.
- (7) The second-hand value of the goods is proven only if the trader gives the consumer clear, independent evidence –
 - (a) of the value of the goods, or of goods that the consumer agrees are equivalent, and
 - (b) of an active second-hand market for the goods.
- (8) If the age of the goods is relevant in calculating their second-hand value, the age must be taken to be reduced by the length of any period for which –
 - (a) the goods were returned to the trader, or
 - (b) the consumer had the goods only because the trader failed to collect them at an agreed time.

25 Powers of the court

- (1) In any proceedings in which a remedy is sought by virtue of section 18, 23 or 24, the court, in addition to any other power it has, may act under this section.
- (2) On the application of the consumer the court may make an order requiring specific performance or, in Scotland, specific implement by the trader of any obligation imposed on the trader by virtue of section 23.
- (3) Subsection (4) applies if –
 - (a) the consumer claims to exercise a right under section 23 or 24, but
 - (b) the court decides that exercise of another right under section 23 or 24 is appropriate.
- (4) The court may proceed as if the consumer had exercised that other right.
- (5) If the consumer has claimed to exercise the final right to reject, the court may order that any reimbursement to the consumer is reduced by a deduction for use, to take account of the use the consumer has had of the goods in the period since they were delivered.
- (6) Any deduction for use is limited as set out in section 24(6).
- (7) The court may make an order under this section unconditionally or on such terms and conditions as to damages, payment of the price and otherwise as it thinks just.

Other rules about remedies under goods contracts

26 Delivery of wrong quantity

- (1) Where the trader delivers to the consumer a quantity of goods less than the trader contracted to supply, the consumer may reject them, but if the consumer accepts them the consumer must pay for them at the contract rate.

- (2) Where the trader delivers to the consumer a quantity of goods larger than the trader contracted to supply, the consumer may accept the goods included in the contract and reject the rest, or may reject all of the goods.
- (3) Where the trader delivers to the consumer a quantity of goods larger than the trader contracted to supply and the consumer accepts all of the goods delivered, the consumer must pay for them at the contract rate.
- (4) This section is subject to any usage of trade, special agreement, or course of dealing between the parties.

27 Instalment deliveries

- (1) Under a contract for the supply of goods, the consumer is not bound to accept delivery of the goods by instalments, unless that has been agreed between the consumer and the trader.
- (2) If—
 - (a) the contract provides for the goods to be delivered by stated instalments, which are to be separately paid for, and
 - (b) the trader makes defective deliveries in respect of one or more instalments, or the consumer 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 effect of the breach is to treat the whole contract as at an end 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 at an end.
- (3) In subsection (2), making defective deliveries does not include failing to make a delivery in accordance with section 29.

28 Consignation, or payment into court, in Scotland

- (1) Subsection (2) applies where—
 - (a) a consumer has not rejected goods which the consumer could have rejected for breach of a term mentioned in section 18(2) or (5),
 - (b) the consumer has chosen to treat the breach as giving rise only to a claim for damages or to a right to rely on the breach against a claim by the trader for the price of the goods, and
 - (c) the trader has begun proceedings in court to recover the price or has brought a counter-claim for the price.
- (2) The court may require the consumer—
 - (a) to consign, or pay into court, the price of the goods, or part of the price, or
 - (b) to provide some other reasonable security for payment of the price.

Other rules about goods contracts

29 Time for delivery of goods

- (1) This section applies only to a sales contract under which the trader is required to deliver the goods to the consumer but need not do so at the time when the contract is made.

- (2) A contract to which this section applies is to be treated as including the following provisions as terms.
- (3) Unless the trader and the consumer come to a different agreement about the time of delivery, the trader must deliver the goods to the consumer –
 - (a) without undue delay, and
 - (b) in any event, not more than 30 days after the day on which the contract is made.
- (4) If the trader does not deliver the goods at the time or within the period agreed or (where there is no agreement) in accordance with subsection (3), the consumer may require the trader to deliver the goods before the end of a further period that is specified by the consumer and is appropriate in the circumstances.
- (5) Subsection (4) does not apply if –
 - (a) the trader has refused to deliver the goods,
 - (b) delivery of the goods at the time or within the period agreed is essential taking into account all the relevant circumstances at the time the contract was made, or
 - (c) the consumer told the trader before the contract was made that delivery at the time or within the period agreed or in accordance with subsection (3) was essential.
- (6) The consumer may treat the contract as at an end if –
 - (a) in a case where subsection (4) does not apply, the goods are not delivered at the time or within the period agreed or (where there is no agreement) in accordance with subsection (3), or
 - (b) in a case where subsection (4) applies, the goods are not delivered within the time specified by the consumer.
- (7) If subsection (6)(a) or (b) applies but the consumer does not treat the contract as at an end, the consumer has the right that section 19(1)(a) confers to reject the goods or (subject to section 22(4) to (7)) to reject some of them.
- (8) If the consumer treats the contract as at an end under subsection (6), the consumer has the right that section 19(1)(c) confers to receive a refund.
- (9) If the consumer rejects goods under subsection (7), the consumer has the right that section 19(1)(c) confers to receive a refund in respect of the goods rejected.
- (10) This section does not prevent the consumer seeking other remedies (see section 18(7)) where it is open to the consumer to do so.

30 Passing of risk

- (1) A sales contract is to be treated as including the following provisions as terms.
- (2) The goods remain at the trader's risk until they come into the physical possession of –
 - (a) the consumer, or
 - (b) a person identified by the consumer to take possession of the goods.
- (3) Subsection (2) does not apply if the goods are delivered to a carrier who –
 - (a) is commissioned by the consumer to deliver the goods, and
 - (b) is not named by the trader for this purpose.

- (4) In that case the goods are at the consumer’s risk on and after delivery to the carrier.
- (5) Subsection (4) does not affect any liability of the carrier to the consumer in respect of the goods.

31 Goods offered with a guarantee

- (1) This section applies where –
 - (a) there is a contract for the supply of goods, and
 - (b) the goods are offered with a guarantee.
- (2) “Guarantee” here means an undertaking to a consumer given without extra charge by a person acting in the course of the person’s business (the “guarantor”) that, if the goods do not meet the specifications set out in the guarantee statement or in any associated advertising –
 - (a) the consumer will be reimbursed for the price paid for the goods, or
 - (b) the goods will be repaired, replaced or handled in any way.
- (3) The guarantee takes effect, at the time the goods are delivered, as a contractual obligation owed by the guarantor under the conditions set out in the guarantee statement and in any associated advertising.
- (4) The guarantor must ensure that –
 - (a) the guarantee sets out in plain, intelligible language the contents of the guarantee and the essential particulars for making claims under the guarantee,
 - (b) the guarantee states that the consumer has statutory rights in relation to the goods and that those rights are not affected by the guarantee, and
 - (c) where the goods are offered within the territory of the United Kingdom, the guarantee is written in English.
- (5) The contents of the guarantee to be set out in it include, in particular –
 - (a) the name and address of the guarantor, and
 - (b) the duration and territorial scope of the guarantee.
- (6) The guarantor and any other person who offers to supply to consumers the goods which are the subject of the guarantee must, on request by the consumer, make the guarantee available to the consumer within a reasonable time, in writing and in a form accessible to the consumer.
- (7) What is a reasonable time is a question of fact.
- (8) If a person fails to comply with a requirement of this section, the enforcement authority may apply to the court for an injunction or (in Scotland) an order of specific implement against that person requiring that person to comply.
- (9) On an application the court may grant an injunction or an order of specific implement on such terms as it thinks fit.
- (10) In this section –
 - “court” means –
 - (a) in relation to England and Wales, the High Court or the county court,
 - (b) in relation to Northern Ireland, the High Court or a county court, and

- (c) in relation to Scotland, the Court of Session or the sheriff;
- “enforcement authority” means –
- (a) the Competition and Markets Authority,
 - (b) a local weights and measures authority in Great Britain, and
 - (c) the Department of Enterprise, Trade and Investment in Northern Ireland.

Can a trader contract out of statutory rights and remedies under a goods contract?

32 Liability that cannot be excluded or restricted

- (1) A term of a contract for the supply of goods cannot exclude or restrict the trader’s liability arising under any of these provisions –
 - (a) section 8 (goods to be of satisfactory quality);
 - (b) section 9 (goods to be fit for particular purpose);
 - (c) section 10 (goods to be as described);
 - (d) section 11 (other pre-contract information included in contract);
 - (e) section 12 (goods to match a sample);
 - (f) section 13 (goods to match a model seen or examined);
 - (g) section 14 (installation as part of conformity of goods with contract);
 - (h) section 16 (trader to have right to supply the goods etc);
 - (i) section 29 (time for delivery of goods);
 - (j) section 30 (passing of risk).
- (2) That also means that a term of a contract for the supply of goods cannot –
 - (a) exclude or restrict a right or remedy in respect of a liability under a provision listed in subsection (1),
 - (b) make such a right or remedy or its enforcement subject to a restrictive or onerous condition,
 - (c) allow a trader to put a person at a disadvantage as a result of pursuing such a right or remedy, or
 - (d) exclude or restrict rules of evidence or procedure.
- (3) The reference in subsection (1) to excluding or restricting a liability also includes preventing an obligation or duty arising or limiting its extent.
- (4) An agreement in writing to submit present or future differences to arbitration is not to be regarded as excluding or restricting any liability for the purposes of this section.
- (5) Subsection (1)(h), and subsection (2) so far as it relates to liability under section 16, do not apply to a term of a contract for the hire of goods.
- (6) But a term that section 16 requires to be treated as included in a contract for the hire of goods cannot be excluded or restricted by an express term unless the express term is inconsistent with it (and see also section 65 (fairness)).
- (7) See Schedule 3 for provision about the enforcement of this section.

33 Other interaction between contractual provisions

- (1) Where section 32 does not apply, a right, duty or liability that would be treated as forming part of a contract for the supply of goods may be cancelled or varied –
 - (a) by an express term of a contract,
 - (b) by the course of dealing between the parties, or
 - (c) by a custom that binds the parties.
- (2) This Chapter does not affect any other enactment or any rule of law which has the effect that a term (other than one about quality or fitness) is treated as included in a contract for the supply of goods.

34 Contracts applying law of non-EEA State

- (1) If –
 - (a) the law of a country or territory other than an EEA State is chosen by the parties to be applicable to a sales contract, but
 - (b) the sales contract has a close connection with the United Kingdom, the provisions mentioned in subsection (2) apply despite that choice.
- (2) The provisions are –
 - (a) section 32, apart from subsection (1)(i) and (j);
 - (b) section 33.

CHAPTER 3

DIGITAL CONTENT

What digital content contracts are covered?

35 Contracts covered by this Chapter

- (1) This Chapter applies to a contract under which a trader provides or agrees to provide digital content to a consumer, if the digital content is provided or to be provided –
 - (a) for a price paid by the consumer, or
 - (b) free with goods or services or other digital content for which the consumer pays a price.
- (2) The references in subsection (1) to the consumer paying a price include references to the consumer using, by way of payment, any facility for which money has been paid.
- (3) The Secretary of State may by order provide for this Chapter to apply also to other contracts under which a trader provides or agrees to provide digital content to a consumer, if the Secretary of State is satisfied that it is appropriate to do so because of significant detriment caused to consumers under contracts of the kind to which the order relates.
- (4) An order under subsection (3) may in particular amend this Act.
- (5) A contract to which this Chapter applies is referred to in this Part as a “contract to provide digital content”.

- (6) This section does not limit the application of section 48.
- (7) The power to make an order under subsection (3) is exercisable by statutory instrument
- (8) No order may be made under subsection (3) unless a draft of the statutory instrument containing it has been laid before, and approved by a resolution of, each House of Parliament.

What statutory rights are there under a digital content contract?

36 Digital content to be of satisfactory quality

- (1) Every contract to provide digital content is to be treated as including a term that the quality of the digital content is satisfactory.
- (2) The quality of digital content is satisfactory if it meets the standard that a reasonable person would consider satisfactory, taking account of –
 - (a) any description of the digital content,
 - (b) the price mentioned in section 35(1)(a) or (b), (if relevant), and
 - (c) all the other relevant circumstances (see subsection (5)).
- (3) The quality of digital content includes its state and condition; and the following aspects (among others) are in appropriate cases aspects of the quality of digital content –
 - (a) fitness for all the purposes for which digital content of that kind is usually provided;
 - (b) freedom from minor defects;
 - (c) safety;
 - (d) durability.
- (4) The term mentioned in subsection (1) does not cover anything which makes the quality of the digital content unsatisfactory –
 - (a) which is specifically drawn to the consumer’s attention before the contract is made,
 - (b) where the consumer examines the digital content before the contract is made, which that examination ought to reveal, or
 - (c) where the consumer examines a trial version before the contract is made, which would have been apparent on a reasonable examination of the trial version.
- (5) The relevant circumstances mentioned in subsection (2)(c) include any public statement about the specific characteristics of the digital content made by the trader, the producer or any representative of the trader or the producer.
- (6) That includes, in particular, any public statement made in advertising or labelling.
- (7) But a public statement is not a relevant circumstance for the purposes of subsection (2)(c) if the trader shows that –
 - (a) when the contract was made, the trader was not, and could not reasonably have been, aware of the statement,
 - (b) before the contract was made, the statement had been publicly withdrawn or, to the extent that it contained anything which was incorrect or misleading, it had been publicly corrected, or

- (c) the consumer's decision to contract for the digital content could not have been influenced by the statement.
- (8) Subsections (5) to (7) do not prevent a public statement from being a relevant circumstance for the purposes of subsection (2)(c) if the statement would have been a relevant circumstance apart from those subsections.
- (9) This section also applies to provision of digital content by a person who in the course of a business is acting as agent for another person as it applies to provision by a principal in the course of a business unless –
 - (a) the other person is not providing the digital content in the course of a business, and
 - (b) the consumer knows that fact or reasonable steps are taken to bring it to the consumer's attention before the contract is made.
- (10) A contract to provide digital content may be treated as making provision about the quality of the digital content as a matter of custom.
- (11) See section 44 for a consumer's rights if the trader is in breach of a term that this section requires to be treated as included in a contract.

37 Digital content to be fit for particular purpose

- (1) Subsection (3) applies to a contract to provide digital content if before the contract is made the consumer makes known to the trader (expressly or by implication) any particular purpose for which the consumer is contracting for the digital content.
- (2) Subsection (3) also applies to a contract to provide digital content if –
 - (a) the digital content was previously sold by a credit-broker to the trader,
 - (b) the consideration or part of it is a sum payable by instalments, and
 - (c) before the contract is made, the consumer makes known to the credit-broker (expressly or by implication) any particular purpose for which the consumer is contracting for the digital content.
- (3) The contract is to be treated as including a term that the digital content is reasonably fit for that purpose, whether or not that is a purpose for which digital content of that kind is usually provided.
- (4) Subsection (3) does not apply if the circumstances show that the consumer does not rely, or it is unreasonable for the consumer to rely, on the skill or judgment of the trader or credit-broker.
- (5) This section also applies to provision of digital content by a person who in the course of a business is acting as agent for another person as it applies to provision by a principal in the course of a business unless –
 - (a) the other person is not providing the digital content in the course of a business, and
 - (b) the consumer knows that fact or reasonable steps are taken to bring it to the consumer's attention before the contract is made.
- (6) A contract to provide digital content may be treated as making provision about the fitness of the digital content for a particular purpose as a matter of custom.
- (7) See section 44 for a consumer's rights if the trader is in breach of a term that this section requires to be treated as included in a contract.

38 Digital content to be as described

- (1) Every contract to provide digital content is to be treated as including a term that the digital content will match any description of it given by the trader to the consumer.
- (2) Where the consumer examines a trial version before the contract is made, it is not sufficient that the digital content matches (or is better than) the trial version if the digital content does not also match any description of it given by the trader to the consumer.
- (3) Any information provided by the trader about the digital content in accordance with provision giving effect to paragraph 1(a), (g) or (h) of Article 5 or paragraph 1(a), (r) or (s) of Article 6 of the Consumer Rights Directive is to be treated as included as a term of the contract.
- (4) Subsection (3) does not prevent the trader and consumer expressly agreeing a change to the contract.
- (5) See section 44 for a consumer's rights if the trader is in breach of a term that this section requires to be treated as included in a contract.

39 Other pre-contract information included in contract

- (1) This section applies to any contract to provide digital content.
- (2) Where provision giving effect to Article 5 of the Consumer Rights Directive, other than paragraph 1(a), (g) or (h) of that Article, or giving effect to Article 6 of that Directive, other than paragraph 1(a), (r) or (s) of that Article, required the trader to provide information to the consumer before the contract became binding, any information provided by the trader under that requirement is to be treated as included as a term of the contract.
- (3) Subsection (2) does not prevent the trader and consumer expressly agreeing a change to the contract.
- (4) See section 44 for a consumer's rights if the trader is in breach of a term that this section requires to be treated as included in a contract.

40 No other requirement to treat term about quality or fitness as included

- (1) Except as provided by sections 36 and 37, a contract to provide digital content is not to be treated as including any term about the quality of the digital content or its fitness for any particular purpose, unless the term is expressly included in the contract.
- (2) Subsection (1) is subject to provision made by any other enactment, whenever passed or made.

41 Time when, and period for which, digital content is provided

- (1) This section applies where there is a contract to provide digital content and the consumer's access to the content on a device requires its transmission to the device under arrangements initiated by the trader (T).
- (2) For the purposes of this Chapter, the time when the digital content is provided is—
 - (a) the time when the content reaches the device, or

- (b) if earlier, the time when the content reaches a trader (other than T) chosen by the consumer to provide, under a contract with the consumer, a service by which digital content reaches the device.
- (3) Where, after that time, its performance in accordance with the contract requires it to be transmitted from the consumer to T, or to another trader under arrangements made by T, and back to the consumer –
 - (a) the contract is to be treated as including a term that the facility to transmit the content to and from T or that other trader will be available for a reasonable period of time, and
 - (b) during that period, sections 36 to 38 apply in relation to the digital content on each occasion that it is transmitted back to the consumer as they apply to it when it is first provided.

42 Rights to modify digital content

Where under a contract a trader provides digital content to a consumer subject to the right of the trader or a third party to modify the digital content, the following provisions apply in relation to the digital content as modified as they apply in relation to the digital content as provided under the contract –

- (a) section 36 (quality);
- (b) section 37 (fitness for a particular purpose);
- (c) section 38 (description).

43 Trader’s right to provide digital content

- (1) Every contract to provide digital content is to be treated as including a term –
 - (a) in relation to any digital content which is provided under the contract and which the consumer has paid for, that the trader has the right to provide that content to the consumer;
 - (b) in relation to any digital content which the trader agrees to provide under the contract and which the consumer has paid for, that the trader will have the right to provide it to the consumer at the time when it is to be provided.
- (2) See section 44 for a consumer’s rights if the trader is in breach of a term that this section requires to be treated as included in a contract.

What remedies are there if statutory rights under a digital content contract are not met?

44 Consumer’s rights to enforce terms about digital content

- (1) In this section and sections 45 and 46 references to digital content conforming to a contract are references to the digital content conforming to the terms described in sections 36, 37 and 38.
- (2) If the digital content does not conform to the contract, the consumer’s rights (and the provisions about them and when they are available) are –
 - (a) the right to repair or replacement (see section 45);
 - (b) the right to a price reduction (see section 46);
 and section 15 also applies if an item including the digital content is supplied.
- (3) If the trader is in breach of a term that section 39 requires to be treated as included in the contract, but it is not a breach by which the digital content does

not conform to the contract, the consumer has the right to a price reduction (see section 46 for provisions about that right and when it is available).

- (4) If the trader is in breach of the term that section 43(1) (right to provide the content) requires to be treated as included in the contract, the consumer has the right to a refund (see section 47 for provisions about that right and when it is available).
- (5) This Chapter does not prevent the consumer seeking other remedies for a breach of a term that this Chapter requires to be treated as included in a contract, including (where it is open to the consumer to do so) –
 - (a) claiming damages (see section 61 for the measure of damages),
 - (b) claiming interest or special damages,
 - (c) seeking to recover money paid where the consideration for payment of the money has failed,
 - (d) seeking specific performance (see section 62),
 - (e) seeking an order for specific implement, or
 - (f) relying on the breach against a claim by the trader for the price;but the consumer may not recover twice for the same loss.
- (6) For the purposes of subsection (2), digital content which does not conform to the contract at any time within the period of six months beginning with the day on which it was provided must be taken not to have conformed to the contract when it was provided.
- (7) Subsection (6) does not apply if –
 - (a) it is established that the digital content did conform to the contract when it was provided, or
 - (b) its application is incompatible with the nature of the digital content or with how it fails to conform to the contract.

45 Right to repair or replacement

- (1) This section applies if the consumer has the right to repair or replacement.
- (2) If the consumer requires the trader to repair or replace the digital content, the trader must –
 - (a) do so within a reasonable time but without causing significant inconvenience to the consumer; and
 - (b) bear any necessary costs incurred in doing so (including in particular the cost of any labour, materials or postage).
- (3) The consumer cannot require the trader to repair or replace the digital content if that remedy (the repair or the replacement) –
 - (a) is impossible, or
 - (b) is disproportionate compared to the other of those remedies.
- (4) Either of those remedies is disproportionate compared to the other if it imposes costs on the trader which, compared to those imposed by the other, are unreasonable, taking into account –
 - (a) the value which the digital content would have if it conformed to the contract,
 - (b) the significance of the lack of conformity, and
 - (c) whether the other remedy could be effected without significant inconvenience to the consumer.

- (5) Any question as to what is a reasonable time or significant inconvenience is to be determined taking account of –
 - (a) the nature of the digital content, and
 - (b) the purpose for which the digital content was obtained or accessed.
- (6) A consumer who requires or agrees to the repair of digital content cannot require the trader to replace it without giving the trader a reasonable time to repair it.
- (7) A consumer who requires or agrees to the replacement of digital content cannot require the trader to repair it without giving the trader a reasonable time to replace it.
- (8) In this Chapter, “repair” in relation to digital content that does not conform to a contract, means making it conform.

46 Right to price reduction

- (1) The right to a price reduction is the right to require the trader to reduce the price to the consumer by an appropriate amount.
- (2) A consumer who has that right may only exercise it in one of these situations –
 - (a) because of section 45(3) the consumer can require neither repair nor replacement of the digital content; or
 - (b) the consumer has required the trader to repair or replace the digital content, but the trader is in breach of the requirement of section 45(2)(a) to do so within a reasonable time and without significant inconvenience to the consumer.

47 Right to a refund

- (1) The right to a refund gives the consumer the right to receive a refund from the trader of all money paid by the consumer for the digital content (subject to subsection (2)).
- (2) If the breach giving the consumer the right to a refund relates to only some of the digital content provided under the contract, the right to a refund does not extend to any part of the price attributable to digital content that is not affected by the breach.

Compensation for damage to device or to other digital content

48 Compensation for damage to device or to other digital content

- (1) A consumer is entitled to payment from a trader if –
 - (a) the trader provides digital content to the consumer under a contract,
 - (b) the digital content causes damage to a device or to other digital content,
 - (c) the device or digital content that is damaged belongs to the consumer, and
 - (d) the damage is of a kind that would not have occurred if the trader had exercised reasonable care and skill.
- (2) The payment the consumer is entitled to is the cost of replacing the device or digital content that is damaged.

Can a trader contract out of statutory rights and remedies under a digital content contract?

49 Liability that cannot be excluded or restricted

- (1) A term of a contract to provide digital content cannot exclude or restrict the trader’s liability arising under any of these provisions –
 - (a) section 36 (quality of digital content),
 - (b) section 37 (fitness for a particular purpose),
 - (c) section 38 (description),
 - (d) section 43 (trader’s right to provide digital content), or
 - (e) section 48 (compensation for damage to other digital content).
- (2) That also means that a term of a contract to provide digital content cannot –
 - (a) exclude or restrict a right or remedy in respect of a liability under a provision listed in that subsection,
 - (b) make such a right or remedy or its enforcement subject to a restrictive or onerous condition,
 - (c) allow a trader to put a person at a disadvantage as a result of pursuing such a right or remedy, or
 - (d) exclude or restrict rules of evidence or procedure.
- (3) The reference in subsection (1) to excluding or restricting a liability also includes preventing an obligation or duty arising or limiting its extent.
- (4) An agreement in writing to submit present or future differences to arbitration is not to be regarded as excluding or restricting any liability for the purposes of this section.
- (5) See Schedule 3 for provision about the enforcement of this section.

CHAPTER 4

SERVICES

What services contracts are covered?

50 Contracts covered by this Chapter

- (1) This Chapter applies to a contract under which a trader agrees to provide a service to a consumer.
- (2) That does not include a contract of employment or apprenticeship.
- (3) A contract to which this Chapter applies is referred to in this Part as a “contract to provide a service”.
- (4) The Secretary of State may by order made by statutory instrument provide that a provision of this Chapter does not apply in relation to a service of a description specified in the order.
- (5) A statutory instrument containing an order under subsection (4) is subject to annulment in pursuance of a resolution of either House of Parliament.

What statutory rights are there under a services contract?

51 Service to be performed with reasonable care and skill

- (1) Every contract to provide a service is to be treated as including a term that the trader must perform the service with reasonable care and skill.
- (2) See section 56 for a consumer's rights if the trader is in breach of a term that this section requires to be treated as included in a contract.

52 Information about the trader or service to be binding

- (1) Every contract to provide a service is to be treated as including as a term of the contract (whether or not it does so expressly) anything that—
 - (a) is spoken or written to the consumer by or on behalf of the trader about the trader or the service, and
 - (b) is taken into account by the consumer when deciding to enter into the contract or when making any decision about the service after entering into the contract.
- (2) Without prejudice to subsection (1), any information provided by the trader in accordance with provision giving effect to Article 5 or 6 of the Consumer Rights Directive is to be treated as included as a term of the contract.
- (3) For the purposes of subsection (1) a consumer cannot claim to have taken anything into account without regard to anything within subsection (1)(a) that qualifies it.
- (4) This section does not prevent the trader and consumer expressly agreeing a change to the contract.
- (5) See section 56 for a consumer's rights if the trader is in breach of a term that this section requires to be treated as included in a contract.

53 Reasonable price to be paid for a service

- (1) This section applies to a contract to provide a service, if—
 - (a) the consumer has not paid a price or other consideration for the service,
 - (b) the contract does not expressly fix a price or other consideration, and does not say how it is to be fixed, and
 - (c) anything that is to be treated under section 52 as included in the contract does not fix a price or other consideration either.
- (2) In that case the contract is to be treated as including a term that the consumer must pay a reasonable price for the service, and no more.
- (3) What is a reasonable price is a question of fact.

54 Service to be performed within a reasonable time

- (1) This section applies to a contract to provide a service, if—
 - (a) the contract does not expressly fix the time for the service to be performed, and does not say how it is to be fixed, and
 - (b) information that is to be treated under section 52 as included in the contract does not fix the time either.

- (2) In that case the contract is to be treated as including a term that the trader must perform the service within a reasonable time.
- (3) What is a reasonable time is a question of fact.
- (4) See section 56 for a consumer's rights if the trader is in breach of a term that this section requires to be treated as included in a contract.

55 Relation to other law on contract terms

- (1) Nothing in this Chapter affects a rule of law that –
 - (a) imposes a stricter duty on the trader, or
 - (b) requires other provision to be treated as included in a contract, if the provision is not inconsistent with this Chapter.
- (2) This Chapter is subject to any other enactment which defines or restricts the rights, duties or liabilities arising in connection with a service of any description.

What remedies are there if statutory rights under a services contract are not met?

56 Consumer's rights to enforce terms about services

- (1) The consumer's rights under this section and sections 57 and 58 do not affect any rights that the contract provides for, if those are not inconsistent.
- (2) In this section and section 57 reference to a service conforming to a contract is a reference to –
 - (a) the service being performed in accordance with section 51, or
 - (b) the service conforming to a term that section 52 requires to be treated as included in the contract and that relates to the service.
- (3) If the service does not conform to the contract, the consumer's rights (and the provisions about them and when they are available) are –
 - (a) the right to require repeat performance (see section 57);
 - (b) the right to a price reduction (see section 58).
- (4) If the trader is in breach of a term that section 52 requires to be treated as included in the contract but that does not relate to the service, the consumer has the right to a price reduction (see section 58 for provisions about that right and when it is available).
- (5) If the trader is in breach of what the contract requires under section 54 (performance within a reasonable time), the consumer has the right to a price reduction (see section 58 for provisions about that right and when it is available).
- (6) This section and sections 57 and 58 do not prevent the consumer seeking other remedies for a breach of a term that this Chapter requires to be treated as included in a contract, including (where it is open to the consumer to do so) –
 - (a) claiming damages (see section 61 for the measure of damages),
 - (b) claiming interest or special damages,
 - (c) seeking to recover money paid where the consideration for payment of the money has failed,
 - (d) seeking specific performance (see section 62),

- (e) seeking an order for specific implement,
 - (f) relying on the breach against a claim by the trader under the contract, or
 - (g) exercising a right to treat the contract as at an end;
- but the consumer may not recover twice for the same loss.

57 Right to repeat performance

- (1) The right to require repeat performance is a right to require the trader to perform the service again, to the extent necessary to complete its performance in conformity with the contract.
- (2) If the consumer requires such repeat performance, the trader –
 - (a) must provide it within a reasonable time but without causing significant inconvenience to the consumer; and
 - (b) must bear any necessary costs incurred in doing so (including in particular the cost of any labour or materials).
- (3) The consumer cannot require repeat performance if completing performance of the service in conformity with the contract is impossible.
- (4) Any question as to what is a reasonable time or significant inconvenience is to be determined taking account of –
 - (a) the nature of the service, and
 - (b) the purpose for which the service was to be performed.

58 Right to price reduction

- (1) The right to a price reduction is the right to require the trader to reduce the price to the consumer by an appropriate amount.
- (2) A consumer who has that right and the right to require repeat performance is only entitled to a price reduction in one of these situations –
 - (a) the consumer cannot require repeat performance because of section 57(3); or
 - (b) the consumer has required repeat performance, but the trader is in breach of the requirement of section 57(2)(a) to do it within a reasonable time and without significant inconvenience to the consumer.

Can a trader contract out of statutory rights and remedies under a services contract?

59 Liability that cannot be excluded or restricted

- (1) A term of a contract to provide services cannot exclude the trader's liability arising under section 51 (service to be performed with reasonable care and skill).
- (2) Subject to section 52(3), a term of a contract to provide services cannot exclude the trader's liability arising under section 52 (information about trader or service to be binding).
- (3) A term of a contract to provide services cannot restrict the trader's liability arising under any of sections 51 and 52 and, where they apply, sections 53 and 54 (reasonable price and reasonable time), if it would prevent the consumer in

an appropriate case from recovering the price paid or the value of any other consideration.

- (4) That also means that a term of a contract to provide services cannot—
 - (a) exclude or restrict a right or remedy in respect of a liability under any of sections 51 to 54,
 - (b) make such a right or remedy or its enforcement subject to a restrictive or onerous condition,
 - (c) allow a trader to put a person at a disadvantage as a result of pursuing such a right or remedy, or
 - (d) exclude or restrict rules of evidence or procedure.
- (5) The reference in subsection (1) to excluding or restricting a liability also includes preventing an obligation or duty arising or limiting its extent.
- (6) An agreement in writing to submit present or future differences to arbitration is not to be regarded as excluding or restricting any liability for the purposes of this section.
- (7) See Schedule 3 for provision about the enforcement of this section.

CHAPTER 5

GENERAL AND SUPPLEMENTARY PROVISIONS

60 Interpretation

In this Part—

“Consumer Rights Directive” means Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council;

“credit-broker” means a person acting in the course of a business of credit brokerage carried on by that person;

“credit brokerage” means—

- (a) introducing individuals who want to obtain credit to persons carrying on any business so far as it relates to the provision of credit,
- (b) introducing individuals who want to obtain goods on hire to persons carrying on a business which comprises or relates to supplying goods under a contract for the hire of goods, or
- (c) introducing individuals who want to obtain credit, or to obtain goods on hire, to other persons engaged in credit brokerage;

“business” includes the activities of any government department or local or public authority;

“delivery” means voluntary transfer of possession from one person to another;

“enactment” includes—

- (a) an enactment contained in subordinate legislation within the meaning of the Interpretation Act 1978,

- (b) an enactment contained in, or in an instrument made under, an Act of the Scottish Parliament, and
 - (c) an enactment contained in, or in an instrument made under, Northern Ireland legislation;
- “producer”, in relation to goods or digital content, means –
- (a) the manufacturer,
 - (b) the importer into the European Economic Area, or
 - (c) any person who purports to be a producer by placing the person’s name, trade mark or other distinctive sign on the goods or using it in connection with the digital content.

61 Measure of damages

- (1) Where a trader is in breach of a term that this Part requires to be treated as included in a contract, the measure of damages is the estimated loss directly and naturally resulting, in the ordinary course of events, from the breach.
- (2) Subsection (3) applies where –
 - (a) the breach is a failure to deliver the goods or digital content or to perform the service, or
 - (b) under section 18, the breach gives the consumer a right to reject the goods, and the consumer does so.
- (3) Where there is an available market for the goods, digital content or service in question the loss mentioned in subsection (1) is (unless any other calculation is shown to be applicable) the difference between the contract price and the market or current price of the goods, digital content or service at the time or times when they ought to have been delivered or performed.
- (4) Subsection (6) applies if –
 - (a) the breach is of a term that Chapter 2, 3 or 4 requires to be treated as included in a contract, or of a requirement stated in a contract for the supply of goods, and
 - (b) the breach relates to the provision of a service, or the goods or digital content to which it relates are retained by the consumer.
- (5) Subsection (6) applies if –
 - (a) the breach is of a term that Chapter 2, 3 or 4 requires to be treated as included in a contract, or of a requirement stated in a contract for the supply of goods, and
 - (b) in a case where the breach gives the consumer the right to reject goods, the consumer does not do so.
- (6) Where this subsection applies, the loss mentioned in subsection (1) is (unless any other calculation is shown to be applicable) the difference between –
 - (a) the value of the goods or digital content at the time of delivery to the consumer, or the value of the service at the time of performance for the consumer, and
 - (b) the value they would have had if there had been no breach.
- (7) The fact that the consumer relies on a breach against a claim by the trader for the price does not prevent the consumer from claiming damages if the consumer has suffered further damage.

62 Specific performance

- (1) A direction for specific performance may be made if—
 - (a) a trader is in breach of a term that this Part requires to be treated as included in a contract,
 - (b) the contract relates to digital content or services, or to specific or ascertained goods,
 - (c) the consumer applies to the court seeking a direction, and
 - (d) the court thinks it appropriate to give one.
- (2) A direction for specific performance is a direction, given by the court by its judgment or decree, that the contract is to be performed specifically, without the trader having the option of paying damages instead.
- (3) The consumer’s application may be made at any time before judgment or decree.
- (4) The judgment or decree may be unconditional, or on any terms and conditions that seem just to the court, relating to damages, payment of the price or otherwise.
- (5) This section is supplementary to, and not in derogation of, the right of specific implement in Scotland.
- (6) In this section “specific goods” means goods identified and agreed on at the time a contract for the supply of goods is made, and includes an un-divided share, specified as a fraction or percentage, of goods identified and agreed on at that time.

63 Changes to other legislation

Schedule 1 (amendments consequential on this Part) has effect.

PART 2

UNFAIR TERMS

What contracts and notices are covered by this Part?

64 Contracts and notices covered by this Part

- (1) This Part applies to a contract between a trader and a consumer.
- (2) This does not include a contract of employment or apprenticeship.
- (3) A contract to which this Part applies is referred to in this Part as a “consumer contract”.
- (4) This Part applies to a notice to the extent that it—
 - (a) relates to rights or obligations as between a trader and a consumer, or
 - (b) purports to exclude or restrict a trader’s liability to a consumer.
- (5) This does not include a notice relating to rights, obligations or liabilities as between an employer and an employee.

- (6) It does not matter for the purposes of subsection (4) whether the notice is expressed to apply to a consumer, as long as it is reasonable to assume it is intended to be read by a consumer.
- (7) A notice to which this Part applies is referred to in this Part as a “consumer notice”.
- (8) In this section “notice” includes an announcement, whether or not in writing, and any other communication or purported communication.
- (9) In this Part “trader” and “consumer” have the same meanings as in Part 1 (see section 2).

What are the general rules about fairness of contract terms and notices?

65 Requirement for contract terms and notices to be fair

- (1) An unfair term of a consumer contract is not binding on the consumer.
- (2) An unfair consumer notice is not binding on the consumer.
- (3) This does not prevent the consumer from relying on the term or notice if the consumer chooses to do so.
- (4) A term is unfair for the purposes of this Part if, contrary to the requirement of good faith, it causes a significant imbalance in the parties’ rights and obligations under the contract to the detriment of the consumer.
- (5) Whether a term is fair is to be determined for these purposes –
 - (a) taking into account the nature of the subject matter of the contract, and
 - (b) by reference to all the circumstances existing when the term was agreed and to all of the other terms of the contract or of any other contract on which it depends.
- (6) A notice is unfair for the purposes of this Part if, contrary to the requirement of good faith, it causes a significant imbalance in the parties’ rights and obligations to the detriment of the consumer.
- (7) Whether a notice is fair is to be determined for these purposes –
 - (a) taking into account the nature of the subject matter of the notice, and
 - (b) by reference to all the circumstances existing when the rights or obligations to which it relates arose and to the terms of any contract on which it depends.
- (8) This section does not affect the operation of –
 - (a) section 32 (exclusion of liability: goods contracts),
 - (b) section 49 (exclusion of liability: digital content contracts),
 - (c) section 59 (exclusion of liability: services contracts), or
 - (d) section 68 (exclusion of negligence liability).

66 Contract terms which may or must be regarded as unfair

- (1) Part 1 of Schedule 2 contains an indicative and non-exhaustive list of terms of consumer contracts that may be regarded as unfair for the purposes of this Part.

- (2) Part 1 of Schedule 2 is subject to the exceptions in Part 2 of that Schedule; but a term listed in Part 2 may nevertheless be assessed for fairness under section 65 unless section 67 or 76 applies to it.
- (3) The Secretary of State may by order made by statutory instrument amend Schedule 2 so as to add, modify or remove an entry in Part 1 or Part 2 of that Schedule.
- (4) A statutory instrument containing an order under subsection (3) is subject to annulment in pursuance of a resolution of either House of Parliament.
- (5) A term of a consumer contract must be regarded as unfair if it has the effect that the consumer bears the burden of proof with respect to compliance by a distance supplier or an intermediary with an obligation under any enactment or rule implementing the Distance Marketing Directive.
- (6) In subsection (5) –
 - “the Distance Marketing Directive” means Directive 2002/65/EC of the European Parliament and of the Council of 23 September 2002 concerning the distance marketing of consumer financial services and amending Council Directive 90/619/EEC and Directives 97/7/EC and 98/27/EC;
 - “distance supplier” means –
 - (a) a supplier under a distance contract within the meaning of the Financial Services (Distance Marketing) Regulations 2004 (SI 2004/2095), or
 - (b) a supplier of unsolicited financial services within the meaning of regulation 15 of those regulations;
 - “enactment” includes an enactment contained in subordinate legislation within the meaning of the Interpretation Act 1978;
 - “intermediary” has the same meaning as in the Financial Services (Distance Marketing) Regulations 2004;
 - “rule” means a rule made by the Financial Conduct Authority or the Prudential Regulation Authority under the Financial Services and Markets Act 2000 or by a designated professional body within the meaning of section 326(2) of that Act.

67 Exclusion from assessment of fairness

- (1) A term of a consumer contract may not be assessed for fairness under section 65(1) to the extent that –
 - (a) it specifies the main subject matter of the contract, or
 - (b) the assessment is of the appropriateness of the price payable under the contract by comparison with the goods, digital content or services provided under it.
- (2) Subsection (1) excludes a term from an assessment under section 65(1) only if it is transparent and prominent.
- (3) A term is transparent for the purposes of this Part if it is expressed in plain and intelligible language and (in the case of a written term) is legible.
- (4) A term is prominent for the purposes of this section if it is brought to the consumer’s attention in such a way that an average consumer would be aware of the term.

- (5) In subsection (4) “average consumer” means a consumer who is reasonably well-informed, observant and circumspect.
- (6) In this Part “digital content” means data which are produced and supplied in digital form.
- (7) This section does not apply to a term of a contract listed in Part 1 of Schedule 2.

68 Bar on exclusion or restriction of negligence liability

- (1) A trader cannot by a term of a consumer contract or by a consumer notice exclude or restrict liability for death or personal injury resulting from negligence.
- (2) Where a term of a consumer contract, or a consumer notice, purports to exclude or restrict a trader’s liability for negligence, a person is not to be taken to have voluntarily accepted any risk merely because the person agreed to or knew about the term or notice.
- (3) In this section “personal injury” includes any disease and any impairment of physical or mental condition.
- (4) In this section “negligence” means the breach of –
 - (a) any obligation to take reasonable care or exercise reasonable skill in the performance of a contract where the obligation arises from an express or implied term of the contract,
 - (b) a common law duty to take reasonable care or exercise reasonable skill,
 - (c) the common law duty of care imposed by the Occupiers’ Liability Act 1957 or the Occupiers’ Liability Act (Northern Ireland) 1957, or
 - (d) the duty of reasonable care imposed by section 2(1) of the Occupiers’ Liability (Scotland) Act 1960.
- (5) It is immaterial for the purposes of subsection (4) –
 - (a) whether a breach of duty or obligation was inadvertent or intentional, or
 - (b) whether liability for it arises directly or vicariously.
- (6) This section is subject to section 69 (which makes provision about the scope of this section).

69 Scope of section 68

- (1) Section 68 does not apply to –
 - (a) any contract so far as it is a contract of insurance, including a contract to pay an annuity on human life, or
 - (b) any contract so far as it relates to the creation or transfer of an interest in land.
- (2) Section 68 does not affect the validity of any discharge or indemnity given by a person in consideration of the receipt by that person of compensation in settlement of any claim the person has.
- (3) Section 68 does not apply to the liability of an occupier of premises to a person who obtains access to the premises for recreational purposes if –
 - (a) the person suffers loss or damage because of the dangerous state of the premises, and

- (b) allowing the person access for those purposes is not within the purposes of the occupier’s trade, business, craft or profession.

70 Effect of an unfair term on the rest of a contract

Where a term of a consumer contract is not binding on the consumer as a result of this Part, the contract continues, so far as practicable, to have effect in every other respect.

71 Other requirements for contract terms

- (1) A trader must ensure that a written term of a consumer contract, or a consumer notice, is transparent.
- (2) If a term of a consumer contract is especially onerous or unusual, the trader must ensure that the term is drawn particularly to the consumer’s attention.
- (3) Whether a term of a contract is especially onerous or unusual is to be determined, in particular, by reference to the subject matter of the contract.

72 Contract terms that may have different meanings

- (1) If a term in a consumer contract, or a consumer notice, could have different meanings, the meaning that is most favourable to the consumer is to prevail.
- (2) Subsection (1) does not apply to the construction of a term or a notice in proceedings on an application for an injunction under paragraph 3 of Schedule 3.

Which public bodies can enforce the general rules?

73 Enforcement of the law on unfair contract terms

Schedule 3 confers functions on the Competition and Markets Authority and other regulators in relation to the enforcement of this Part.

Supplementary provisions

74 Duty of court to consider fairness of term

- (1) Subsection (2) applies to proceedings before a court which relate to a consumer contract.
- (2) The court must consider whether a term in the contract is fair even if none of the parties to the proceedings has raised that issue or indicated that it intends to raise it.
- (3) But subsection (2) does not apply unless the court considers that it has before it sufficient legal and factual material to enable it to consider the fairness of the term.

75 Application of rules to secondary contracts

- (1) This section applies if a term of a contract (“the secondary contract”) reduces the rights or remedies or increases the obligations of a person under another contract (“the main contract”).
- (2) The term is subject to the provisions of this Part that would apply to the term if it were in the main contract.
- (3) It does not matter for the purposes of this section –
 - (a) whether the parties to the secondary contract are the same as the parties to the main contract, or
 - (b) whether the secondary contract is a consumer contract.
- (4) This section does not apply if the secondary contract is a settlement of a claim arising under the main contract.

76 Disapplication of rules to terms required to be in contracts

- (1) This Part does not apply to a term of a contract which reflects –
 - (a) mandatory statutory or regulatory provisions, or
 - (b) the provisions or principles of an international convention to which the United Kingdom or the EU is a party.
- (2) In subsection (1) “mandatory statutory or regulatory provisions” includes rules which, according to law, apply between the parties on the basis that no other arrangements have been established.

77 Contracts applying law of non-EEA State

If a consumer contract has a close connection with the United Kingdom, this Part applies to it despite any term of a contract which would otherwise apply the law of a country or territory other than an EEA State to the consumer contract.

78 Changes to other legislation

Schedule 4 (amendments consequential on this Part) has effect.

PART 3

MISCELLANEOUS AND GENERAL

*Miscellaneous***79 Investigatory powers etc**

Schedule 5 (investigatory powers etc) has effect.

80 Amendment of the Weights and Measures (Packaged Goods) Regulations 2006

- (1) In the Weights and Measures (Packaged Goods) Regulations 2006 (S.I. 2006/659), Schedule 5 (application to bread) is amended in accordance with subsections (2) and (3).

- (2) For paragraph 9 substitute –
- “9 Regulation 9(1)(b)(ii) (duty to keep records) does not apply to bread which is sold unwrapped or in open packs.”
- (3) After paragraph 13 insert –
- “Transitional provision*
- 14 (1) Regulation 9(1)(b)(ii) (duty to keep records) does not apply to a packer who holds a notice of exemption which is in force.
- (2) A “notice of exemption” means a notice issued under paragraph 9 as it stood before section 80 of the Consumer Rights Act 2013 came into force.”
- (4) The use of this Act to make amendments to the Weights and Measures (Packaged Goods) Regulations 2006 has no effect on the availability of any power in the Weights and Measures Act 1985 to amend or revoke those Regulations, including the provision substituted by subsection (2) and that inserted by subsection (3).

81 Enterprise Act 2002: enhanced consumer measures and other enforcement

- (1) Schedule 6 contains amendments of Part 8 of the Enterprise Act 2002 (enforcement of certain consumer legislation).
- (2) The amendments have effect only in relation to conduct which occurs, or which is likely to occur, after the commencement of this section.

82 Private actions in competition law

Schedule 7 (private actions in competition law) has effect.

General

83 Consequential amendments, repeals and revocations

- (1) The Secretary of State may by order made by statutory instrument make such provision as the Secretary of State considers appropriate in consequence of this Act.
- (2) The power conferred by subsection (1) includes power –
- (a) to make transitional, transitory or saving provision;
- (b) to amend, repeal, revoke or otherwise modify any provision made by or under an enactment (including any enactment passed or made in the same Session as this Act).
- (3) A statutory instrument containing (whether alone or with other provision) an order under this section which amends, repeals or revokes any provision of primary legislation is not to be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (4) A statutory instrument containing an order under this section which does not amend, repeal or revoke any provision of primary legislation is subject to annulment in pursuance of a resolution of either House of Parliament.

- (5) In this section –
- “enactment” includes an Act of the Scottish Parliament, a Measure or Act of the National Assembly for Wales and Northern Ireland legislation;
 - “primary legislation” means –
 - (a) an Act of Parliament,
 - (b) an Act of the Scottish Parliament,
 - (c) a Measure or Act of the National Assembly for Wales, and
 - (d) Northern Ireland legislation.

84 Extent

- (1) The amendment, repeal or revocation of any provision by this Act has the same extent as the provision concerned.
- (2) Section 28 extends only to Scotland.
- (3) Subject to that this Act extends to England and Wales, Scotland and Northern Ireland.

85 Commencement

- (1) Sections 83 and 84, this section and section 86 come into force on the day on which this Act is passed.
- (2) The other provisions of this Act come into force on such day as the Secretary of State may appoint by order made by statutory instrument.
- (3) An order under this section may appoint different days for different purposes.

86 Short title

This Act may be cited as the Consumer Rights Act 2013.

SCHEDULES

SCHEDULE 1

Section 63

AMENDMENTS CONSEQUENTIAL ON PART 1

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

- 1 The Supply of Goods (Implied Terms) Act 1973 is amended as follows.
- 2 For “hire-purchase agreement” (or “hire purchase agreement”) in each place, except in section 15(1), substitute “relevant hire-purchase agreement”.
- 3 (1) Section 10 (implied undertakings as to quality or fitness) is amended as follows.
 - (2) Omit subsections (2D) to (2F).
 - (3) Omit subsection (8).
- 4 (1) Section 11A (modification of remedies for breach of statutory condition in non-consumer cases) is amended as follows.
 - (2) In subsection (1) omit “then, if the person to whom the goods are bailed does not deal as a consumer,”.
 - (3) In subsection (3), for paragraph (b) substitute—
 - “(b) that the agreement was a relevant hire-purchase agreement.”
 - (4) Omit subsection (4).
- 5 In section 12A (remedies for breach of hire-purchase agreement as respects Scotland) omit subsections (2) and (3).
- 6 Omit section 14 (special provision as to conditional sale agreements).
- 7 (1) Section 15 (interpretation) is amended as follows.
 - (2) In subsection (1)—
 - (a) in the definition of “hire-purchase agreement” at the end insert—
 - “and a hire-purchase agreement is relevant if it is not a contract to which Chapter 2 of Part 1 of the Consumer Rights Act 2013 applies;”
 - (b) omit the definition of “producer”.
 - (3) Omit subsection (3).

Sale of Goods Act 1979 (c. 54)

- 8 The Sale of Goods Act 1979 is amended as follows.

- 9 In section 1 (contracts to which Act applies), after subsection (4) insert –
- “(5) Certain sections or subsections of this Act do not apply to a contract to which Chapter 2 of Part 1 of the Consumer Rights Act 2013 applies.
 - (6) Where that is the case it is indicated in the section concerned.”
- 10 In section 11 (when condition to be treated as warranty), after subsection (4) insert –
- “(4A) Subsection (4) does not apply to a contract to which Chapter 2 of Part 1 of the Consumer Rights Act 2013 applies (but see the provision made about such contracts in section 20 of that Act).”
- 11 In section 12 (implied terms about title etc), after subsection (6) insert –
- “(7) This section does not apply to a contract to which Chapter 2 of Part 1 of the Consumer Rights Act 2013 applies (but see the provision made about such contracts in section 16 of that Act).”
- 12 In section 13 (sale by description), after subsection (4) insert –
- “(5) This section does not apply to a contract to which Chapter 2 of Part 1 of the Consumer Rights Act 2013 applies (but see the provision made about such contracts in section 10 of that Act).”
- 13 (1) Section 14 (implied terms about quality or fitness) is amended as follows.
- (2) Omit subsections (2D) to (2F).
 - (3) After subsection (8) insert –
 - “(9) This section does not apply to a contract to which Chapter 2 of Part 1 of the Consumer Rights Act 2013 applies (but see the provision made about such contracts in sections 8, 9 and 17 of that Act).”
- 14 In section 15 (sale by sample), after subsection (4) insert –
- “(5) This section does not apply to a contract to which Chapter 2 of Part 1 of the Consumer Rights Act 2013 applies (but see the provision made about such contracts in sections 12 and 17 of that Act).”
- 15 In section 15A (modification of remedies for breach of condition in non-consumer cases), in subsection (1) omit “then, if the buyer does not deal as consumer,”.
- 16 In section 15B (remedies for breach of contract as respects Scotland) omit subsection (2).
- 17 (1) In section 20 (passing of risk), for subsection (4) substitute –
- “(4) This section does not apply to a contract to which Chapter 2 of Part 1 of the Consumer Rights Act 2013 applies (but see the provision made about such contracts in section 30 of that Act).”
- (2) The marginal note “Passing of risk” substituted by the Sale and Supply of Goods to Consumers Regulations 2002 is not affected by the revocation of those Regulations by this Schedule.

- 18 In section 29 (rules about delivery), after subsection (3) insert –
- “(3A) Subsection (3) does not apply to a contract to which Chapter 2 of Part 1 of the Consumer Rights Act 2013 applies (but see the provision made about such contracts in section 29 of that Act).”
- 19 (1) Section 30 (delivery of wrong quantity) is amended as follows.
- (2) In subsection (2A) omit “who does not deal as consumer”.
- (3) After subsection (5) insert –
- “(6) This section does not apply to a contract to which Chapter 2 of Part 1 of the Consumer Rights Act 2013 applies (but see the provision made about such contracts in section 26 of that Act).”
- 20 In section 31 (instalment deliveries) after subsection (2) insert –
- “(3) This section does not apply to a contract to which Chapter 2 of Part 1 of the Consumer Rights Act 2013 applies (but see the provision made about such contracts in section 27 of that Act).”
- 21 In section 32 (delivery to carrier), for subsection (4) substitute –
- “(4) This section does not apply to a contract to which Chapter 2 of Part 1 of the Consumer Rights Act 2013 applies (but see the provision made about such contracts in section 30 of that Act).”
- 22 (1) Section 33 (risk where goods are delivered at distant place) is amended as follows.
- (2) At the beginning insert “(1)”.
- (3) At the end insert –
- “(2) This section does not apply to a contract to which Chapter 2 of Part 1 of the Consumer Rights Act 2013 applies (but see the provision made about such contracts in section 30 of that Act).”
- 23 (1) Section 35 (acceptance) is amended as follows.
- (2) Omit subsection (3).
- (3) After subsection (8) insert –
- “(9) This section does not apply to a contract to which Chapter 2 of Part 1 of the Consumer Rights Act 2013 applies (but see the provision made about such contracts in section 22 of that Act).”
- 24 In section 35A (right of partial rejection), after subsection (4) insert –
- “(5) This section does not apply to a contract to which Chapter 2 of Part 1 of the Consumer Rights Act 2013 applies (but see the provision made about such contracts in section 22 of that Act).”
- 25 (1) Section 36 (right of partial rejection) is amended as follows.
- (2) At the beginning insert “(1)”.

- (3) At the end insert –
- “(2) This section does not apply to a contract to which Chapter 2 of Part 1 of the Consumer Rights Act 2013 applies (but see the provision made about such contracts in section 19 of that Act).”
- 26 Omit Part 5A (additional rights of buyer in consumer cases).
- 27 In section 51 (damages for non-delivery), after subsection (3) insert –
- “(4) This section does not apply to a contract to which Chapter 2 of Part 1 of the Consumer Rights Act 2013 applies (but see the provision made about such contracts in sections 18 and 61 of that Act).”
- 28 In section 52 (specific performance), after subsection (4) insert –
- “(5) This section does not apply to a contract to which Chapter 2 of Part 1 of the Consumer Rights Act 2013 applies (but see the provision made about such contracts in sections 18 and 62 of that Act).”
- 29 In section 53 (remedy for breach of warranty), after subsection (4) insert –
- “(4A) This section does not apply to a contract to which Chapter 2 of Part 1 of the Consumer Rights Act 2013 applies (but see the provision made about such contracts in sections 18 and 61 of that Act).”
- 30 In section 53A (measure of damages as respects Scotland), after subsection (2) insert –
- “(2A) This section does not apply to a contract to which Chapter 2 of Part 1 of the Consumer Rights Act 2013 applies (but see the provision made about such contracts in sections 18 and 61 of that Act).”
- 31 (1) Section 54 (interest) is amended as follows.
- (2) At the beginning insert “(1)”.
- (3) At the end insert –
- “(2) This section does not apply to a contract to which Chapter 2 of Part 1 of the Consumer Rights Act 2013 applies (but see the provision made about such contracts in section 18 of that Act).”
- 32 In section 55 (exclusion of implied terms), after subsection (1) insert –
- “(1A) Subsection (1) does not apply to a contract to which Chapter 2 of Part 1 of the Consumer Rights Act 2013 applies (but see the provision made about such contracts in sections 32 and 33 of that Act).”
- 33 (1) Section 58 (payment into court in Scotland) is amended as follows.
- (2) At the beginning insert “(1)”.
- (3) At the end insert –
- “(2) This section does not apply to a contract to which Chapter 2 of Part 1 of the Consumer Rights Act 2013 applies (but see the provision made about such contracts in section 28 of that Act).”
- 34 (1) Section 61(1) (interpretation) is amended as follows.
- (2) In subsection (1) omit the following definitions –

- (a) “consumer contract”
 - (b) “repair”;
 - (c) “producer”.
- (3) Omit subsection (5A).

Supply of Goods and Services Act 1982

- 35 The Supply of Goods and Services Act 1982 is amended as follows.
- 36 In each place –
- (a) for “contract for the transfer of goods” substitute “relevant contract for the transfer of goods”;
 - (b) for “contract for the hire of goods” substitute “relevant contract for the hire of goods”;
 - (c) for “contract for the supply of a service” substitute “relevant contract for the supply of a service”.
- 37 In section 1 (the contracts concerned: transfer of property in goods, as respects England and Wales and Northern Ireland), in subsection (1) at the end insert “, and other than a contract to which Chapter 2 of Part 1 of the Consumer Rights Act 2013 applies.”
- 38 In section 4 (implied terms about quality or fitness) omit subsections (2B) to (2D).
- 39 In section 5A (modification of remedies for breach of statutory condition in non-consumer cases), in subsection (1) omit “then, if the transferee does not deal as consumer,”.
- 40 In section 6 (the contracts concerned: hire of goods, as respects England and Wales and Northern Ireland), in subsection (1) at the end insert “, and other than a contract to which Chapter 2 of Part 1 of the Consumer Rights Act 2013 applies.”
- 41 In section 9 (implied terms about quality or fitness) omit subsections (2B) to (2D).
- 42 In section 10A (modification of remedies for breach of statutory condition in non-consumer cases) in subsection (1) omit “then, if the bailee does not deal as consumer,”.
- 43 In section 11A (the contracts concerned: transfer of property in goods, as respects Scotland), in subsection (1) at the end insert “, and other than a contract to which Chapter 2 of Part 1 of the Consumer Rights Act 2013 applies.”
- 44 In section 11D (implied terms about quality or fitness in contracts for transfer of property in goods) omit subsections (3A) to (3C) and (10).
- 45 In section 11F (remedies for breach of contract) omit subsections (2) and (3).
- 46 In section 11G (the contracts concerned: hire of goods, as respects Scotland), in subsection (1) at the end insert “, and other than a contract to which Chapter 2 of Part 1 of the Consumer Rights Act 2013 applies.”
- 47 In section 11J (implied terms about quality or fitness in contracts for hire of goods) omit subsections (3A) to (3C) and (10).

- 48 Omit Part 1B (additional rights of transferee in consumer cases).
- 49 In section 12 (the contracts concerned: supply of services, as respects England and Wales and Northern Ireland), in subsection (1) at the end insert “, and other than a contract to which Chapter 2 of Part 1 of the Consumer Rights Act 2013 applies.”
- 50 (1) Section 18 (interpretation: general) is amended as follows.
 (2) In subsection (1) omit the definitions of “repair” and “producer”.
 (3) Omit subsection (4).

Sale and Supply of Goods to Consumers Regulations 2002 (S.I. 2002/3045)

- 51 The Sale and Supply of Goods to Consumers Regulations 2002 are revoked.

SCHEDULE 2

Section 66

CONSUMER CONTRACT TERMS WHICH MAY BE REGARDED AS UNFAIR

PART 1

LIST OF TERMS

- 1 A term which has the object or effect of excluding or limiting the trader’s liability in the event of the death of or personal injury to the consumer resulting from an act or omission of the trader.
 This does not include a term which is of no effect by virtue of section 68 (exclusion for negligence liability).
- 2 A term which has the object or effect of inappropriately excluding or limiting the legal rights of the consumer in relation to the trader or another party in the event of total or partial non-performance or inadequate performance by the trader of any of the contractual obligations.
 This includes a term with the object or effect of providing an option of offsetting a debt owed to the trader against any claim which the consumer may have against the trader.
- 3 A term which has the object or effect of making an agreement binding on the consumer in a case where the provision of services by the trader is subject to a condition whose realisation depends on the trader’s will alone.
- 4 A term which has the object or effect of permitting the trader to retain sums paid by the consumer where the consumer decides not to conclude or perform the contract, without providing for the consumer to receive compensation of an equivalent amount from the trader where the trader is the party cancelling the contract.
- 5 A term which has the object or effect of requiring that, where the consumer decides not to conclude or perform the contract, the consumer must pay the trader a disproportionately high sum in compensation or for services which have not been supplied.

- 6 A term which has the object or effect of requiring a consumer who fails to fulfil his obligations under the contract to pay a disproportionately high sum in compensation.
- 7 A term which has the object or effect of authorising the trader to dissolve the contract on a discretionary basis where the same facility is not granted to the consumer, or permitting the trader to retain the sums paid for services not yet supplied by the trader where it is the trader who dissolves the contract.
- 8 A term which has the object or effect of enabling the trader to terminate a contract of indeterminate duration without reasonable notice except where there are serious grounds for doing so.
This is subject to paragraphs 21 (financial services contracts) and 25 (contracts for sale of securities, foreign currency etc).
- 9 A term which has the object or effect of automatically extending a contract of fixed duration where the consumer does not indicate otherwise, when the deadline fixed for the consumer to do so is unreasonably early.
- 10 A term which has the object or effect of irrevocably binding the consumer to terms with which the consumer has had no real opportunity of becoming acquainted before the conclusion of the contract.
- 11 A term which has the object or effect of enabling the trader to alter the terms of the contract unilaterally without a valid reason which is specified in the contract.
This is subject to paragraphs 22 (financial services contracts), 24 (contracts which last indefinitely) and 25 (contracts for sale of securities, foreign currency etc).
- 12 A term which has the object or effect of permitting the trader to determine the characteristics of the subject matter of the contract after the consumer has become bound by it.
This is subject to paragraph 24 (contracts which last indefinitely).
- 13 A term which has the object or effect of enabling the trader to alter unilaterally without a valid reason any characteristics of the goods, digital content or services to be provided.
- 14 A term which has the object or effect of permitting the trader to determine the price payable under the contract after the consumer has become bound by it.
This is subject to paragraphs 25 (contracts for sale of securities, foreign currency etc) and 26 (price index clauses).
- 15 A term which has the object or effect of permitting a trader to increase the price of goods, digital content or services without giving the consumer the right to cancel the contract if the final price is too high in relation to the price agreed when the contract was concluded.
This is subject to paragraphs 25 (contracts for sale of securities, foreign currency etc) and 26 (price index clauses).
- 16 A term which has the object or effect of giving the trader the right to determine whether the goods, digital content or services supplied are in conformity with the contract, or giving the trader the exclusive right to interpret any term of the contract.

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- 17 A term which has the object or effect of limiting the trader’s obligation to respect commitments undertaken by the trader’s agents or making the trader’s commitments subject to compliance with a particular formality.
- 18 A term which has the object or effect of obliging the consumer to fulfil all of the consumer’s obligations where the trader does not perform the trader’s obligations.
- 19 A term which has the object or effect of allowing the trader to transfer the trader’s rights and obligations under the contract, where this may reduce the guarantees for the consumer, without the consumer’s agreement.
- 20 A term which has the object or effect of excluding or hindering the consumer’s right to take legal action or exercise any other legal remedy, in particular by –
- (a) requiring the consumer to take disputes exclusively to arbitration not covered by legal provisions,
 - (b) unduly restricting the evidence available to the consumer, or
 - (c) imposing on the consumer a burden of proof which, according to the applicable law, should lie with another party to the contract.

PART 2

EXCEPTIONS

Financial services contracts

- 21 Paragraph 8 (cancellation without reasonable notice) does not include a term by which a trader under a financial services contract reserves the right to terminate unilaterally a contract of indeterminate duration without notice where there is a valid reason, if the trader is required immediately to inform the consumer of the cancellation.
- 22 Paragraph 11 (variation of contract without valid reason) does not include a term by which a trader under a financial services contract reserves the right to alter the rate of interest payable by or to the consumer, or the amount of other charges for financial services without notice where there is a valid reason, if –
- (a) the trader is required to inform the consumer of the variation at the earliest opportunity, and
 - (b) the consumer may then dissolve the contract immediately.
- 23 In paragraphs 21 and 22 “financial services contract” means a contract for the supply of financial services.

Contracts which last indefinitely

- 24 Paragraphs 11 (variation of contract without valid reason) and 12 (determination of characteristics of goods etc after consumer bound) do not include a term under which a trader reserves the right to alter unilaterally the conditions of a contract of indeterminate duration if –
- (a) the trader is required to give the consumer reasonable notice of the variation, and
 - (b) the consumer may then dissolve the contract.

Contracts for sale of securities, foreign currency etc

- 25 (1) None of the paragraphs listed in sub-paragraph (2) includes a term which forms part of a contract to which this paragraph applies.
- (2) Those paragraphs are –
- (a) paragraph 8 (cancellation without reasonable notice),
 - (b) paragraph 11 (variation of contract without valid reason),
 - (c) paragraph 14 (determination of price after consumer bound), and
 - (d) paragraph 15 (increase in price).
- (3) This paragraph applies to a contract which is for a transaction in transferable securities, financial instruments or other products or services where the price is linked to –
- (a) fluctuations in a stock exchange quotation or index, or
 - (b) a financial market rate that the trader does not control.
- (4) This paragraph applies to a contract which is for the purchase or sale of foreign currency, traveller’s cheques or international money orders denominated in foreign currency.

Price index clauses

- 26 Paragraphs 14 (determination of price after consumer bound) and 15 (increase in price) do not include a term which is a price-indexation clause (where otherwise lawful), if the method by which prices vary is explicitly described.

SCHEDULE 3

Section 73

ENFORCEMENT OF THE LAW ON UNFAIR CONTRACT TERMS

Application of Schedule

- 1 (1) This Schedule applies to a complaint about –
- (a) a term of a consumer contract,
 - (b) a term proposed for use in a consumer contract, or
 - (c) a term which a third party recommends for use in a consumer contract.
- (2) This Schedule also applies to a complaint about a consumer notice.
- (3) A complaint to which this Schedule applies is referred to in this Schedule as a “relevant complaint”.

Consideration of complaints

- 2 (1) A regulator may consider a relevant complaint.
- (2) If a regulator other than the CMA intends to consider a relevant complaint, it must notify the CMA that it intends to do so, and must then consider the complaint.

- (3) If a regulator considers a relevant complaint, but decides not to make an application under paragraph 3 in relation to the complaint, it must give reasons for its decision to the person who made the complaint.

Application for injunction

- 3 (1) A regulator who has considered a relevant complaint may apply for an injunction against a person if the regulator thinks that—
 - (a) the person is using, or proposing or recommending the use of, a term or notice to which the complaint relates, and
 - (b) the term or notice falls within this paragraph.
- (2) A term or notice falls within this paragraph if it purports to exclude or restrict liability of the kind mentioned in—
 - (a) section 32 (exclusion of liability: goods contracts),
 - (b) section 49 (exclusion of liability: digital content contracts),
 - (c) section 59 (exclusion of liability: services contracts), or
 - (d) section 68(1) (business liability for death or personal injury resulting from negligence).
- (3) A term or notice (other than one within sub-paragraph (2)) falls within this paragraph if it is unfair to any extent.
- (4) A term within paragraph 1(1)(b) or (c) (but not within paragraph 1(1)(a)) is to be treated for the purposes of section 65(4) and (5) (assessment of fairness) as if it were a term of a contract.
- (5) A term or notice falls within this paragraph if it breaches section 71 (other requirements for contract terms).

Notification of application

- 4 (1) Before making an application under paragraph 3, a regulator other than the CMA must notify the CMA that it intends to do so.
- (2) The regulator may make the application only if—
 - (a) the period of 14 days beginning with the day on which the regulator notified the CMA has ended, or
 - (b) before the end of that period, the CMA agrees to the regulator making the application.

Determination of application

- 5 (1) On an application under paragraph 3, the court may grant an injunction on such conditions, and against such of the respondents or (in Scotland) the defenders, as it thinks appropriate.
- (2) The injunction may include provision about—
 - (a) a term or notice to which the application relates, or
 - (b) any term of a consumer contract, or any consumer notice, of a similar kind or with a similar effect.
- (3) It is not a defence to an application under paragraph 3 to show that, because of a rule of law, a term to which the application relates is not, or could not be, an enforceable contract term.

- (4) If a regulator other than the CMA makes the application, it must notify the CMA of—
 - (a) the outcome of the application, and
 - (b) if an injunction is granted, the conditions on which, and the persons against whom, it is granted.

Undertakings

- 6 (1) A regulator may accept an undertaking from a person against whom it has applied, or thinks it is entitled to apply, for an injunction under paragraph 3.
- (2) The undertaking may provide that the person will comply with the conditions that are agreed between the person and the regulator about the use of terms or notices, or terms or notices of a kind, specified in the undertaking.
- (3) If a regulator other than the CMA accepts an undertaking, it must notify the CMA of—
 - (a) the conditions on which the undertaking is accepted, and
 - (b) the person who gave it.

Publication, information and advice

- 7 (1) The CMA must arrange the publication of details of—
 - (a) any application it makes for an injunction under paragraph 3,
 - (b) any injunction under this Schedule, and
 - (c) any undertaking under this Schedule.
- (2) The CMA must respond to a request whether a term or notice, or one of a similar kind or with a similar effect, is or has been the subject of an injunction or undertaking under this Schedule.
- (3) Where the term or notice, or one of a similar kind or with a similar effect, is or has been the subject of an injunction under this Schedule, the CMA must give the person making the request a copy of the injunction.
- (4) Where the term or notice, or one of a similar kind or with a similar effect, is or has been the subject of an undertaking under this Schedule, the CMA must give the person making the request—
 - (a) details of the undertaking, and
 - (b) if the person giving the undertaking has agreed to amend the term or notice, a copy of the amendments.
- (5) The CMA may arrange the publication of advice and information about the provisions of this Part.
- (6) In this paragraph—
 - (a) references to an injunction under this Schedule are to an injunction granted on an application by the CMA under paragraph 3 or notified to it under paragraph 5, and
 - (b) references to an undertaking are to an undertaking given to the CMA under paragraph 6 or notified to it under that paragraph.

Meaning of “regulator”

- 8 (1) In this Schedule “regulator” means—

- (a) the CMA,
 - (b) the Department of Enterprise, Trade and Investment in Northern Ireland,
 - (c) a local weights and measures authority in Great Britain,
 - (d) the Financial Conduct Authority,
 - (e) the Office of Communications,
 - (f) the Information Commissioner,
 - (g) the Gas and Electricity Markets Authority,
 - (h) the Water Services Regulation Authority,
 - (i) the Office of Rail Regulation,
 - (j) the Northern Ireland Authority for Rail Regulation, or
 - (k) the Consumers' Association.
- (2) The Secretary of State may by order made by statutory instrument amend sub-paragraph (1) so as to add, modify or remove an entry.
 - (3) An order under sub-paragraph (2) may amend sub-paragraph (1) so as to add a body that is not a public authority only if the Secretary of State thinks that the body represents the interests of consumers (or consumers of a particular description).
 - (4) The Secretary of State must publish (and may from time to time vary) other criteria to be applied by the Secretary of State in deciding whether to add an entry to, or remove an entry from, sub-paragraph (1).
 - (5) An order under sub-paragraph (2) may make consequential amendments to this Schedule (including with the effect that any of its provisions apply differently, or do not apply, to a body added to sub-paragraph (1)).
 - (6) An order under sub-paragraph (2) is subject to annulment in pursuance of a resolution of either House of Parliament.
 - (7) In this paragraph “public authority” has the same meaning as in section 6 of the Human Rights Act 1998.

Other definitions

- 9 In this Schedule –
- “the CMA” means the Competition and Markets Authority;
- “injunction” includes –
- (a) an interim injunction,
 - (b) an interdict, and
 - (c) an interim interdict.

SCHEDULE 4

Section 78

AMENDMENTS CONSEQUENTIAL ON PART 2

Unfair Contract Terms Act 1977 (c. 50)

- 1 The Unfair Contract Terms Act 1977 is amended as follows.
- 2 In section 1(2) (scope of Part 1) for “to 4” substitute “, 3”.

- 3 In section 2 (negligence liability), after subsection (3) insert –
- “(4) This section does not apply to –
- (a) a term in a consumer contract, or
 - (b) a notice to the extent that it is a consumer notice,
- (but see the provision made about such contracts and notices in sections 65 and 68 of the Consumer Rights Act 2013).”
- 4 (1) Section 3 (liability arising in contract) is amended as follows.
- (2) In subsection (1) omit “as consumer or”.
- (3) After subsection (2) insert –
- “(3) This section does not apply to a term in a consumer contract (but see the provision made about such contracts in section 65 of the Consumer Rights Act 2013).”
- 5 Omit section 4 (unreasonable indemnity clauses).
- 6 Omit section 5 (“guarantee” of consumer goods).
- 7 (1) Section 6 (sale and hire-purchase) is amended as follows.
- (2) After subsection (1) insert –
- “(1A) Liability for breach of the obligations arising from –
- (a) section 13, 14 or 15 of the 1979 Act (seller’s implied undertakings as to conformity of goods with description or sample, or as to their quality or fitness for a particular purpose);
 - (b) section 9, 10 or 11 of the 1973 Act (the corresponding things in relation to hire purchase),
- cannot be excluded or restricted by reference to a contract term except in so far as the term satisfies the requirement of reasonableness.”
- (3) Omit subsections (2) and (3).
- (4) After subsection (4) insert –
- “(5) This section does not apply to a consumer contract (but see the provision made about such contracts in section 32 of the Consumer Rights Act 2013).”
- 8 (1) Section 7 (miscellaneous contracts under which goods pass) is amended as follows.
- (2) After subsection (1) insert –
- “(1A) Liability in respect of the goods’ correspondence with description or sample, or their quality or fitness for any particular purpose, cannot be excluded or restricted by reference to such a term except in so far as the term satisfies the requirement of reasonableness.”
- (3) Omit subsections (2) and (3).

- (4) After subsection (4) insert –
- “(4A) This section does not apply to a consumer contract (but see the provision made about such contracts in section 32 of the Consumer Rights Act 2013).”
- 9 Omit section 9 (effect of breach of contract).
- 10 Omit section 12 (“dealing as consumer”).
- 11 In section 13(1) (varieties of exemption clauses) for “and 5 to” substitute “, 6 and”.
- 12 In section 14 (interpretation of Part 1), at the appropriate places insert –
- ““consumer contract” has the same meaning as in the Consumer Rights Act 2013 (see section 64);”;
- ““consumer notice” has the same meaning as in the Consumer Rights Act 2013 (see section 64);”.
- 13 (1) Section 15 (scope of Part 2) is amended as follows.
- (2) In subsection (2) for “to 18” substitute “and 17”.
- (3) In subsection (3) –
- (a) for “to 18” substitute “and 17”, and
- (b) in paragraph (b) omit sub-paragraph (ii) and the “or” preceding it.
- 14 In section 16 (liability for breach of duty), after subsection (3) insert –
- “(4) This section does not apply to –
- (a) a term in a consumer contract, or
- (b) a notice to the extent that it is a consumer notice,
- (but see the provision made about such contracts and notices in sections 65 and 68 of the Consumer Rights Act 2013).”
- 15 (1) Section 17 (control of unreasonable exemptions in consumer or standard form contracts) is amended as follows.
- (2) In the heading omit “consumer or”.
- (3) In subsection (1) –
- (a) omit “a consumer contract or”,
- (b) in paragraph (a) omit “consumer or”, and
- (c) in paragraph (b) omit “consumer or”.
- (4) After subsection (2) insert –
- “(3) This section does not apply to a term in a consumer contract (but see the provision made about such contracts in section 65 of the Consumer Rights Act 2013).”
- 16 Omit section 18 (unreasonable indemnity clauses in consumer contracts).
- 17 Omit section 19 (“guarantee” of consumer goods).
- 18 (1) Section 20 (obligations implied by law in sale and hire-purchase contracts) is amended as follows.

- (2) After subsection (1) insert –
- “(1A) Any term of a contract which purports to exclude or restrict liability for breach of the obligations arising from –
- (a) section 13, 14 or 15 of the 1979 Act (seller’s implied undertakings as to conformity of goods with description or sample, or as to their quality or fitness for a particular purpose);
 - (b) section 9, 10 or 11 of the 1973 Act (the corresponding things in relation to hire purchase),
- shall have effect only if it was fair and reasonable to incorporate the term in the contract.
- (1B) This section does not apply to a consumer contract (but see the provision made about such contracts in sections 32 of the Consumer Rights Act 2013).”
- (3) Omit subsection (2).
- 19 (1) Section 21 (obligations implied by law in other contracts for the supply of goods) is amended as follows.
- (2) In subsection (1), for paragraphs (a) and (b) substitute “such as is referred to in subsection (3) below shall have no effect if it was not fair and reasonable to incorporate the term in the contract.”
 - (3) In subsection (2)(b) omit “unless it is a consumer contract (and then only in favour of the consumer)”.
 - (4) After subsection (3A) insert –
- “(3B) This section does not apply to a consumer contract (but see the provision made about such contracts in section 32 of the Consumer Rights Act 2013).”
- 20 Omit section 22 (consequence of breach of contract).
- 21 (1) Section 25 (interpretation of Part 2) is amended as follows.
- (2) In subsection (1) –
 - (a) omit the definition of “consumer”,
 - (b) for the definition of “consumer contract” substitute –

““consumer contract” has the same meaning as in the Consumer Rights Act 2013 (see section 64);”, and
 - (c) at the appropriate place insert –

““consumer notice” has the same meaning as in the Consumer Rights Act 2013 (see section 64);”.
 - (3) Omit subsections (1A) and (1B).
 - (4) In subsection (5), for “and 16 and 19 to” substitute “, 16, 20 and”.
- 22 In section 26(2) (international supply contracts) omit “or 4”.
- 23 (1) Section 27 (choice of law clauses) is amended as follows.
- (2) In subsection (2) –
 - (a) omit “(either or both)”, and
 - (b) omit paragraph (b) and the “or” preceding it.

- (3) Omit subsection (3).
- 24 Omit section 28 (temporary provision for sea carriage of passengers).
- 25 (1) Schedule 1 (scope of sections 2 to 4 and 7) is amended as follows.
- (2) In the heading, for “to 4” substitute “, 3”.
- (3) In paragraph 1, for “to 4” substitute “ and 3”.
- (4) In paragraph 2 –
- (a) for “to 4” substitute “, 3”, and
- (b) omit “except in favour of a person dealing as consumer”.
- (5) In paragraph 3 –
- (a) omit “, 3”, and
- (b) omit “, except in favour of a person dealing as consumer,”.

Unfair Terms in Consumer Contracts Regulations 1999 (S.I. 1999/2083)

- 26 The Unfair Terms in Consumer Contracts Regulations 1999 are revoked.

Consequential repeals and revocations

- 27 In consequence of the amendments made by this Schedule –
- (a) omit paragraph 19(b) of Schedule 2 to the Sale of Goods Act 1979,
- (b) in paragraph 21 of that Schedule, omit “and (2)(a)” and “(in each case)”, and
- (c) omit regulation 14 of the Sale and Supply of Goods to Consumers Regulations 2002 (SI 2002/3045).

SCHEDULE 5

Section 79

INVESTIGATORY POWERS ETC.

PART 1

BASIC CONCEPTS

Exercise of investigatory powers

- 1 (1) An enforcer may, for a purpose that is relevant to that enforcer, exercise the functions set out in Part 3 of this Schedule that are available to that enforcer.
- (2) Paragraphs 2 to 6 explain what is meant by an “enforcer”.
- (3) Paragraph 7 and Part 2 of this Schedule explain what purposes are relevant to each kind of enforcer.
- (4) Paragraph 8 explains what functions set out in Part 3 of this Schedule are available to each kind of enforcer.
- (5) Paragraph 9 imposes a particular limitation on the exercise of the functions in Part 3 of this Schedule in the case of an EU enforcer.

- (6) Part 4 of this Schedule contains provisions that are supplementary to the functions in Part 3 of this Schedule.
- (7) Part 5 of this Schedule makes provision about the exercise of functions by certain enforcers outside their area or district and the bringing of proceedings in relation to conduct outside an enforcer’s area or district.
- (8) References in this Part of this Schedule to an enforcer exercising a function include a reference to an officer of the enforcer exercising that function where that is required or permitted by a provision of Part 3 of this Schedule.

Enforcers

- 2 (1) In this Schedule “enforcer” means –
 - (a) a domestic enforcer,
 - (b) an EU enforcer,
 - (c) a public designated enforcer, or
 - (d) an unfair contract terms enforcer.
- (2) This is subject to the provision made by paragraph 8 about the availability of functions.

Domestic enforcers

- 3 In this Schedule “domestic enforcer” means –
 - (a) the Competition and Markets Authority,
 - (b) a local weights and measures authority in Great Britain,
 - (c) a district council in England,
 - (d) the Department of Enterprise, Trade and Investment in Northern Ireland,
 - (e) a district council in Northern Ireland,
 - (f) the Secretary of State,
 - (g) the British Hallmarking Council,
 - (h) an assay office within the meaning of the Hallmarking Act 1973, or
 - (i) any other person to whom the duty in subsection (1) of section 27 of the Consumer Protection Act 1987 (duty to enforce safety provisions) applies by virtue of regulations under subsection (2) of that section.

EU enforcers

- 4 In this Schedule “EU enforcer” means –
 - (a) the Competition and Markets Authority,
 - (b) a local weights and measures authority in Great Britain,
 - (c) the Department of Enterprise, Trade and Investment in Northern Ireland,
 - (d) the Financial Conduct Authority,
 - (e) the Civil Aviation Authority,
 - (f) the Secretary of State,
 - (g) the Department of Health, Social Services and Public Safety in Northern Ireland,
 - (h) the Office of Communications,

- (i) an enforcement authority within the meaning of section 120(15) of the Communications Act 2003 (regulation of premium rate services), or
- (j) the Information Commissioner.

Public designated enforcers

- 5 In this Schedule “public designated enforcer” means a person or body which—
- (a) is designated by order under subsection (2) of section 213 of the Enterprise Act 2002, and
 - (b) has been designated by virtue of subsection (3) of that section (which provides that the Secretary of State may designate a public body only if satisfied that it is independent).

Unfair contract terms enforcer

- 6 In this Schedule “unfair contract terms enforcer” means a person or body which—
- (a) is for the time being listed in paragraph 8(1) of Schedule 3 (persons or bodies that may enforce provisions about unfair contract terms), and
 - (b) is a public authority within the meaning of section 6 of the Human Rights Act 1998.

Relevant purposes

- 7 (1) This paragraph sets out the purposes that are relevant to each kind of enforcer (and so the purposes for which an enforcer of that kind may exercise the functions in Part 3 of this Schedule that are available to it).
- (2) The purpose that is relevant to a domestic enforcer is to ascertain whether there has been a breach of the enforcer’s legislation.
- (3) References in this Schedule to the enforcer’s legislation are to—
- (a) legislation which, by virtue of a provision listed in paragraph 11, the enforcer has a duty or power to enforce, or
 - (b) in the case of an enforcer listed in an entry in the first column of the table in paragraph 12, the legislation listed in the corresponding entry in the second column of that table,
- and references to a breach of the enforcer’s legislation include a breach of a notice issued under the enforcer’s legislation.
- (4) In addition to the purpose mentioned in sub-paragraph (2), the other purposes that are relevant to the Competition and Markets Authority are—
- (a) to enable the Authority to exercise or to consider whether to exercise any function it has under Part 8 of the Enterprise Act 2002,
 - (b) to enable a private designated enforcer to consider whether to exercise any function it has under that Part,
 - (c) to enable a Community enforcer to consider whether to exercise any function it has under that Part,
 - (d) to ascertain whether a person has complied with or is complying with an enforcement order or an interim enforcement order, and

- (e) to ascertain whether a person has complied with or is complying with an undertaking given under section 217(9), 218(10) or 219 of the Enterprise Act 2002.
- (5) In addition to the purpose mentioned in sub-paragraph (2), the other purposes that are relevant to a local weights and measures authority in Great Britain or the Department of Enterprise, Trade and Investment in Northern Ireland are—
- (a) to enable that enforcer to exercise or to consider whether to exercise any function it has under Part 8 of the Enterprise Act 2002,
 - (b) to ascertain whether a person has complied with or is complying with an enforcement order or an interim enforcement order made on the application of the enforcer,
 - (c) to ascertain whether a person has complied with or is complying with an undertaking given under section 217(9) or 218(10) of the Enterprise Act 2002 following such an application, and
 - (d) to ascertain whether a person has complied with or is complying with an undertaking given to the enforcer under section 219 of that Act.
- (6) The purposes that are relevant to an EU enforcer are—
- (a) to ascertain whether there has been, or is likely to be, a Community infringement, and
 - (b) to ascertain whether there is, or has been, a failure to comply with a relevant enforcement measure.
- (7) In addition to the purpose mentioned in sub-paragraph (6), the other purpose that is relevant to an EU enforcer is to enable the enforcer to exercise or to consider whether to exercise any function it has under Part 8 of the Enterprise Act 2002.
- (8) The purposes that are relevant to a public designated enforcer are—
- (a) to enable the enforcer to exercise or to consider whether to exercise any function it has under Part 8 of the Enterprise Act 2002,
 - (b) to ascertain whether a person has complied with or is complying with an enforcement order or an interim enforcement order made on the application of the enforcer,
 - (c) to ascertain whether a person has complied with or is complying with an undertaking given under section 217(9) or 218(10) of the Enterprise Act 2002 following such an application, and
 - (d) to ascertain whether a person has complied with or is complying with an undertaking given to the enforcer under section 219 of that Act.
- (9) The purposes that are relevant to an unfair contract terms enforcer are—
- (a) to enable the enforcer to exercise or to consider whether to exercise any function it has under Schedule 3 to this Act (enforcement of provisions about unfair contract terms), and
 - (b) to ascertain whether a person has complied with or is complying with an injunction (within the meaning of that Schedule) granted under paragraph 5 of that Schedule or an undertaking given under paragraph 6 of that Schedule.
- (10) This paragraph is subject to any provision in Part 3 of this Schedule that enables a function in that Part to be exercised for another purpose.

- (11) In this Schedule the following expressions have the same meaning as in the Enterprise Act 2002—
- “Community infringement” (see section 212 of that Act);
 - “relevant enforcement measure” (see section 227A(9) of that Act).
- (12) In this paragraph—
- “Community enforcer” has the same meaning as in the Enterprise Act 2002 (see section 213(5) of that Act);
 - “enforcement order” means an order under section 217 of that Act;
 - “interim enforcement order” means an order under section 218 of that Act;
 - “private designated enforcer” means a person or body which—
 - (a) is designated by order under subsection (2) of section 213 of that Act, and
 - (b) has been designated by virtue of subsection (4) of that section (which provides that the Secretary of State may designate a person or body which is not a public body only if it satisfies criteria specified by order).

Availability of functions

- 8 (1) All of the functions in Part 3 of this Schedule are available to—
- (a) a domestic enforcer when acting for a purpose mentioned in paragraph 7(2), (4)(d) or (e) or (5)(b), (c) or (d),
 - (b) an EU enforcer when acting for a purpose mentioned in paragraph 7(6), or
 - (c) a public designated enforcer that is also an EU enforcer when acting for a purpose mentioned in paragraph 7(8)(b), (c) or (d).
- (2) Sub-paragraph (1) is subject to any express limitations in that Part.
- (3) Only the functions in paragraphs 16 to 18 are available to—
- (a) the Competition and Markets Authority when acting for a purpose mentioned in paragraph 7(4)(a), (b) or (c),
 - (b) a local weights and measures authority in Great Britain or the Department of Enterprise, Trade and Investment in Northern Ireland when acting for a purpose mentioned in paragraph 7(5)(a),
 - (c) an EU enforcer when acting for the purpose mentioned in paragraph 7(7),
 - (d) a public designated enforcer when acting for a purpose mentioned in paragraph 7(8)(a),
 - (e) a public designated enforcer that is not also an EU enforcer when acting for a purpose mentioned in paragraph 7(8)(b), (c) or (d), and
 - (f) an unfair contract terms enforcer when acting for a purpose mentioned in paragraph 7(9).

Limitation on powers in case of EU enforcers

- 9 (1) An EU enforcer may not exercise a function under Part 3 of this Schedule when acting for a purpose mentioned in paragraph 7(6) unless the enforcer has reasonable cause to suspect that there is, has been or is likely to be—
- (a) a Community infringement, or
 - (b) a failure to comply with a relevant enforcement measure.

- (2) Sub-paragraph (1) does not apply to the exercise of the function in paragraph 16 (power to require the production of information) for the purpose mentioned in paragraph 7(6)(b).

Officers

- 10 (1) In this Schedule “officer”, in relation to an enforcer, means –
- (a) an inspector appointed by the enforcer to exercise functions under this Schedule, or authorised to do so,
 - (b) an officer of the enforcer appointed by the enforcer to exercise functions under this Schedule, or authorised to do so,
 - (c) an employee of the enforcer (other than an inspector or officer) appointed by the enforcer to exercise functions under this Schedule, or authorised to do so, or
 - (d) a person (other than an inspector, officer or employee of the enforcer) authorised by the enforcer to exercise functions under this Schedule.
- (2) But references in this Schedule to an officer in relation to a particular function only cover a person within sub-paragraph (1) if and to the extent that the person has been appointed or authorised to exercise that function.
- (3) A person who, immediately before the coming into force of this Schedule, was appointed or authorised to exercise a function replaced by a function in this Schedule is to be treated as having been appointed or authorised to exercise the new function.
- (4) In this paragraph “employee”, in relation to the Secretary of State, means a person employed in the civil service of the State.

PART 2

THE ENFORCER’S LEGISLATION

Enforcer’s legislation: duties and powers mentioned in paragraph 7(3)(a)

- 11 The duties and powers mentioned in paragraph 7(3)(a) are those arising under any of the following provisions –
- section 26(1) or 40(1)(b) of the Trade Descriptions Act 1968 (including as applied by regulation 8(4) of the Crystal Glass (Descriptions) Regulations 1973 (SI 1973/1952) and regulation 10(2) of the Footwear (Indication of Composition) Labelling Regulations 1995 (SI 1995/2489));
 - section 9(1) or (6) of the Hallmarking Act 1973;
 - paragraph 6 of the Schedule to the Prices Act 1974 (including as read with paragraph 14(1) of that Schedule);
 - section 161(1) of the Consumer Credit Act 1974;
 - section 26(1) of the Estate Agents Act 1979;
 - section 16A(1) or (4) of the Video Recordings Act 1984;
 - section 27(1) of the Consumer Protection Act 1987 (including as applied by section 12(1) of the Fireworks Act 2003 to fireworks regulations under that Act);
 - section 215(1) of the Education Reform Act 1988;
 - section 107A(1) or (3) or 198A(1) or (3) of the Copyright, Designs and Patents Act 1988;

paragraph 1 of the Schedule to the Property Misdescriptions Act 1991;
paragraph 3(a) of Schedule 5 to the Simple Pressure Vessels (Safety) Regulations 1991 (SI 1991/2749);
paragraph 1 of Schedule 3 to the Package Travel, Package Holidays and Package Tours Regulations 1992 (SI 1992/3288);
section 30(4) or (7) of the Clean Air Act 1993;
paragraph 1 of Schedule 2 to the Sunday Trading Act 1994;
section 93(1) or (3) of the Trade Marks Act 1994;
section 8A(1) or (3) of the Olympic Symbol etc (Protection) Act 1995;
paragraph 2(a) or 3(1) of Schedule 15 to the Lifts Regulations 1997 (SI 1997/831);
paragraph 2(a) or 3(3)(a) of Schedule 8 to the Pressure Equipment Regulations 1999 (SI 1999/2001);
paragraph 1(1)(b) or (2)(b) or 2 of Schedule 9 to the Radio Equipment and Telecommunications Terminal Equipment Regulations 2000 (SI 2000/730);
paragraph 1 of Schedule 10 to the Personal Protective Equipment Regulations 2002 (SI 2002/1144);
paragraph 1 of Schedule 4 to the Packaging (Essential Requirements) Regulations 2003 (SI 2003/1941);
section 3(1) of the Christmas Day Trading Act 2004;
regulation 10(1) of the General Product Safety Regulations 2005 (SI 2005/1803);
regulation 10 of the Weights and Measures (Packaged Goods) Regulations 2006 (SI 2006/659);
regulation 17 of the Measuring Instruments (Automatic Discontinuous Totalisers) Regulations 2006 (SI 2006/1255);
regulation 18 of the Measuring Instruments (Automatic Rail-weighbridges) Regulations 2006 (SI 2006/1256);
regulation 20 of the Measuring Instruments (Automatic Catchweighers) Regulations 2006 (SI 2006/1257);
regulation 18 of the Measuring Instruments (Automatic Gravimetric Filling Instruments) Regulations 2006 (SI 2006/1258);
regulation 18 of the Measuring Instruments (Beltweighers) Regulations 2006 (SI 2006/1259);
regulation 16 of the Measuring Instruments (Capacity Serving Measures) Regulations 2006 (SI 2006/1264);
regulation 17 of the Measuring Instruments (Liquid Fuel and Lubricants) Regulations 2006 (SI 2006/1266);
regulation 16 of the Measuring Instruments (Material Measures of Length) Regulations 2006 (SI 2006/1267);
regulation 17 of the Measuring Instruments (Cold-water Meters) Regulations 2006 (SI 2006/1268);
regulation 18 of the Measuring Instruments (Liquid Fuel delivered from Road Tankers) Regulations 2006 (SI 2006/1269);
regulation 37(1)(a)(ii) or (b)(ii) of the Electromagnetic Compatibility Regulations 2006 (SI 2006/3418);
regulation 13(1) of the Business Protection from Misleading Marketing Regulations 2008 (SI 2008/1276);
regulation 19(1) of the Consumer Protection from Unfair Trading Regulations 2008 (SI 2008/1277);

paragraph 2 or 5 of the Supply of Machinery (Safety) Regulations 2008 (SI 2008/1597);
 regulation 32(2) or (3) of the Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010 (SI 2010/2960);
 regulation 11 of the Textile Products (Labelling and Fibre Composition) Regulations 2012 (SI 2012/1102).

Enforcer’s legislation: legislation mentioned in paragraph 7(3)(b)

12 Here is the table mentioned in paragraph 7(3)(b) –

<i>Enforcer</i>	<i>Legislation</i>
A local weights and measures authority in Great Britain or the Department of Enterprise, Trade and Investment in Northern Ireland	The Measuring Container Bottles (EEC Requirements) Regulations 1977 (SI 1977/932)
The Secretary of State	The Alcoholometers and Alcohol Hydrometers (EEC Requirements) Regulations 1977 (SI 1977/1753)
A local weights and measures authority in Great Britain	The Weights and Measures Act 1985 and regulations made under that Act
A local weights and measures authority in Great Britain or the Department of Enterprise, Trade and Investment in Northern Ireland	The Measuring Instruments (EEC Requirements) Regulations 1988 (SI 1988/186)
A local weights and measures authority in Great Britain or the Department of Enterprise, Trade and Investment in Northern Ireland	The Non-Automatic Weighing Instruments Regulations 2000 (SI 2000/3236)

Powers to amend paragraph 11 or 12

- 13 (1) The Secretary of State may by order made by statutory instrument –
- (a) amend paragraph 11 or the table in paragraph 12 by adding, modifying or removing any entry in it;
 - (b) in consequence of provision made under paragraph (a), amend, repeal or revoke any other legislation (including this Act) whenever passed or made.
- (2) The Secretary of State may not make an order under this paragraph that has the effect that a power of entry, or an associated power, contained in legislation other than this Act is replaced by a power of entry, or an

associated power, contained in this Schedule unless the Secretary of State thinks that the condition in sub-paragraph (3) is met.

- (3) That condition is that, on and after the changes made by the order, the safeguards applicable to the new power, taken together, provide a greater level of protection than any safeguards applicable to the old power.
- (4) In sub-paragraph (2) “power of entry” and “associated power” have the meanings given by section 46 of the Protection of Freedoms Act 2012.
- (5) An order under this paragraph may contain transitional or transitory provision or savings.
- (6) A statutory instrument containing an order under this paragraph that amends or repeals primary legislation may not be made unless a draft of the instrument containing the order has been laid before, and approved by a resolution of, each House of Parliament.
- (7) Any other statutory instrument containing an order under this paragraph is subject to annulment in pursuance of a resolution of either House of Parliament.
- (8) In this paragraph “primary legislation” means—
 - (a) an Act of Parliament,
 - (b) an Act of the Scottish Parliament,
 - (c) an Act or Measure of the National Assembly for Wales, or
 - (d) Northern Ireland legislation.

PART 3

THE POWERS

Power to make test purchases

- 14 (1) An officer of an enforcer may—
 - (a) make a purchase of a product, or
 - (b) enter into an agreement to secure the provision of a product.
- (2) For the purposes of exercising the power in sub-paragraph (1), an officer may—
 - (a) enter premises to which the public has access at any reasonable time (whether or not the public has access at that time), and
 - (b) inspect any product on the premises which the public may inspect.

Power to observe carrying on of business etc

- 15 (1) An officer of an enforcer may enter premises to which the public has access in order to observe the carrying on of a business on those premises.
- (2) The power in sub-paragraph (1) may be exercised at any reasonable time (whether or not the public has access at that time).

Power to require the production of information

- 16 (1) An enforcer or an officer of an enforcer may give notice to a person requiring the person to provide the enforcer with the information specified in the notice.
- (2) A domestic enforcer or an officer of a domestic enforcer may not exercise the power in this paragraph for a purpose within paragraph 7(2) unless the enforcer or officer has reasonable cause to suspect that there is, has been, or is likely to be, a breach of the enforcer’s legislation.
- (3) An unfair contract terms enforcer or an officer of an unfair contract terms enforcer may not exercise the power in this paragraph for a purpose within paragraph 7(9)(a) unless the enforcer or officer has reasonable cause to suspect that a person is using, or proposing or recommending the use of, a contractual term or a notice within paragraph 3 of Schedule 3.

Procedure for notice under paragraph 16

- 17 (1) A notice under paragraph 16 must be in writing and specify the purpose for which the information is required.
- (2) If the purpose is to enable a person to exercise or to consider whether to exercise a function, the notice must specify the function concerned.
- (3) The notice may specify –
- (a) the time within which and the manner in which the person to whom it is given must comply with it;
 - (b) the form in which information is to be provided.
- (4) The notice may require the creation of documents, or documents of a description, specified in the notice.
- (5) A requirement to provide information or create a document is a requirement to do so in a legible form.
- (6) Where documents are created in compliance with the requirement, the enforcer or an officer of the enforcer may take copies of them.
- (7) A notice under paragraph 16 does not require a person to provide any information or create any documents which the person would be entitled to refuse to provide or produce –
- (a) in proceedings in the High Court on the grounds of legal professional privilege, or
 - (b) in proceedings in the Court of Session on the grounds of confidentiality of communications.
- (8) In sub-paragraph (7) “communications” means –
- (a) communications between a professional legal adviser and the adviser’s client, or
 - (b) communications made in connection with or in contemplation of legal proceedings or for the purposes of those proceedings.
- (9) A notice under paragraph 16 does not require a person to provide any information or create any document if to do so might incriminate that person or that person’s spouse or civil partner of an offence.

Enforcement of notice under paragraph 16

- 18 (1) If a person fails to comply with a notice under paragraph 16, the enforcer or an officer of the enforcer may make an application under this paragraph to the court.
- (2) If it appears to the court that the person has failed to comply with the notice, it may make an order under this paragraph.
- (3) An order under this paragraph is an order requiring the person to do anything that the court thinks it is reasonable for the person to do, for any of the purposes for which the notice was given, to ensure that the notice is complied with.
- (4) An order under this section may require the person to meet the costs or expenses of the application.
- (5) If the person is a company or association, the court in acting under sub-paragraph (4) may require any officer of the company or association who is responsible for the failure to meet the costs or expenses.
- (6) In this paragraph—
 “the court” means—
 (a) the High Court,
 (b) in relation to England and Wales, the county court,
 (c) in relation to Northern Ireland, a county court,
 (d) the Court of Session, or
 (e) the sheriff;
 “officer”, in relation to a company, means a person who is a director, manager, secretary or other similar officer of the company.

Limitations on use of information provided in response to a notice under paragraph 16

- 19 (1) This paragraph applies if a person provides information in response to a notice under paragraph 16.
- (2) This includes information contained in a document created by a person in response to such a notice.
- (3) In any criminal proceedings against the person—
 (a) no evidence relating to the information may be adduced by or on behalf of the prosecution, and
 (b) no question relating to the information may be asked by or on behalf of the prosecution.
- (4) Sub-paragraph (3) does not apply if, in the proceedings—
 (a) evidence relating to the information is adduced by or on behalf of the person providing it, or
 (b) a question relating to the information is asked by or on behalf of that person.
- (5) Sub-paragraph (3) does not apply if the proceedings are for—
 (a) an offence under paragraph 34 (obstruction),
 (b) an offence under section 5 of the Perjury Act 1911 (false statement made otherwise than on oath),

- (c) an offence under section 44(2) of the Criminal Law (Consolidation) (Scotland) Act 1995 (false statement made otherwise than on oath), or
- (d) an offence under Article 10 of the Perjury (Northern Ireland) Order 1979 (false statements made otherwise than on oath).

Power to enter premises without warrant

- 20 (1) An officer of an enforcer may enter premises at any reasonable time.
- (2) Sub-paragraph (1) does not authorise the entry into premises used wholly or mainly as a dwelling.
- (3) The power of entry in that sub-paragraph may only be exercised if a notice has been given to the occupier of the premises in accordance with the requirements in sub-paragraph (4), unless sub-paragraph (5) applies.
- (4) Those requirements are that –
- (a) the notice is in writing and is given by an officer of the enforcer,
 - (b) the notice sets out why the entry is necessary and indicates the nature of the offence under paragraph 34 (obstruction), and
 - (c) there are at least two working days between the date of receipt of the notice and the date of entry.
- (5) A notice need not be given if –
- (a) the occupier has waived the requirement to give notice,
 - (b) the power of entry is to be exercised by an officer of a domestic enforcer and the officer has reasonable cause to suspect that there is or has been a breach of the enforcer’s legislation,
 - (c) the officer reasonably considers that to give notice in accordance with this paragraph would defeat the purpose of the entry, in particular because the officer has reasonable cause to suspect that evidence may be lost or destroyed if notice is given,
 - (d) it is not reasonably practicable in all the circumstances to give notice in accordance with this paragraph, in particular because the officer has reasonable cause to suspect that there is an imminent risk to public health or safety, or
 - (e) the enforcer is a market surveillance authority within the meaning of Article 2(18) of the Regulation on Accreditation and Market Surveillance and the entry is for the purpose of market surveillance within the meaning of Article 2(17) of that Regulation.
- (6) If a notice is not given, and the officer finds one or more occupiers on the premises, the officer must provide to that occupier or (if there is more than one) to at least one of them a document that –
- (a) sets out why the entry is necessary, and
 - (b) indicates the nature of the offence under paragraph 34 (obstruction).
- (7) Whether or not a notice is given, if the officer finds one or more occupiers on the premises, the officer must produce evidence of the officer’s identity and authority to that occupier or (if there is more than one) to at least one of them.
- (8) An officer need not comply with sub-paragraph (6) or (7) if it is not reasonably practicable to do so.

- (9) Proceedings resulting from the exercise of the power under sub-paragraph (1) are not invalid merely because of a failure to comply with sub-paragraph (6) or (7).
- (10) An officer entering premises under sub-paragraph (1) may be accompanied by such persons, and may take onto the premises such equipment, as the officer thinks necessary.
- (11) In this paragraph –
- “give”, in relation to the giving of a notice to the occupier of premises, includes delivering or leaving it at the premises or sending it there by post;
 - “the Regulation on Accreditation and Market Surveillance” means Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/93;
 - “working day” means a day other than –
 - (a) Saturday or Sunday,
 - (b) Christmas Day or Good Friday, or
 - (c) a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in the part of the United Kingdom in which the premises are situated.

Power to inspect goods etc

- 21 (1) This paragraph applies if an officer of an enforcer has entered any premises under the power in paragraph 20(1) or under a warrant under paragraph 30.
- (2) The officer may inspect any product on the premises.
- (3) The powers in sub-paragraphs (5) and (6) are also available to an officer of a domestic enforcer acting pursuant to the duty in section 27(1) of the Consumer Protection Act 1987 or regulation 10(1) of the General Product Safety Regulations 2005 (SI 2005/1803).
- (4) The powers in sub-paragraphs (5) and (6) may only be exercised for the purpose of ascertaining whether there has been a breach of –
- (a) any safety provision within the meaning of that Act, or
 - (b) a requirement imposed by or under those regulations, (as the case may be).
- (5) The officer may inspect any record on the premises.
- (6) The officer may examine any procedure (including any arrangements for carrying out a test) connected with the production of a product.
- (7) The powers in sub-paragraph (9) are also available to an officer of a domestic enforcer acting pursuant to the duty in regulation 37(1)(a)(ii) or (b)(ii) of the Electromagnetic Compatibility Regulations 2006 (SI 2006/3418).
- (8) The powers in sub-paragraph (9) may only be exercised for the purpose of ascertaining whether there has been a breach of those regulations.
- (9) The officer may –
- (a) inspect any apparatus or fixed installation (within the meaning of those regulations), or

- (b) examine any procedure (including any arrangements for carrying out a test) connected with the production of apparatus.
- (10) The powers in sub-paragraph (11) are also available to an officer of a domestic enforcer acting pursuant to the duty in regulation 10(1) of the Weights and Measures (Packaged Goods) Regulations 2006 (SI 2006/659).
- (11) The officer may inspect and take copies of, or of anything purporting to be –
 - (a) a record of a kind mentioned in regulation 5(2) or 9(1) of those regulations, or
 - (b) evidence of a kind mentioned in regulation 9(3) of those regulations.

Power to require the production of documents

- 22
- (1) An officer of an enforcer who has entered any premises under the power in paragraph 20(1) or under a warrant under paragraph 30 may, at any reasonable time –
 - (a) require a trader occupying the premises or a person on the premises acting on behalf of such a trader to produce any documents relating to the trader’s business to which the trader has access, and
 - (b) take copies of, or of any entry in, any such document.
 - (2) An officer of a domestic enforcer may not exercise the power in sub-paragraph (1) for a purpose within paragraph 7(2) unless the officer has reasonable cause to suspect that there is, has been, or is likely to be a breach of the enforcer’s legislation, subject to sub-paragraph (3) (and see also paragraph 23).
 - (3) Sub-paragraph (2) does not apply in relation to a document that the trader is required to keep by virtue of a provision of the enforcer’s legislation.
 - (4) An officer of a domestic enforcer may exercise the power in sub-paragraph (1) for the purpose of ascertaining whether the documents may be required as evidence in proceedings for breach of the enforcer’s legislation (as well as for the purpose mentioned in paragraph 7(2)).
 - (5) An officer of an EU enforcer may exercise the power in sub-paragraph (1) for the purpose of ascertaining whether the documents may be required as evidence in proceedings relating to a Community infringement or a failure to comply with a relevant enforcement measure (as well as for the purpose mentioned in paragraph 7(6) or (7)).
 - (6) The power in sub-paragraph (1) is available regardless of whether –
 - (a) the breach, infringement or failure in relation to which the documents are required was, is or is likely to be that of the trader or some other person, or
 - (b) the proceedings referred to in sub-paragraph (4) or (5) could be taken against the trader or some other person.
 - (7) That power includes power to require the person to give an explanation of the documents.
 - (8) Where a document required to be produced under sub-paragraph (1) contains information recorded electronically, the power in that sub-paragraph includes power to require the production of a copy of the document in a form in which it can easily be taken away and in which it is visible and legible.

- (9) This paragraph does not permit an officer to require a person to create a document other than as described in sub-paragraph (8).
- (10) This paragraph does not permit an officer to require a person to produce any document which the person would be entitled to refuse to produce –
- (a) in proceedings in the High Court on the grounds of legal professional privilege, or
 - (b) in proceedings in the Court of Session on the grounds of confidentiality of communications.
- (11) In sub-paragraph (10) “communications” means –
- (a) communications between a professional legal adviser and the adviser’s client, or
 - (b) communications made in connection with or in contemplation of legal proceedings or for the purposes of those proceedings.
- (12) In this paragraph “trader” has the same meaning as in Part 1 of this Act.

Operation of paragraph 22 in relation to the Estate Agents Act 1979

- 23 (1) An officer of a domestic enforcer who is acting pursuant to the duty in section 26(1) of the Estate Agents Act 1979 may also exercise the power in paragraph 22 if the officer has reasonable cause to suspect that –
- (a) a person has failed to comply with an obligation imposed on that person under or by virtue of any of sections 15 and 18 to 21A of that Act (obligations of and limitations on estate agents), or
 - (b) a person has engaged in a practice mentioned in section 3(1)(d) of that Act (practice in relation to estate agency work declared undesirable by the Secretary of State).
- (2) Where sub-paragraph (1) applies, paragraph 22(6)(a) has effect as if the reference to the breach were to the conduct within sub-paragraph (1).

Power to seize and detain goods

- 24 (1) An officer of a domestic enforcer who has reasonable cause to suspect that there has been a breach of the enforcer’s legislation may seize and detain any goods for the purpose of ascertaining, by testing or otherwise, whether the breach has been committed.
- (2) An officer of an EU enforcer may seize and detain any goods for the purpose of ascertaining, by testing or otherwise, whether there has been a Community infringement or a failure to comply with a relevant enforcement measure.
- (3) An officer seizing goods under this paragraph from premises which are occupied must produce evidence of the officer’s identity and authority to an occupier of the premises before seizing them.
- (4) An officer need not comply with sub-paragraph (3) if it is not reasonably practicable to do so.
- (5) An officer seizing goods under this paragraph must take reasonable steps to –
- (a) inform the person from whom they are seized that they have been seized, and

- (b) provide that person with a written record of what has been seized.
- (6) If, under this paragraph, an officer seizes any goods from a vending machine, the duty in sub-paragraph (5) also applies in relation to –
 - (a) the person whose name and address are on the vending machine as the owner of the machine, or
 - (b) if there is no such name and address on the machine, the occupier of the premises on which the machine stands or to which it is fixed.
- (7) In determining the steps to be taken under sub-paragraph (5), an officer exercising a power under this paragraph in England and Wales or Northern Ireland must have regard to any relevant provision about the seizure of property made by –
 - (a) a code of practice under section 66 of the Police and Criminal Evidence Act 1984, or
 - (b) a code of practice under article 65 of the Police and Criminal Evidence (Northern Ireland) Order 1989 (SI 1989/1341 (NI 12)),(as the case may be).
- (8) Goods seized under this paragraph may not be detained –
 - (a) for a period of more than 3 months beginning with the day on which they were seized, or
 - (b) where the goods are reasonably required to be detained for a longer period by the enforcer for a purpose for which they were seized, for longer than they are required for that purpose.

Seizure of goods subject to forfeiture

- 25
- (1) An officer of a domestic enforcer may seize and detain goods which the officer has reasonable cause to suspect are liable to be forfeited under the enforcer’s legislation.
 - (2) Sub-paragraphs (3) to (7) of paragraph 24 apply in relation to the seizure of goods under this paragraph as they apply in relation to the seizure of goods under that paragraph.

Power to decommission or switch off fixed installations

- 26
- (1) The power in sub-paragraph (3) is available to an officer of a domestic enforcer acting pursuant to the duty in regulation 37(1)(a)(ii) or (b)(ii) of the Electromagnetic Compatibility Regulations 2006 (SI 2006/3418).
 - (2) That power may be exercised –
 - (a) if the officer has reasonable cause to suspect that there has been a breach of those regulations, and
 - (b) for the purpose of ascertaining, by testing or otherwise, whether there has been such a breach.
 - (3) The officer may decommission or switch off any fixed installation or part of such an installation.
 - (4) In sub-paragraph (3) “fixed installation” has the same meaning as in the Electromagnetic Compatibility Regulations 2006 (SI 2006/3418).

Power to seize goods and documents required as evidence

- 27 (1) An officer of a domestic enforcer may seize and detain goods or documents which the officer has reasonable cause to suspect may be required as evidence in proceedings for a breach of the enforcer’s legislation.
- (2) An officer of an EU enforcer may seize and detain goods or documents which the officer has reasonable cause to suspect may be required as evidence in proceedings relating to a Community infringement.
- (3) An officer seizing goods or documents under this paragraph from premises which are occupied must produce evidence of the officer’s identity and authority to an occupier of the premises before seizing them.
- (4) An officer need not comply with sub-paragraph (3) if it is not reasonably practicable to do so.
- (5) An officer seizing goods or documents under this paragraph must take reasonable steps to –
- (a) inform the person from whom they are seized that they have been seized, and
 - (b) provide that person with a written record of what has been seized.
- (6) If, under this paragraph, an officer seizes any goods from a vending machine, the duty in sub-paragraph (5) also applies in relation to –
- (a) the person whose name and address are on the vending machine as the owner of the machine, or
 - (b) if there is no such name and address on the machine, the occupier of the premises on which the machine stands or to which it is fixed.
- (7) In determining the steps to be taken under sub-paragraph (5), an officer exercising a power under this paragraph in England and Wales or Northern Ireland must have regard to any relevant provision about the seizure of property made by –
- (a) a code of practice under section 66 of the Police and Criminal Evidence Act 1984, or
 - (b) a code of practice under article 65 of the Police and Criminal Evidence (Northern Ireland) Order 1989 (SI 1989/1341 (NI 12)),
- (as the case may be).
- (8) This paragraph does not confer any power on an officer to seize from a person any document which the person would be entitled to refuse to produce –
- (a) in proceedings in the High Court on the grounds of legal professional privilege, or
 - (b) in proceedings in the Court of Session on the grounds of confidentiality of communications.
- (9) In sub-paragraph (8) “communications” means –
- (a) communications between a professional legal adviser and the adviser’s client, or
 - (b) communications made in connection with or in contemplation of legal proceedings or for the purposes of those proceedings.
- (10) Goods or documents seized under this paragraph may not be detained –

- (a) for a period of more than 3 months beginning with the day on which they were seized, or
- (b) where the goods or documents are reasonably required to be detained for a longer period by the enforcer for a purpose for which they were seized, for longer than they are required for that purpose.

Operation of paragraph 27 in relation to the Estate Agents Act 1979

- 28 (1) An officer of a domestic enforcer who is acting pursuant to the duty in section 26(1) of the Estate Agents Act 1979 may also seize and detain documents which the officer has reasonable cause to suspect may be required as evidence in proceedings under that Act relating to an allegation that –
- (a) a person has failed to comply with an obligation imposed on that person under or by virtue of any of sections 15 and 18 to 21A of that Act (obligations of and limitations on estate agents), or
 - (b) a person has engaged in a practice mentioned in section 3(1)(d) of that Act (practice in relation to estate agency work declared undesirable by the Secretary of State).
- (2) Sub-paragraphs (3) to (5) and (7) to (10) of paragraph 27 apply in relation to the seizure and detention of documents under this paragraph as they apply in relation to the seizure and detention of documents under that paragraph.

Power to break open container etc

- 29 (1) An officer of an enforcer may, for the purpose of exercising any of the powers in paragraphs 24 to 28, require a person with authority to do so to –
- (a) break open any container,
 - (b) open any vending machine, or
 - (c) access any electronic device in which information may be stored or from which it may be accessed.
- (2) Where a requirement under sub-paragraph (1) has not been complied with, an officer of the enforcer may, for the purpose of exercising any of the powers in paragraphs 24 to 28 –
- (a) break open the container,
 - (b) open the vending machine, or
 - (c) access the electronic device.
- (3) Sub-paragraph (1) or (2) applies if and to the extent that the exercise of the power in that sub-paragraph is reasonably necessary for the purposes for which that power may be exercised.
- (4) In this paragraph “container” means anything in which goods or documents may be stored.

Power to enter premises with warrant

- 30 (1) A justice of the peace may issue a warrant authorising an officer of an enforcer to enter premises if satisfied, on written information on oath given by such an officer, that there are reasonable grounds for believing that –
- (a) condition A or B is met, and
 - (b) condition C, D or E is met.

- (2) Condition A is that on the premises there are—
 - (a) products which an officer of the enforcer has power to inspect under paragraph 21, or
 - (b) documents which an officer of the enforcer could require a person to produce.
- (3) Condition B is that any of the following has been, is being or is about to be committed on the premises—
 - (a) in the case of a domestic enforcer, a breach of the enforcer’s legislation;
 - (b) in the case of an EU enforcer, a Community infringement;
 - (c) in the case of an EU enforcer, a failure to comply with a relevant enforcement measure.
- (4) Condition C is that—
 - (a) access to the premises has been or is likely to be refused, and
 - (b) notice of the enforcer’s intention to apply for a warrant under this paragraph has been given to the occupier of the premises.
- (5) Condition D is that it is likely that products or documents on the premises would be concealed or interfered with if notice of entry on the premises were given to the occupier of the premises.
- (6) Condition E is that—
 - (a) the premises are unoccupied, or
 - (b) the occupier of the premises is absent, and it might defeat the purpose of the entry to wait for the occupier’s return.
- (7) In the application of this paragraph to Scotland—
 - (a) the reference in sub-paragraph (1) to a justice of the peace is to be read as a reference to a sheriff, and
 - (b) the reference in that sub-paragraph to information on oath is to be read as a reference to evidence on oath.
- (8) In the application of this paragraph to Northern Ireland—
 - (a) the reference in sub-paragraph (1) to a justice of the peace is to be read as a reference to a lay magistrate, and
 - (b) the reference in that sub-paragraph to written information is to be read as a reference to a written complaint.

Entry to premises under warrant

- 31 (1) A warrant under paragraph 30 authorises an officer of the enforcer to enter the premises at any reasonable time, using reasonable force if necessary.
- (2) A warrant under that paragraph ceases to have effect at the end of the period of one month beginning with the day it is issued.
- (3) An officer entering premises under a warrant under paragraph 30 may be accompanied by such persons, and may take onto the premises such equipment, as the officer thinks necessary.
- (4) If the premises are occupied when the officer enters them, the officer must produce the warrant for inspection to an occupier of the premises.

- (5) Sub-paragraph (6) applies if the premises are unoccupied or the occupier is temporarily absent.
- (6) On leaving the premises the officer must –
 - (a) leave a notice on the premises stating that the premises have been entered under a warrant under paragraph 30, and
 - (b) leave the premises as effectively secured against trespassers as the officer found them.

Power to require assistance from person on premises

- 32 (1) If an officer of an enforcer has entered premises under paragraph 20(1) or under a warrant under paragraph 30, the officer may require any person on the premises to provide such assistance as the officer reasonably considers necessary.
- (2) Sub-paragraph (3) applies if an officer of a domestic enforcer has entered premises under paragraph 20(1) or under a warrant under paragraph 30 for the purposes of the enforcement of the Weights and Measures (Packaged Goods) Regulations 2006 (SI 2006/659).
- (3) The officer may, in particular, require any person on the premises to provide such information as the person possesses about the name and address of the packer and of any importer of a package which the officer finds on the premises.
- (4) In sub-paragraph (3) “importer”, “package” and “packer” have the same meaning as in the Weights and Measures (Packaged Goods) Regulations 2006 (SI 2006/659) (see regulation 2).

Definitions for purposes of Part

- 33 In this Part of this Schedule –
- “document” includes information recorded in any form;
 - “goods” has the meaning given by section 2(7);
 - “occupier”, in relation to premises, means any person an officer of an enforcer reasonably suspects to be the occupier of the premises;
 - “premises” includes a vehicle;
 - “product” means –
 - (a) goods,
 - (b) a service,
 - (c) digital content, as defined in section 2(8),
 - (d) immovable property, or
 - (e) rights or obligations.

PART 4

PROVISIONS SUPPLEMENTARY TO PART 3

Offence of obstruction

- 34 (1) A person commits an offence if the person –

- (a) intentionally obstructs an enforcer or an officer of an enforcer who is exercising or seeking to exercise a function under Part 3 of this Schedule in accordance with that Part,
 - (b) intentionally fails to comply with a requirement properly imposed by an enforcer or an officer of an enforcer under Part 3 of this Schedule, or
 - (c) without reasonable cause fails to give an enforcer or an officer of an enforcer any other assistance or information which the enforcer or officer reasonably requires of the person for a purpose for which the enforcer or officer may exercise a function under Part 3 of this Schedule.
- (2) A person commits an offence if, in giving information required of that person under sub-paragraph (1)(c), the person—
- (a) makes a statement which the person knows is false in a material respect, or
 - (b) recklessly makes a statement which is false in a material respect.
- (3) A person who is guilty of an offence under sub-paragraph (1) or (2) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (4) Nothing in this paragraph requires a person to answer any question or give any information if to do so might incriminate that person.

Offence of purporting to act as officer

- 35 (1) A person who is not an officer of an enforcer commits an offence if the person purports to act as such under Part 3 of this Schedule.
- (2) A person who is guilty of an offence under sub-paragraph (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Access to seized goods and documents

- 36 (1) This paragraph applies where anything seized by an officer of an enforcer under Part 3 of this Schedule is detained by the enforcer.
- (2) If a request for permission to be granted access to that thing is made to the enforcer by a person who had custody or control of it immediately before it was seized, the enforcer must allow that person access to it under the supervision of an officer of the enforcer.
- (3) If a request for a photograph or copy of that thing is made to the enforcer by a person who had custody or control of it immediately before it was seized, the enforcer must—
- (a) allow that person access to it under the supervision of an officer of the enforcer for the purpose of photographing or copying it, or
 - (b) photograph or copy it, or cause it to be photographed or copied.
- (4) Where anything is photographed or copied under sub-paragraph (3), the photograph or copy must be supplied to the person who made the request within a reasonable time from the making of the request.
- (5) This paragraph does not require access to be granted to, or a photograph or copy to be supplied of, anything if the enforcer has reasonable grounds for believing that to do so would prejudice the investigation for the purposes of which it was seized.

- (6) An enforcer may recover the reasonable costs of complying with a request under this paragraph from the person by whom or on whose behalf it was made.
- (7) References in this paragraph to a person who had custody or control of a thing immediately before it was seized include a representative of such a person.

Notice of testing of goods

- 37 (1) This paragraph applies where goods purchased under Part 3 of this Schedule by an officer of a domestic enforcer are submitted to a test and as a result –
- (a) proceedings are brought for a breach of the enforcer’s legislation or for the forfeiture of the goods under that legislation, or
 - (b) a notice is served under the enforcer’s legislation preventing a person from doing any thing.
- (2) The enforcer must inform the relevant person of the results of the test.
- (3) The enforcer must allow a relevant person to have the goods tested if it is reasonably practicable to do so.
- (4) Sub-paragraphs (2) and (3) also apply where goods seized by an officer of a domestic enforcer under Part 3 of this Schedule are submitted to a test, whether or not that has a result mentioned in sub-paragraph (1).
- (5) In sub-paragraph (2) “relevant person” means the person from whom the goods were purchased or seized or, where the goods were purchased or seized from a vending machine –
- (a) the person whose name and address are on the vending machine as the owner of the machine, or
 - (b) if there is no such name and address on the machine, the occupier of the premises on which the machine stands or to which it is fixed.
- (6) In sub-paragraph (3) “relevant person” means –
- (a) a person within sub-paragraph (5),
 - (b) in a case within sub-paragraph (1)(a), a person who is a party to the proceedings, and
 - (c) in a case within sub-paragraph (1)(b), a person with an interest in the goods.

Appeals against detention of goods and documents

- 38 (1) This paragraph applies where goods or documents are being detained as the result of the exercise of a power in Part 3 of this Schedule.
- (2) A person with an interest in the goods or documents may apply for an order requiring them to be released to that or another person.
- (3) An application under this paragraph may be made in England and Wales or Northern Ireland –
- (a) to any magistrates’ court in which proceedings have been brought for an offence as the result of the investigation in the course of which the goods or documents were seized,

- (b) to any magistrates' court in which proceedings have been brought for the forfeiture of the goods or documents or (in the case of seized documents) any goods to which the documents relate, or
 - (c) if no proceedings within paragraph (a) or (b) have been brought, by way of complaint to a magistrates' court.
- (4) An application under this paragraph may be made in Scotland by summary application to the sheriff.
- (5) On an application under this section, the court or sheriff may make an order requiring goods to be released only if satisfied that condition A or B is met.
- (6) Condition A is that –
- (a) no proceedings have been brought –
 - (i) for an offence as the result of the investigation in the course of which the goods or documents were seized, or
 - (ii) for the forfeiture of the goods or documents or (in the case of seized documents) any goods to which the documents relate, and
 - (b) the period of 6 months beginning with the date the goods or documents were seized has expired.
- (7) Condition B is that –
- (a) proceedings of a kind mentioned in sub-paragraph (6)(a) have been brought, and
 - (b) those proceedings have been concluded without the goods or documents being forfeited.
- (8) A person aggrieved by an order made under this paragraph by a magistrates' court, or by the decision of a magistrates' court not to make such an order, may appeal against the order or decision –
- (a) in England and Wales, to the Crown Court;
 - (b) in Northern Ireland, to a county court.
- (9) An order made under this paragraph by a magistrates' court may contain such provision as the court thinks appropriate for delaying its coming into force pending the making and determination of any appeal.
- (10) In sub-paragraph (9) "appeal" includes an application under section 111 of the Magistrates' Courts Act 1980 or Article 146 of the Magistrates' Courts (Northern Ireland) Order 1981 (SI 1981/1675 (NI 26)) (statements of case).

Compensation

- 39 (1) An enforcer must pay compensation to any person with an interest in goods seized and detained by an officer of the enforcer under Part 3 of this Schedule in respect of any loss or damage caused by the seizure and detention if the condition in sub-paragraph (2) or (3) that is relevant to the enforcer is met.
- (2) The condition that is relevant to a domestic enforcer is that –
- (a) there has been no breach of the enforcer's legislation in relation to the goods, and
 - (b) the power to seize and detain the goods was not exercised as a result of any neglect or default of the person seeking the compensation.

- (3) The condition that is relevant to an EU enforcer is that –
 - (a) there has been no Community infringement or failure to comply with a relevant enforcement measure in relation to the goods, and
 - (b) the power to seize and detain the goods was not exercised as a result of any neglect or default of the person seeking the compensation.
- (4) Any dispute about the right to or amount of any compensation payable under this paragraph is to be determined –
 - (a) in England and Wales or Northern Ireland, by arbitration, or
 - (b) in Scotland, by a single arbiter appointed by the parties or, if there is no agreement between the parties as to that appointment, by the sheriff.

PART 5

EXERCISE OF ENFORCEMENT FUNCTIONS BY AREA ENFORCERS

Interpretation of this Part

- 40 In this Part, “area enforcer” means –
- (a) a local weights and measures authority in Great Britain,
 - (b) a district council in England, or
 - (c) a district council in Northern Ireland.

Investigatory functions

- 41 (1) Sub-paragraphs (3) to (6) apply in relation to an area enforcer’s exercise, in accordance with this Schedule, of an enforcement function set out in Part 3 of this Schedule.
- (2) Sub-paragraphs (3) to (6) also apply in relation to an area enforcer’s exercise of an enforcement function –
- (a) conferred by legislation which, by virtue of a provision listed in paragraph 11 of this Schedule, the area enforcer has a duty or power to enforce, or conferred by legislation under which such legislation is made, or
 - (b) conferred by legislation listed in the second column of the table in paragraph 12 of this Schedule,
- for the purpose of ascertaining whether there has been a breach of that legislation or of any notice issued by the area enforcer under that legislation.
- (3) A local weights and measures authority in England or Wales may exercise the enforcement function in a part of England or Wales which is outside that authority’s area.
 - (4) A local weights and measures authority in Scotland may exercise the enforcement function in a part of Scotland which is outside that authority’s area.
 - (5) A district council in England may exercise the enforcement function in a part of England which is outside that council’s district.
 - (6) A district council in Northern Ireland may exercise the enforcement function in a part of Northern Ireland which is outside that council’s district.

Civil proceedings

- 42 (1) Sub-paragraphs (4) to (7) apply in relation to civil proceedings which may be brought by an area enforcer under –
- (a) Part 8 of the Enterprise Act 2002,
 - (b) Schedule 3 to this Act,
 - (c) legislation which, by virtue of a provision listed in paragraph 11 of this Schedule, the area enforcer has a duty or power to enforce, or
 - (d) legislation listed in the second column of the table in paragraph 12 of this Schedule.
- (2) Sub-paragraphs (4) to (7) also apply in relation to an application for forfeiture which may be made by an area enforcer in circumstances where there are no related criminal proceedings –
- (a) under section 16 of the Consumer Protection Act 1987, or
 - (b) under legislation which, by virtue of a provision listed in paragraph 11 of this Schedule, the area enforcer has a duty or power to enforce.
- (3) In sub-paragraphs (4), (5), (6) and (7), the reference to civil proceedings includes a reference to an application mentioned in sub-paragraph (2).
- (4) A local weights and measures authority in England or Wales may bring civil proceedings in respect of conduct in a part of England or Wales which is outside that authority’s area.
- (5) A local weights and measures authority in Scotland may bring civil proceedings in respect of conduct in a part of Scotland which is outside that authority’s area.
- (6) A district council in England may bring civil proceedings in respect of conduct in a part of England which is outside that council’s district.
- (7) A district council in Northern Ireland may bring civil proceedings in respect of conduct in a part of Northern Ireland which is outside that council’s district.

Criminal proceedings

- 43 (1) A local weights and measures authority in England or Wales may bring proceedings for a consumer offence allegedly committed in a part of England or Wales which is outside that authority’s area.
- (2) In sub-paragraph (1) “a consumer offence” means –
- (a) an offence under legislation which, by virtue of a provision listed in paragraph 11 of this Schedule, a local weights and measures authority in England or Wales has a duty or power to enforce,
 - (b) an offence under legislation listed in the second column of the table in paragraph 12 of this Schedule in relation to which a local weights and measures authority is listed in the corresponding entry in the first column of the table as an enforcer,
 - (c) an offence originating from an investigation into a breach of legislation mentioned in paragraph (a) or (b), or
 - (d) an offence described in paragraph 34 or 35 of this Schedule.

- (3) A district council in England may bring proceedings for a consumer offence allegedly committed in a part of England which is outside that council's district.
- (4) In sub-paragraph (3) “a consumer offence” means –
 - (a) an offence under legislation which, by virtue of a provision listed in paragraph 11 of this Schedule, a district council in England has a duty or power to enforce,
 - (b) an offence originating from an investigation into a breach of legislation mentioned in paragraph (a), or
 - (c) an offence described in paragraph 34 or 35 of this Schedule.
- (5) A district council in Northern Ireland may bring proceedings for a consumer offence allegedly committed in a part of Northern Ireland which is outside that council's district.
- (6) In sub-paragraph (5) “a consumer offence” means –
 - (a) an offence under legislation which, by virtue of a provision listed in paragraph 11 of this Schedule, a district council in Northern Ireland has a duty or power to enforce,
 - (b) an offence originating from an investigation into a breach of legislation mentioned in paragraph (a), or
 - (c) an offence described in paragraph 34 or 35 of this Schedule.

SCHEDULE 6

Section 81

ENTERPRISE ACT 2002: ENHANCED CONSUMER MEASURES AND OTHER ENFORCEMENT

- 1 Part 8 of the Enterprise Act 2002 (enforcement of certain consumer legislation) is amended as follows.
- 2 In section 210 (consumers), omit subsection (5).
- 3 (1) Section 211 (domestic infringements) is amended as follows.
 - (2) In subsection (1)(c), omit “in the United Kingdom”.
 - (3) After subsection (1) insert –

“(1A) But an act or omission which satisfies the conditions in subsection (1) is a domestic infringement only if at least one of the following is satisfied –

 - (a) the person supplying (or seeking to supply) goods or services has a place of business in the United Kingdom, or
 - (b) the goods or services are supplied (or sought to be supplied) to or for a person in the United Kingdom (see section 232).”
- 4 In section 213(5A) (CPC enforcers), for paragraph (i) substitute –
 - “(i) an enforcement authority within the meaning of section 120(15) of the Communications Act 2003 (regulation of premium rate services);”.
- 5 (1) Section 214 (consultation) is amended as follows.

- (2) In subsection (4)(a), after “14 days” insert “or, where subsection (4A) applies, 28 days”.
- (3) After subsection (4) insert –
- “(4A) This subsection applies where the person against whom the enforcement order would be made is a member of, or is represented by, a representative body, and that body operates a consumer code which has been approved by –
- (a) an enforcer, other than a designated enforcer which is not a public body,
 - (b) a body which is representative of an enforcer mentioned in paragraph (a), or
 - (c) a group of enforcers mentioned in paragraph (a).
- (4B) In subsection (4A) –
- “consumer code” means a code of practice or other document (however described) intended, with a view to safeguarding or promoting the interests of consumers, to regulate by any means the conduct of persons engaged in the supply of goods or services to consumers (or the conduct of their employees or representatives), and
- “representative body” means an organisation established to represent the interests of two or more businesses in a particular sector or area, and for this purpose “business” has the meaning it bears in section 210.”
- 6 In section 217 (enforcement orders), after subsection (10) insert –
- “(10A) An enforcement order may require a person against whom the order is made to take enhanced consumer measures (defined in section 219A) within a period specified by the court.
- (10B) An undertaking under subsection (9) may include a further undertaking by the person to take enhanced consumer measures within a period specified in the undertaking.
- (10C) Subsections (10A) and (10B) do not apply where the application for the enforcement order was made by a designated enforcer which is not a public body.
- (10D) Where a person is required by an enforcement order or an undertaking under this section to take enhanced consumer measures, the order or undertaking may include requirements as to the provision of information or documents to the court by the person in order that the court may determine if the person is taking those measures.”
- 7 In section 219 (undertakings), after subsection (5) insert –
- “(5ZA) An undertaking under this section may include a further undertaking by the person –
- (a) to take enhanced consumer measures (defined in section 219A) within a period specified in the undertaking, and
 - (b) where such measures are included, to provide information or documents to the enforcer in order that the enforcer may determine if the person is taking those measures.

(5ZB) Subsection (5ZA) does not apply where the enforcer is a designated enforcer which is not a public body.”

8 After section 219 insert—

“219A Definition of enhanced consumer measures

- (1) In this Part, enhanced consumer measures are measures (not excluded by subsection (5)) falling within—
 - (a) the redress category described in subsection (2),
 - (b) the compliance category described in subsection (3), or
 - (c) the choice category described in subsection (4).
- (2) The measures in the redress category are—
 - (a) measures offering compensation or other redress to consumers who have suffered loss as a result of the conduct which has given rise to the enforcement order or undertaking,
 - (b) where the conduct referred to in paragraph (a) relates to a contract, measures offering such consumers the option to terminate (but not vary) that contract,
 - (c) where such consumers cannot be identified, or cannot be identified without disproportionate cost to the subject of the enforcement order or undertaking, measures intended to be in the collective interests of consumers.
- (3) The measures in the compliance category are measures intended to prevent or reduce the risk of the occurrence or repetition of the conduct to which the enforcement order or undertaking relates (including measures with that purpose which may have the effect of improving compliance with consumer law more generally).
- (4) The measures in the choice category are measures intended to enable consumers to choose more effectively between persons supplying or seeking to supply goods or services.
- (5) The following are not enhanced consumer measures—
 - (a) a publication requirement included in an enforcement order as described in section 217(8),
 - (b) a publication requirement included in an undertaking accepted by the court as described in section 217(10), or
 - (c) a publication requirement included in an undertaking accepted by a CPC enforcer as described in section 219(5A)(a).

219B Inclusion of enhanced consumer measures etc.

- (1) An enforcement order or undertaking may include only such enhanced consumer measures as the court or enforcer (as the case may be) considers to be just and reasonable.
- (2) For the purposes of subsection (1) the court or enforcer must in particular consider whether any proposed enhanced consumer measures are proportionate, taking into account—
 - (a) the likely benefit of the measures to consumers,
 - (b) the costs likely to be incurred by the subject of the enforcement order or undertaking, and

-
- (c) the likely cost to consumers of obtaining the benefit of the measures.
- (3) The costs referred to in subsection (2)(b) are –
 - (a) the cost of the measures, and
 - (b) the reasonable administrative costs associated with taking the measures.
 - (4) An enforcement order or undertaking may include enhanced consumer measures in the redress category –
 - (a) only in a loss case, and
 - (b) only if the court or enforcer (as the case may be) is satisfied that the cost of such measures to the subject of the enforcement order or undertaking is unlikely to be more than the sum of the losses suffered by consumers as a result of the conduct which has given rise to the enforcement order or undertaking.
 - (5) The cost referred to in subsection (4)(b) does not include the administrative costs associated with taking the measures.
 - (6) Subsection (7) applies if an enforcement order or undertaking includes enhanced consumer measures offering compensation and a settlement agreement is entered into in connection with the payment of compensation.
 - (7) A waiver of a person’s rights in the settlement agreement is not valid if it is a waiver of the right to bring civil proceedings in respect of conduct other than the conduct which has given rise to the enforcement order or undertaking.
 - (8) The following definitions apply for the purposes of subsection (4)(a).
 - (9) In the case of an enforcement order or undertaking under section 217, “a loss case” means a case in which –
 - (a) subsection (1) of that section applies (a finding that a person has engaged in conduct which constitutes an infringement), and
 - (b) consumers have suffered loss as a result of that conduct.
 - (10) In the case of an undertaking under section 219, “a loss case” means a case in which –
 - (a) subsection (3)(a) or (b) of that section applies (a belief that a person has engaged or is engaging in conduct which constitutes an infringement), and
 - (b) consumers have suffered loss as a result of that conduct.”
- 9 (1) Section 220 (further proceedings) is amended as follows.
 - (2) After subsection (1) insert –
 - “(1A) This section does not apply in the case of a failure to comply with an order or undertaking which consists only of a failure to provide information or documents required by the order or undertaking as described in section 217(10D).”
 - (3) In subsection (2), for “In such a case the OFT” substitute “Any CPC enforcer”.

- (4) In subsection (5) –
- (a) in the opening words, for “sections 215 and 217 or 218 (as the case may be)” substitute “sections 215, 217 or 218 (as the case may be) and 219A and 219B”,
 - (b) for paragraph (c) substitute –
 - “(c) section 217(9), (10), (10B) and (11) must be ignored, and section 217(10C) and (10D) must be ignored to the extent that they relate to an undertaking under subsection (9);”,
 - (c) after paragraph (d) insert –
 - “(e) sections 219A and 219B must be ignored to the extent that they relate to an undertaking under section 217(9) or 219.”
- 10 In section 229 (advice and information), after subsection (1) insert –
- “(1A) As soon as is reasonably practicable after the commencement of Schedule 5 to the Consumer Rights Act 2013 (investigatory powers etc.) the CMA must prepare and publish advice and information with a view to –
- (a) explaining the provisions of that Schedule, so far as they relate to enforcement functions exercised for the purposes set out in paragraph 7(4), (5), (6), (7) or (8) of that Schedule, to persons who are likely to be affected by them, and
 - (b) indicating how the CMA expects such provisions to operate.”

SCHEDULE 7

Section 82

PRIVATE ACTIONS IN COMPETITION LAW

PART 1

COMPETITION ACT 1998

- 1 The Competition Act 1998 is amended in accordance with this Part.
- 2 For the heading of Chapter 4 of Part 1, substitute “Appeals, proceedings before the Tribunal and settlements relating to infringements of competition law”.
- 3 For the cross-heading preceding section 46, substitute “Appeals and proceedings before the Tribunal”.
- 4 (1) For section 47A substitute –
- “47A Proceedings before the Tribunal: claims for damages etc.**
- (1) A person may make a claim to which this section applies in proceedings before the Tribunal, subject to the provisions of this Act and Tribunal rules.
 - (2) This section applies to a claim of a kind specified in subsection (3) in respect of an infringement decision or an alleged infringement of –
 - (a) the Chapter I prohibition,
 - (b) the Chapter II prohibition,
 - (c) the prohibition in Article 101(1), or

-
- (d) the prohibition in Article 102.
 - (3) The claims are –
 - (a) a claim for damages;
 - (b) any other claim for a sum of money;
 - (c) in proceedings in England and Wales or Northern Ireland, a claim for an injunction.
 - (4) The right to make a claim in proceedings under this section does not affect the right to bring any other proceedings in respect of the claim.
 - (5) In this Part (except in section 49C) “infringement decision” means –
 - (a) a decision of the CMA that the Chapter I prohibition, the Chapter II prohibition, the prohibition in Article 101(1) or the prohibition in Article 102 has been infringed,
 - (b) a decision of the Tribunal on an appeal from a decision of the CMA that the Chapter I prohibition, the Chapter II prohibition, the prohibition in Article 101(1) or the prohibition in Article 102 has been infringed, or
 - (c) a decision of the Commission that the prohibition in Article 101(1) or the prohibition in Article 102 has been infringed.”
 - (2) Section 47A of the Competition Act 1998 (as substituted by sub-paragraph (1)) applies to claims arising before the commencement of this paragraph as it applies to claims arising after that time.
- 5 (1) For section 47B substitute –
- “47B Collective proceedings before the Tribunal**
- (1) Subject to the provisions of this Act and Tribunal rules, proceedings may be brought before the Tribunal combining two or more claims to which section 47A applies (“collective proceedings”).
 - (2) Collective proceedings must be commenced by a person who proposes to be the representative in those proceedings.
 - (3) The following points apply in relation to claims in collective proceedings –
 - (a) it is not a requirement that all of the claims should be against all of the defendants to the proceedings,
 - (b) the proceedings may combine claims which have been made in proceedings under section 47A and claims which have not, and
 - (c) a claim which has been made in proceedings under section 47A may be continued in collective proceedings only with the consent of the person who made that claim.
 - (4) Collective proceedings may be continued only if the Tribunal makes a collective proceedings order.
 - (5) The Tribunal may make a collective proceedings order only –
 - (a) if it considers that the person who brought the proceedings is a person who, if the order were made, the Tribunal could authorise to act as the representative in those proceedings in accordance with subsection (8), and

- (b) in respect of claims which are eligible for inclusion in collective proceedings.
- (6) Claims are eligible for inclusion in collective proceedings only if the Tribunal considers that they raise the same, similar or related issues of fact or law and are suitable to be brought in collective proceedings.
- (7) A collective proceedings order must include the following matters –
 - (a) authorisation of the person who brought the proceedings to act as the representative in those proceedings,
 - (b) description of a class of persons whose claims are eligible for inclusion in the proceedings, and
 - (c) specification of the proceedings as opt-in collective proceedings or opt-out collective proceedings (see subsections (10) and (11)).
- (8) The Tribunal may authorise a person to act as the representative in collective proceedings only if that person –
 - (a) is a person falling within the class of persons described in the collective proceedings order for those proceedings (a “class member”), or
 - (b) is not a class member, but the Tribunal considers that it is just and reasonable for that person to act as a representative in those proceedings.
- (9) The Tribunal may vary or revoke a collective proceedings order at any time.
- (10) “Opt-in collective proceedings” are collective proceedings which are brought on behalf of each class member who opts in by notifying the representative, in a manner and by a time specified, that the claim should be included in the collective proceedings.
- (11) “Opt-out collective proceedings” are collective proceedings which are brought on behalf of each class member except –
 - (a) any class member who opts out by notifying the representative, in a manner and by a time specified, that the claim should not be included in the collective proceedings, and
 - (b) any class member who –
 - (i) is not domiciled in the United Kingdom at a time specified, and
 - (ii) does not, in a manner and by a time specified, opt in by notifying the representative that the claim should be included in the collective proceedings.
- (12) Where the Tribunal gives a judgment or makes an order in collective proceedings, the judgment or order is binding on all represented persons, except as otherwise specified.
- (13) The right to make a claim in collective proceedings does not affect the right to bring any other proceedings in respect of the claim.
- (14) In this section and in section 47C, “specified” means specified in a direction made by the Tribunal.”

(2) Section 47B of the Competition Act 1998 (as substituted by sub-paragraph (1)) applies to claims arising before the commencement of this paragraph as it applies to claims arising after that time.

6 After section 47B (as substituted by paragraph 5) insert –

“47C Collective proceedings: damages and costs

- (1) The Tribunal may not award exemplary damages in collective proceedings.
- (2) The Tribunal may make an award of damages in collective proceedings without undertaking an assessment of the amount of damages recoverable in respect of the claim of each represented person.
- (3) Where the Tribunal makes an award of damages in opt-out collective proceedings, the Tribunal must make an order providing for the damages to be paid on behalf of the represented persons to –
 - (a) the representative, or
 - (b) such person other than a represented person as the Tribunal thinks fit.
- (4) Where the Tribunal makes an award of damages in opt-in collective proceedings, the Tribunal may make an order as described in subsection (3).
- (5) Where the Tribunal makes an award of damages in opt-out collective proceedings, any damages not claimed by the represented persons within a specified period must be paid to the charity for the time being prescribed by order made by the Lord Chancellor under section 194(8) of the Legal Services Act 2007.
- (6) The Secretary of State may by order amend subsection (5).
- (7) A damages-based agreement is unenforceable if it relates to opt-out collective proceedings.
- (8) In this section –
 - (a) “damages” (except in the term “exemplary damages”) includes any sum of money which may be awarded by the Tribunal in collective proceedings (other than costs or expenses);
 - (b) “damages-based agreement” has the meaning given in section 58AA(3) of the Courts and Legal Services Act 1990.”

7 After section 47C (inserted by paragraph 6) insert –

“47D Proceedings under section 47A or collective proceedings: injunctions etc.

- (1) An injunction granted by the Tribunal in proceedings under section 47A or in collective proceedings –
 - (a) has the same effect as an injunction granted by the High Court, and
 - (b) is enforceable as if it were an injunction granted by the High Court.

- (2) In deciding whether to grant an injunction in proceedings under section 47A or in collective proceedings, the Tribunal must –
- (a) in proceedings in England and Wales, apply the principles which the High Court would apply in deciding whether to grant an injunction under section 37(1) of the Senior Courts Act 1981, and
 - (b) in proceedings in Northern Ireland, apply the principles that the High Court would apply in deciding whether to grant an injunction.”

- 8 (1) After section 47D (inserted by paragraph 7) insert –

“47E Limitation or prescriptive periods for proceedings under section 47A and collective proceedings

- (1) Subsection (2) applies in respect of a claim to which section 47A applies, for the purposes of determining the limitation or prescriptive period which would apply in respect of the claim if it were to be made in –
 - (a) proceedings under section 47A, or
 - (b) collective proceedings at the commencement of those proceedings.
- (2) Where this subsection applies –
 - (a) in the case of proceedings in England and Wales, the Limitation Act 1980 applies as if the claim were an action in a court of law;
 - (b) in the case of proceedings in Scotland, the Prescription and Limitation (Scotland) Act 1973 applies as if the claim related to an obligation to which section 6 of that Act applies;
 - (c) in the case of proceedings in Northern Ireland, the Limitation (Northern Ireland) Order 1989 applies as if the claim were an action in a court established by law.
- (3) Where a claim is made in collective proceedings at the commencement of those proceedings (“the section 47B claim”), subsections (4) to (6) apply for the purpose of determining the limitation or prescriptive period which would apply in respect of the claim if it were subsequently to be made in proceedings under section 47A.
- (4) The running of the limitation or prescriptive period in respect of the claim is suspended from the date on which the collective proceedings are commenced.
- (5) Following suspension under subsection (4), the running of the limitation or prescriptive period in respect of the claim resumes on the date on which any of the following occurs –
 - (a) the Tribunal declines to make a collective proceedings order in respect of the collective proceedings;
 - (b) the Tribunal makes a collective proceedings order in respect of the collective proceedings, but the order does not provide that the section 47B claim is eligible for inclusion in the proceedings;
 - (c) the Tribunal rejects the section 47B claim;

-
- (d) in the case of opt-in collective proceedings, the period within which a person may choose to have the section 47B claim included in the proceedings expires without the person having done so;
 - (e) in the case of opt-out collective proceedings –
 - (i) a person domiciled in the United Kingdom chooses (within the period in which such a choice may be made) to have the section 47B claim excluded from the collective proceedings, or
 - (ii) the period within which a person not domiciled in the United Kingdom may choose to have the section 47B claim included in the collective proceedings expires without the person having done so;
 - (f) the section 47B claim is withdrawn;
 - (g) the Tribunal revokes the collective proceedings order in respect of the collective proceedings;
 - (h) the Tribunal varies the collective proceedings order in such a way that the section 47B claim is no longer included in the collective proceedings;
 - (i) the section 47B claim is settled with or without the Tribunal’s approval;
 - (j) the section 47B claim is dismissed, discontinued or otherwise disposed of without an adjudication on the merits.
- (6) Where the running of the limitation or prescriptive period in respect of the claim resumes under subsection (5) but the period would otherwise expire before the end of the period of six months beginning with the date of that resumption, the period is treated as expiring at the end of that six month period.
- (7) This section has effect subject to any provision in Tribunal rules which defers the date on which the limitation or prescriptive period begins in relation to claims in proceedings under section 47A or in collective proceedings.”
- (2) Section 47E of the Competition Act 1998 does not apply in relation to claims arising before the commencement of this paragraph.
- 9 (1) Section 49 (further appeals) is amended in accordance with this paragraph.
- (2) In subsection (1) –
- (a) at the end of paragraph (a) insert “and”, and
 - (b) omit paragraph (b) and the “and” at the end of that paragraph.
- (3) After subsection (1) insert –
- “(1A) An appeal lies to the appropriate court on a point of law arising from a decision of the Tribunal in proceedings under section 47A or in collective proceedings –
- (a) as to the award of damages or other sum (other than a decision on costs or expenses), or
 - (b) as to the grant of an injunction.
- (1B) An appeal lies to the appropriate court from a decision of the Tribunal in proceedings under section 47A or in collective

- proceedings as to the amount of an award of damages or other sum (other than the amount of costs or expenses).
- (1C) An appeal under subsection (1A) arising from a decision in respect of a stand-alone claim may include consideration of a point of law arising from a finding of the Tribunal as to an infringement of a prohibition listed in section 47A(2).
- (1D) In subsection (1C) “a stand-alone claim” is a claim –
- (a) in respect of an alleged infringement of a prohibition listed in section 47A(2), and
 - (b) made in proceedings under section 47A or included in collective proceedings.”
- (4) In subsection (2)(a), at the beginning insert “except as provided by subsection (2A),”.
- (5) After subsection (2) insert –
- “(2A) An appeal from a decision of the Tribunal in respect of a claim included in collective proceedings may be brought only by the representative in those proceedings or by a defendant to that claim.”
- 10 (1) After section 49 insert –

“Settlements relating to infringements of competition law

49A Collective settlements: where a collective proceedings order has been made

- (1) The Tribunal may, in accordance with this section and Tribunal rules, make an order approving the settlement of claims in collective proceedings (a “collective settlement”) where –
- (a) a collective proceedings order has been made in respect of the claims, and
 - (b) the Tribunal has specified that the proceedings are opt-out collective proceedings.
- (2) An application for approval of a proposed collective settlement must be made to the Tribunal by the representative and the defendant in the collective proceedings.
- (3) The representative and the defendant must provide agreed details of the claims to be settled by the proposed collective settlement and the proposed terms of that settlement.
- (4) Where there is more than one defendant in the collective proceedings, “defendant” in subsections (2) and (3) means such of the defendants as wish to be bound by the proposed collective settlement.
- (5) The Tribunal may make an order approving a proposed collective settlement only if satisfied that its terms are just and reasonable.
- (6) On the date on which the Tribunal approves a collective settlement –
- (a) if the period within which persons may opt out of or (in the case of persons not domiciled in the United Kingdom) opt in to the collective proceedings has expired, subsections (8) and

-
- (10) apply so as to determine the persons bound by the settlement;
 - (b) if that period has not yet expired, subsections (9) and (10) apply so as to determine the persons bound by the settlement.
- (7) If the period within which persons may opt out of the collective proceedings expires on a different date from the period within which persons not domiciled in the United Kingdom may opt in to the collective proceedings, the references in subsection (6) to the expiry of a period are to the expiry of whichever of those periods expires later.
- (8) Where this subsection applies, a collective settlement approved by the Tribunal is binding on all persons falling within the class of persons described in the collective proceedings order who –
- (a) were domiciled in the United Kingdom at the time specified for the purposes of determining domicile in relation to the collective proceedings (see section 47B(11)(b)(i)) and did not opt out of those proceedings, or
 - (b) opted in to the collective proceedings.
- (9) Where this subsection applies, a collective settlement approved by the Tribunal is binding on all persons falling within the class of persons described in the collective proceedings order.
- (10) But a collective settlement is not binding on a person who –
- (a) opts out by notifying the representative, in a manner and by a time specified, that the claim should not be included in the collective settlement, or
 - (b) is not domiciled in the United Kingdom at a time specified, and does not, in a manner and by a time specified, opt in by notifying the representative that the claim should be included in the collective settlement.
- (11) This section does not affect a person’s right to offer to settle opt-in collective proceedings.
- (12) In this section and in section 49B, “specified” means specified in a direction made by the Tribunal.”
- (2) Section 49A of the Competition Act 1998 applies to claims arising before the commencement of this paragraph as it applies to claims arising after that time.
- 11 (1) After section 49A (inserted by paragraph 10) insert –
- “49B Collective settlements: where a collective proceedings order has not been made**
- (1) The Tribunal may, in accordance with this section and Tribunal rules, make an order approving the settlement of claims (a “collective settlement”) where –
- (a) a collective proceedings order has not been made in respect of the claims, but
 - (b) if collective proceedings were brought, the claims could be made at the commencement of the proceedings (disregarding

- any limitation period applicable to a claim in collective proceedings).
- (2) An application for approval of a proposed collective settlement must be made to the Tribunal by –
 - (a) a person who proposes to be the settlement representative in relation to the collective settlement, and
 - (b) the person who, if collective proceedings were brought in respect of the claims, would be a defendant in those proceedings (or, where more than one person would be a defendant in those proceedings, such of those persons as wish to be bound by the proposed collective settlement).
 - (3) The persons applying to the Tribunal under subsection (2) must provide agreed details of the claims to be settled by the proposed collective settlement and the proposed terms of that settlement.
 - (4) The Tribunal may make an order approving a proposed collective settlement (see subsection (8)) only if it first makes a collective settlement order.
 - (5) The Tribunal may make a collective settlement order only –
 - (a) if it considers that the person described in subsection (2)(a) is a person who, if the order were made, the Tribunal could authorise to act as the settlement representative in relation to the collective settlement in accordance with subsection (7), and
 - (b) in respect of claims which, if collective proceedings were brought, would be eligible for inclusion in the proceedings (see section 47B(6)).
 - (6) A collective settlement order must include the following matters –
 - (a) authorisation of the person described in subsection (2)(a) to act as the settlement representative in relation to the collective settlement, and
 - (b) description of a class of persons whose claims fall within subsection (5)(b).
 - (7) The Tribunal may authorise a person to act as the settlement representative in relation to a collective settlement only if that person –
 - (a) is a person falling within the class of persons described in the collective settlement order for that settlement, or
 - (b) is not such a person, but the Tribunal considers that it is just and reasonable for that person to act as the settlement representative in relation to that settlement.
 - (8) Where the Tribunal has made a collective settlement order, it may make an order approving a proposed collective settlement only if satisfied that its terms are just and reasonable.
 - (9) A collective settlement approved by the Tribunal is binding on all persons falling within the class of persons described in the collective settlement order.
 - (10) But a collective settlement is not binding on a person who –

-
- (a) opts out by notifying the settlement representative, in a manner and by a time specified, that the claim should not be included in the collective settlement, or
 - (b) is not domiciled in the United Kingdom at a time specified, and does not, in a manner and by a time specified, opt in by notifying the settlement representative that the claim should be included in the collective settlement.
- (11) In this section, “settlement representative” means a person who is authorised by a collective settlement order to act in relation to a collective settlement.”
- (2) Section 49B of the Competition Act 1998 applies to claims arising before the commencement of this paragraph as it applies to claims arising after that time.
- 12 After section 49B (inserted by paragraph 11) insert –
- “49C Approval of redress schemes by the CMA**
- (1) A person may apply to the CMA for approval of a redress scheme.
 - (2) The CMA may consider an application before the infringement decision to which the redress scheme relates has been made, but may approve the scheme only –
 - (a) after that decision has been made, or
 - (b) in the case of a decision of the CMA, at the same time as that decision is made.
 - (3) In deciding whether to approve a redress scheme, the CMA may not take into account the amount or value of compensation offered under the scheme.
 - (4) An approved scheme may not be varied by the CMA or the compensating party.
 - (5) The Secretary of State may make regulations relating to the approval of redress schemes, and the regulations may in particular –
 - (a) make provision as to the procedure governing an application for approval of a redress scheme, including the information to be provided with the application;
 - (b) provide that the CMA may approve a redress scheme only if it has been devised according to a process specified in the regulations;
 - (c) provide that the CMA may approve a redress scheme only if it is in a form, or contains terms, specified in the regulations (which may include terms requiring a settlement agreement under the scheme to be in a form, or contain terms, specified in the regulations);
 - (d) provide that the CMA may approve a redress scheme only if (so far as the CMA can judge from facts known to it) the scheme is intended to be administered in a manner specified in the regulations;
 - (e) describe factors which the CMA may or must take into account, or may not take into account, in deciding whether to approve a redress scheme.

- (6) The CMA must publish guidance with regard to –
 - (a) applications for approval of redress schemes,
 - (b) the approval of redress schemes, and
 - (c) the enforcement of approved schemes, and in particular as to the criteria which the CMA intends to adopt in deciding whether to bring proceedings under section 49E(4).
- (7) Guidance under subsection (6) must be approved by the Secretary of State before it is published.
- (8) In this section and sections 49D and 49E –
 - “approved scheme” means a redress scheme approved by the CMA,
 - “compensating party” means a person offering compensation under an approved scheme,
 - “infringement decision” means –
 - (a) a decision of the CMA that the Chapter I prohibition, the Chapter II prohibition, the prohibition in Article 101(1) or the prohibition in Article 102 has been infringed, or
 - (b) a decision of the Commission that the prohibition in Article 101(1) or the prohibition in Article 102 has been infringed, and
 - “redress scheme” means a scheme under which a person offers compensation in consequence of an infringement decision made in respect of that person.
- (9) For the purposes of this section and section 49E, “compensation” –
 - (a) may be monetary or non-monetary, and
 - (b) may be offered to persons who have not suffered a loss as a result of the infringement decision to which the redress scheme relates.

49D Redress schemes: recovery of costs

- (1) The CMA may require a person making an application for approval of a redress scheme to pay some or all of the CMA’s reasonable costs relating to the application.
- (2) A requirement to pay costs is imposed by giving that person written notice specifying –
 - (a) the amount to be paid,
 - (b) how that amount has been calculated, and
 - (c) by when that amount must be paid.
- (3) A person required to pay costs under this section may appeal to the Tribunal against the amount.
- (4) Where costs required to be paid under this section relate to an approved scheme, the CMA may withdraw approval from that scheme if the costs have not been paid by the date specified in accordance with subsection (2)(c).
- (5) Costs required to be paid under this section are recoverable by the CMA as a debt.

49E Enforcement of approved schemes

- (1) A compensating party is under a duty to comply with the terms of an approved scheme (“the duty”).
 - (2) The duty is owed to any person entitled to compensation under the terms of the approved scheme.
 - (3) Where such a person suffers loss or damage as a result of a breach of the duty, the person may bring civil proceedings before the court for damages, an injunction or interdict or any other appropriate relief or remedy.
 - (4) Where the CMA considers that the compensating party is in breach of the duty, the CMA may bring civil proceedings before the court for an injunction or interdict or any other appropriate relief or remedy.
 - (5) Subsection (4) is without prejudice to any right that a person has to bring proceedings under subsection (3).
 - (6) In any proceedings brought under subsection (3) or (4), it is a defence for the compensating party to show that it took all reasonable steps to comply with the duty.
 - (7) Where the CMA considers that it is no longer appropriate for the compensating party to be subject to the duty, the CMA may give notice in writing to that party stating that it is released from the duty.
 - (8) Where a person has entered into a settlement agreement with the compensating party, that agreement remains enforceable notwithstanding the release of the compensating party under subsection (7) from the duty.
 - (9) In this section “the court” means –
 - (a) in England and Wales, the High Court or the county court,
 - (b) in Northern Ireland, the High Court or a county court,
 - (c) in Scotland, the Court of Session or the sheriff.”
- 13 (1) Section 58 (findings of fact by OFT) is amended in accordance with this paragraph.
- (2) In subsection (1), after “the court” insert “or the Tribunal”.
 - (3) In subsection (2) –
 - (a) in the definition of “Part I proceedings”, before paragraph (a) insert –

“(za) in respect of an infringement decision;”;
 - (b) in the definition of “relevant party”, in paragraphs (a) and (b), for “is alleged to have infringed the prohibition” substitute “has been found to have infringed the prohibition or is alleged to have infringed the prohibition (as the case may be)”.
 - (4) In subsection (3) –
 - (a) after “Rules of court” insert “or Tribunal rules”, and
 - (b) after “the court” insert “or the Tribunal”.

(5) After subsection (3) insert –

- “(4) In this section “the court” means –
- (a) in England and Wales or Northern Ireland, the High Court,
 - (b) in Scotland, the Court of Session or the sheriff.”

14 (1) For section 58A substitute –

“58A Infringement decisions

- (1) This section applies to a claim in respect of an infringement decision which is brought in proceedings –
 - (a) before the court, or
 - (b) before the Tribunal under section 47A or 47B.
- (2) The court or the Tribunal is bound by the infringement decision once it has become final.
- (3) An infringement decision specified in section 47A(5)(a) or (b) becomes final –
 - (a) when the time for appealing against that decision expires without an appeal having been brought;
 - (b) where the decision is specified in section 47A(5)(a) and an appeal has been brought against the decision under section 46 or 47, when that appeal –
 - (i) has been withdrawn, dismissed or otherwise discontinued, or
 - (ii) has confirmed the infringement decision and the time for making any further appeal against that confirmatory decision expires without a further appeal having been brought;
 - (c) where an appeal has been brought in relation to the decision under section 49, when that appeal –
 - (i) in the case of an appeal against the infringement decision or against a decision which confirmed the infringement decision, has been withdrawn, dismissed or otherwise discontinued, or
 - (ii) has confirmed the infringement decision and the time for making any further appeal to the Supreme Court against that confirmatory decision expires without a further appeal having been brought; or
 - (d) where an appeal has been brought to the Supreme Court in relation to the decision, when that appeal –
 - (i) in the case of an appeal against a decision which confirmed the infringement decision, has been withdrawn, dismissed or otherwise discontinued, or
 - (ii) has confirmed the infringement decision.
- (4) An infringement decision specified in section 47A(5)(c) becomes final –
 - (a) when the time for appealing against that decision in the European Court expires without an appeal having been brought; or
 - (b) where such an appeal has been brought against the decision, when that appeal –

-
- (i) has been withdrawn, dismissed or otherwise discontinued, or
 - (ii) has confirmed the infringement decision.
- (5) This section applies to the extent that the court or the Tribunal would not otherwise be bound by the infringement decision in question.
 - (6) In this section “the court” means –
 - (a) in England and Wales or Northern Ireland, the High Court,
 - (b) in Scotland, the Court of Session or the sheriff.”
- (2) Section 58A of the Competition Act 1998 (as substituted by sub-paragraph (1)) does not apply in relation to decisions made before the commencement of this paragraph.
- 15 (1) Section 59 (interpretation of Part 1) is amended in accordance with this paragraph.
- (2) In subsection (1), at the appropriate places insert –
- ““class member” has the meaning given in section 47B(8)(a);
 - “collective proceedings” has the meaning given in section 47B(1);
 - “collective proceedings order” means an order made by the Tribunal authorising the continuance of collective proceedings;
 - “infringement decision”, except in section 49C, has the meaning given in section 47A(5);
 - “injunction” includes an interim injunction;
 - “opt-in collective proceedings” has the meaning given in section 47B(10);
 - “opt-out collective proceedings” has the meaning given in section 47B(11);
 - “representative” means a person who is authorised by a collective proceedings order to bring collective proceedings;
 - “represented person” means a class member who –
 - (a) has opted in to opt-in collective proceedings,
 - (b) was domiciled in the United Kingdom at the time specified for the purposes of determining domicile (see section 47B(11)(b)(i)) and has not opted out of opt-out collective proceedings, or
 - (c) has opted in to opt-out collective proceedings;”.
- (3) In subsection (1), in the definition of “the court”, before “58” insert “49E,”.
- (4) After subsection (1) insert –
- “(1A) In this Part, in respect of proceedings in Scotland, “defendant” is to be read as “defender”.
 - (1B) Sections 41, 42, 45 and 46 of the Civil Jurisdiction and Judgments Act 1982 apply for the purpose of determining whether a person is regarded as “domiciled in the United Kingdom” for the purposes of this Part.”
- 16 In section 71 (regulations, orders and rules), after subsection (4)(ca) insert –
- “(cb) section 47C(6),”.

- 17 (1) Schedule 8 (appeals) is amended in accordance with this paragraph.
- (2) In paragraph 2(1), for “46 or 47” substitute “46, 47 or 49D(3)”.
- (3) After paragraph 3A insert –
- “3B (1) This paragraph applies to an appeal under section 49D(3).
- (2) The Tribunal must determine the appeal on the merits by reference to the grounds of appeal set out in the notice of appeal.
- (3) The Tribunal may –
- (a) approve the amount of costs which is the subject of the appeal, or
- (b) impose a requirement to pay costs of a different amount.
- (4) The Tribunal may also give such directions, or take such other steps, as the CMA could itself have given or taken.
- (5) A requirement imposed by the Tribunal under sub-paragraph (3)(b) has the same effect, and may be enforced in the same manner, as a requirement imposed by the CMA under section 49D.”

PART 2

ENTERPRISE ACT 2002

- 18 The Enterprise Act 2002 is amended in accordance with this Part.
- 19 (1) Section 14 (constitution of Tribunal for particular proceedings and its decisions) is amended as follows.
- (2) In subsection (1), after “before it” insert “, including proceedings relating to the approval of a collective settlement under section 49A or 49B of the 1998 Act.”.
- (3) After subsection (1) insert –
- “(1A) But in the case of proceedings relating to a claim under section 47A of the 1998 Act which is subject to a fast-track claims procedure (as described in Tribunal rules), the Tribunal shall consist of a chairman only.”
- 20 In section 15 (Tribunal rules), in subsection (1), at the end insert “, including proceedings relating to the approval of a collective settlement under section 49A or 49B of the 1998 Act.”
- 21 In section 16 (transfers of certain proceedings to and from Tribunal), in subsection (5), for “High Court or the Court of Session of” substitute “court of all or any part of”.
- 22 Schedule 4 (Tribunal: procedure) is amended in accordance with the following paragraphs of this Part.
- 23 In paragraph 1 (decisions of the Tribunal), for sub-paragraph (1)(a) substitute –
- “(a) state the reasons for the decision;

- (aa) state whether the decision was unanimous or taken by a majority or, where proceedings are heard by a chairman only, state that fact;”.
- 24 After paragraph 1 insert –
“Enforcement of injunctions in England and Wales and Northern Ireland
- 1A (1) Where a person (“A”) fails to comply with an injunction granted by the Tribunal in proceedings under section 47A or 47B of the 1998 Act, the Tribunal may certify the matter to the High Court.
- (2) The High Court may enquire into the matter.
- (3) If, after hearing any witnesses who may be produced against or on behalf of A, and any statement made by or on behalf of A, the High Court is satisfied that A would have been in contempt of court if the injunction had been granted by the High Court, the High Court may deal with A as if A were in contempt.”
- 25 In each of paragraphs 4(c) and 5(1)(c) –
(a) for “47B(6)” substitute “47C(3) or (4)”; and
(b) for “specified body concerned” substitute “representative in the proceedings under section 47B of that Act”.
- 26 In paragraph 6 –
(a) for sub-paragraph (a) substitute –
 “(a) awards damages to a person in respect of a claim made or continued on behalf of that person (but is not the subject of an order under section 47C(3) or (4) of that Act); or”;
(b) in sub-paragraph (b) –
 (i) for “an individual” substitute “a person”,
 (ii) for “his behalf” substitute “behalf of that person”; and
(c) in the full-out words at the end, for “individual” substitute “person”.
- 27 In paragraph 7 –
(a) for “specified body” substitute “representative”; and
(b) for “individual” substitute “person”.
- 28 In paragraph 9 –
(a) the existing provision is numbered as sub-paragraph (1), and
(b) after that provision insert –
 “(2) In this Schedule, where a paragraph is capable of applying to proceedings relating to the approval of a collective settlement under section 49A or 49B of the 1998 Act, any reference in that paragraph to “proceedings” includes a reference to those proceedings.”
- 29 In paragraph 11(2), for paragraph (a) substitute –
 “(a) make further provision as to procedural aspects of the operation of the limitation or prescriptive periods in relation to claims which may be made in proceedings under section 47A of the 1998 Act, as set out in section 47E(3) to (6) of that Act;”.

30 For paragraph 13 substitute –

- “13 (1) Tribunal rules may provide for the Tribunal –
- (a) to reject a claim made under section 47A of the 1998 Act or a section 47B claim if it considers that there are no reasonable grounds for making it;
 - (b) to reject a section 47B claim if –
 - (i) the Tribunal declines to make a collective proceedings order in respect of the proceedings under section 47B of the 1998 Act,
 - (ii) the Tribunal makes a collective proceedings order in respect of the proceedings, but the order does not provide that the claim in question is eligible for inclusion in the proceedings,
 - (iii) the Tribunal revokes the collective proceedings order in respect of the proceedings, or
 - (iv) the Tribunal varies the collective proceedings order in such a way that the claim in question is no longer included in the proceedings;
 - (c) to reject a section 47B claim if the claim had been previously made in proceedings under section 47A of the 1998 Act by a person who has not consented to its being continued in proceedings under section 47B of that Act.
- (2) In this paragraph, “a section 47B claim” means a claim made in proceedings under section 47B of the 1998 Act at the commencement of those proceedings.”

31 After paragraph 15 insert –

“Fast-track claims procedure

- 15A (1) Tribunal rules may make provision in relation to a fast-track claims procedure for claims made in proceedings under section 47A of the 1998 Act, including describing the factors relevant to determining whether a claim is suitable to be dealt with according to that procedure.
- (2) Tribunal rules may make different provision for claims in proceedings under section 47A of the 1998 Act which are and which are not subject to the fast-track procedure.

Collective proceedings

- 15B (1) Tribunal rules may make provision in relation to collective proceedings under section 47B of the 1998 Act.
- (2) Rules under sub-paragraph (1) must in particular make provision as to the following matters –
- (a) the procedure governing an application for a collective proceedings order;
 - (b) the factors which the Tribunal must take into account in deciding whether a claim is suitable to be brought in collective proceedings (but rules need not make provision

- in connection with the determination as to whether claims raise the same, similar or related issues of fact or law);
- (c) the factors which the Tribunal must take into account in deciding whether to authorise a person to act as a representative in collective proceedings;
 - (d) the procedure by which the Tribunal is to reach a decision as to whether to make a collective proceedings order;
 - (e) the procedure by which a person may opt in or opt out of collective proceedings;
 - (f) the factors which the Tribunal must take into account in deciding whether to vary or revoke a collective proceedings order;
 - (g) the assessment of damages in collective proceedings;
 - (h) the payment of damages in collective proceedings, including the procedure for publicising an award of damages;
 - (i) the effect of judgments and orders in collective proceedings.

Collective settlements

- 15C (1) Tribunal rules may make provision in relation to collective settlements under sections 49A and 49B of the 1998 Act.
- (2) Rules under sub-paragraph (1) must in particular make provision as to the following matters—
- (a) the procedure governing an application for approval of a proposed collective settlement;
 - (b) where section 49B applies, the factors which the Tribunal must take into account in deciding whether to make a collective settlement order (but rules need not make provision in connection with the determination as to whether claims raise the same, similar or related issues of fact or law);
 - (c) where section 49B applies, the factors which the Tribunal must take into account in deciding whether to authorise a person to act as a settlement representative in relation to a collective settlement;
 - (d) where section 49B applies, the procedure by which the Tribunal is to reach a decision as to whether to make a collective settlement order;
 - (e) the factors which the Tribunal must take into account in deciding whether to approve a proposed collective settlement;
 - (f) the procedure by which the Tribunal is to reach a decision as to whether to approve a collective settlement;
 - (g) the procedure by which a person may opt in or opt out of a collective settlement;
 - (h) the payment of compensation under a collective settlement, including the procedure for publicising a compensation award.”

32 In paragraph 17 (conduct of the hearing)–

- (a) after sub-paragraph (1)(h) insert—
 - “(ha) allowing the Tribunal to order payments in respect of the representation of a party to proceedings under section 47A or 47B of the 1998 Act, where the representation by a legal representative was provided free of charge;”;
- (b) in sub-paragraph (2)—
 - (i) for “an individual” substitute “a person”; and
 - (ii) for “that individual” substitute “that person”;
- (c) in sub-paragraph (3), for “an individual” substitute “a person”.

33 After paragraph 20 insert—

“Stay or sist of proceedings

- 20A (1) In relation to proceedings in England and Wales or Northern Ireland under section 47A or 47B of the 1998 Act, Tribunal rules may make provision as to the stay of the proceedings, including as to—
 - (a) the circumstances in which a stay may be ordered or removed at the request of a party to the proceedings,
 - (b) the circumstances in which the proceedings may be stayed at the instance of the Tribunal, and
 - (c) the procedure to be followed.
- (2) In relation to proceedings in Scotland under section 47A or 47B of the 1998 Act, Tribunal rules may make provision as to the sist of the proceedings, including as to—
 - (a) the circumstances in which a sist may be granted or recalled at the request of a party to the proceedings,
 - (b) the circumstances in which the proceedings may be sisted at the instance of the Tribunal, and
 - (c) the procedure to be followed.
- (3) Rules under sub-paragraph (1) or (2) may in particular make provision in relation to the stay or sist of proceedings under section 47A or 47B which relate to a claim in respect of an infringement decision (as defined in section 47A(5)) which has not become final (see section 58A of the 1998 Act).”

34 After paragraph 21 insert—

“Injunctions

- 21A Tribunal rules may make provision in relation to the grant of injunctions (including interim injunctions) in proceedings under section 47A or 47B of the 1998 Act.”

35 In paragraph 23(3), for “an individual” substitute “a person”.

36 In paragraph 25, after “transfer” insert “all or any part of”.

PART 3

COURTS AND LEGAL SERVICES ACT 1990

37 In the Courts and Legal Services Act 1990, in section 58AA (damages-based agreements), after subsection (10) insert –

“(11) Subsection (1) is subject to section 47C(7) of the Competition Act 1998.”

