

Unfair Contract Terms Bill

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Limit the exclusion or restriction of civil liability by contract terms or notices; to limit the effect of unfair terms in consumer and small business contracts; to make provision about the protection of the collective interests of consumers; 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

BUSINESS LIABILITY FOR NEGLIGENCE

1 Business liability for negligence

- (1) Business liability for death or personal injury resulting from negligence cannot be excluded or restricted by a contract term or a notice.
- (2) Business liability for other loss or damage resulting from negligence cannot be excluded or restricted by a contract term or a notice unless the term or notice is fair and reasonable.
- (3) “Business liability” means liability arising from –
 - (a) anything that was or should have been done for purposes related to a business, or
 - (b) the occupation of premises used for purposes related to the occupier’s business.
- (4) The reference in subsection (3)(a) to anything done for purposes related to a business includes anything done by an employee of that business within the scope of his employment.
- (5) “Negligence” means the breach of –

- (a) an 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 duty of care imposed by the Occupiers' Liability Act 1957 (c. 31) or the Occupiers' Liability Act (Northern Ireland) 1957 (c. 25 NI), or
 - (d) the duty of reasonable care imposed by section 2(1) of the Occupiers' Liability (Scotland) Act 1960 (c. 30).
- (6) It does not matter –
- (a) whether a breach of obligation or duty was, or was not, inadvertent, or
 - (b) whether liability for it arises directly or vicariously.

2 Exceptions to section 1

- (1) Section 1 does not prevent an employee from excluding or restricting his liability for negligence to his employer.
- (2) Section 1 does not apply to the business liability of an occupier of premises to a person who obtains access to the premises for recreational or educational purposes if –
 - (a) that person suffers loss or damage because of the dangerous state of the premises, and
 - (b) allowing that person access to those premises for those purposes is not within the purposes of the occupier's business.
- (3) Subsection (2) does not extend to Scotland.

3 Voluntary acceptance of risk

The defence that a person voluntarily accepted a risk cannot be used against him just because he agreed to or knew about a contract term, or a notice, appearing to exclude or restrict business liability for negligence in the case in question.

PART 2

CONSUMER CONTRACTS

Contracts in general

4 Terms of no effect unless fair and reasonable

- (1) If a term of a consumer contract is detrimental to the consumer, the business cannot rely on the term unless the term is fair and reasonable.
- (2) But subsection (1) does not apply to a term which defines the main subject-matter of a consumer contract, if the definition is—
 - (a) transparent, and
 - (b) substantially the same as the definition the consumer reasonably expected.
- (3) Nor does subsection (1) apply to a term in so far as it sets the price payable under a consumer contract, if the price is—
 - (a) transparent,
 - (b) payable in circumstances substantially the same as those the consumer reasonably expected, and
 - (c) calculated in a way substantially the same as the way the consumer reasonably expected.
- (4) Nor does subsection (1) apply to a term which—
 - (a) is transparent, and
 - (b) leads to substantially the same result as would be produced as a matter of law if the term were not included.
- (5) The reference to the price payable under a consumer contract does not include any amount, payment of which would be incidental or ancillary to the main purpose of the contract.
- (6) “Price” includes remuneration.

*Sale or supply of goods***5 Sale or supply to consumer**

- (1) This section applies to a consumer contract for the sale or supply of goods to the consumer.
- (2) In the case of a contract for the sale of the goods, the business cannot rely on a term of the contract to exclude or restrict liability arising under any of the following sections of the 1979 Act –
 - (a) section 12 (implied term that seller entitled to sell),
 - (b) section 13 (implied term that goods match description),
 - (c) section 14 (implied term that goods satisfactory and fit for the purpose),
 - (d) section 15 (implied term that goods match sample).
- (3) In the case of a contract for the hire-purchase of the goods, the business cannot rely on a term of the contract to exclude or restrict liability arising under any of the following sections of the 1973 Act –
 - (a) section 8 (implied term that supplier entitled to supply),
 - (b) section 9 (implied term that goods match description),
 - (c) section 10 (implied term that goods satisfactory and fit for the purpose),
 - (d) section 11 (implied term that goods match sample).
- (4) In the case of any other contract for the transfer of property in the goods, the business cannot rely on a term of the contract to exclude or restrict liability arising under any of the following sections of the 1982 Act –
 - (a) section 2 or 11B (implied term that supplier entitled to supply),
 - (b) section 3 or 11C (implied term that goods match description),
 - (c) section 4 or 11D (implied term that goods satisfactory and fit for the purpose),
 - (d) section 5 or 11E (implied term that goods match sample).
- (5) In the case of a contract for the hire of the goods, the business cannot rely on a term of the contract to exclude or restrict liability arising under any of the following sections of the 1982 Act –
 - (a) section 8 or 11I (implied term that goods match description),
 - (b) section 9 or 11J (implied term that goods satisfactory and fit for the purpose),
 - (c) section 10 or 11K (implied term that goods match sample).
- (6) Subsection (2)(b) to (d) does not apply if the contract is –
 - (a) for the sale of second-hand goods, and
 - (b) made at a public auction which the consumer had the opportunity to attend in person.

6 Sale or supply to business

- (1) This section applies to a consumer contract for the sale or supply of goods to the business.
- (2) In the case of a contract for the sale of the goods, the consumer cannot rely on a term of the contract to exclude or restrict liability –
 - (a) arising under section 12 of the 1979 Act (implied term that seller entitled to sell), or
 - (b) unless the term is fair and reasonable, arising under either of the following sections of that Act –
 - (i) section 13 (implied term that goods match description),
 - (ii) section 15 (implied term that goods match sample).
- (3) In the case of a contract for the hire-purchase of the goods, the consumer cannot rely on a term of the contract to exclude or restrict liability –
 - (a) arising under section 8 of the 1973 Act (implied term that supplier entitled to supply), or
 - (b) unless the term is fair and reasonable, arising under either of the following sections of that Act –
 - (i) section 9 (implied term that goods match description),
 - (ii) section 11 (implied term that goods match sample).

*Supplemental***7 Regulation and enforcement**

Schedule 1 confers functions on the OFT and regulators in relation to –

- (a) consumer contract terms,
- (b) terms drawn up or proposed for use as consumer contract terms,
- (c) terms which a trade association recommends for use as consumer contract terms, and
- (d) notices relating to the rights conferred or duties imposed by consumer contracts.

8 Ambiguity

- (1) If it is reasonable to read a written term of a consumer contract in two (or more) ways, the term is to be read in whichever of those ways it is reasonable to think the more (or the most) favourable to the consumer.
- (2) This section does not apply in relation to proceedings under Schedule 1 (regulation and enforcement of consumer contract terms, etc.).

PART 3

NON-CONSUMER CONTRACTS

Business contracts

9 Written standard terms

- (1) This section applies where one party to a business contract (“A”) deals on the written standard terms of business of the other (“B”).
- (2) Unless the term is fair and reasonable, B cannot rely on any of those terms to exclude or restrict its liability to A for breach of the contract.
- (3) Unless the term is fair and reasonable, B cannot rely on any of those terms to claim that it has the right –
 - (a) to carry out its obligations under the contract in a way substantially different from the way in which A reasonably expected them to be carried out, or
 - (b) not to carry out all or part of those obligations.

10 Sale or supply of goods

- (1) In the case of a business contract for the sale of goods, the seller cannot rely on a term of the contract to exclude or restrict liability arising under section 12 of the 1979 Act (implied term that seller entitled to sell).
- (2) In the case of a business contract for the hire-purchase of goods, the supplier cannot rely on a term of the contract to exclude or restrict liability arising under section 8 of the 1973 Act (implied term that supplier entitled to supply).
- (3) In the case of any other business contract for the transfer of property in goods, the supplier cannot rely on a term of the contract to exclude or restrict liability arising under section 2 or 11B of the 1982 Act (implied term that supplier entitled to supply).

Small business contracts

11 Non-negotiated terms

- (1) This section applies where there is a small business contract and –
 - (a) the terms on which one party (“A”) deals include a term which the other party (“B”) put forward during the negotiation of the contract as one of its written standard terms of business,
 - (b) the substance of the term was not, as a result of negotiation, changed in favour of A, and
 - (c) at the time the contract is made, A is a small business.
- (2) If that term is detrimental to A, B cannot rely on the term unless the term is fair and reasonable.
- (3) But subsection (2) does not apply to a term which defines the main subject-matter of a small business contract, if the definition is –
 - (a) transparent, and

- (b) substantially the same as the definition A reasonably expected.
- (4) Nor does subsection (2) apply to a term in so far as it sets the price payable under a small business contract, if the price is –
 - (a) transparent,
 - (b) payable in circumstances substantially the same as those A reasonably expected, and
 - (c) calculated in a way substantially the same as the way A reasonably expected.
- (5) Nor does subsection (2) apply to a term which –
 - (a) is transparent, and
 - (b) leads to substantially the same result as would be produced as a matter of law if the term were not included.
- (6) The reference to the price payable under a small business contract does not include any amount, payment of which would be incidental or ancillary to the main purpose of the contract.
- (7) “Price” includes remuneration.

Employment contracts

12 Written standard terms

- (1) This section applies in relation to an employment contract under which an individual (“the employee”) is employed by a business on its written standard terms of employment.
- (2) Unless the term is fair and reasonable, the business cannot rely on any of those terms to exclude or restrict its liability for breach of the contract.
- (3) Unless the term is fair and reasonable, the business cannot rely on any of those terms to claim it has the right –
 - (a) to carry out its obligations under the contract in a way substantially different from the way in which the employee reasonably expected them to be carried out, or
 - (b) not to carry out all or part of those obligations.

Private contracts

13 Sale or supply of goods

- (1) This section applies if neither party to a contract for the sale or supply of goods enters into it for purposes related to a business of his.
- (2) In the case of a contract for the sale of the goods, the seller cannot rely on a term of the contract to exclude or restrict liability –
 - (a) arising under section 12 of the 1979 Act (implied term that seller entitled to sell), or
 - (b) unless the term is fair and reasonable, arising under either of the following sections of that Act –
 - (i) section 13 (implied term that goods match description),
 - (ii) section 15 (implied term that goods match sample).
- (3) In the case of a contract for the hire-purchase of the goods, the supplier cannot rely on a term of the contract to exclude or restrict liability –
 - (a) arising under section 8 of the 1973 Act (implied term that supplier entitled to supply), or
 - (b) unless the term is fair and reasonable, arising under either of the following sections of that Act –
 - (i) section 9 (implied term that goods match description),
 - (ii) section 11 (implied term that goods match sample).

PART 4

THE "FAIR AND REASONABLE" TEST

*The test***14 The test**

- (1) Whether a contract term is fair and reasonable is to be determined by taking into account –
 - (a) the extent to which the term is transparent, and
 - (b) the substance and effect of the term, and all the circumstances existing at the time it was agreed.
- (2) Whether a notice is fair and reasonable is to be determined by taking into account –
 - (a) the extent to which the notice is transparent, and
 - (b) the substance and effect of the notice, and all the circumstances existing at the time when the liability arose (or, but for the notice, would have arisen).
- (3) “Transparent” means –
 - (a) expressed in reasonably plain language,
 - (b) legible,
 - (c) presented clearly, and
 - (d) readily available to any person likely to be affected by the contract term or notice in question.

- (4) Matters relating to the substance and effect of a contract term, and to all the circumstances existing at the time it was agreed, include the following –
 - (a) the other terms of the contract,
 - (b) the terms of any other contract on which the contract depends,
 - (c) the balance of the parties' interests,
 - (d) the risks to the party adversely affected by the term,
 - (e) the possibility and probability of insurance,
 - (f) other ways in which the interests of the party adversely affected by the term might have been protected,
 - (g) the extent to which the term (whether alone or with others) differs from what would have been the case in its absence,
 - (h) the knowledge and understanding of the party adversely affected by the term,
 - (i) the strength of the parties' bargaining positions,
 - (j) the nature of the goods or services to which the contract relates.
- (5) Subsection (4) applies, with any necessary modifications, in relation to a notice as it applies in relation to a contract term.
- (6) Schedule 2 contains an indicative and non-exhaustive list of consumer contract terms and small business contract terms which may be regarded as not being fair and reasonable.
- (7) The Secretary of State may by order amend Schedule 2 so as to add, modify or omit an entry.

*Burden of proof***15 Business liability for negligence**

It is for a person wishing to rely on a contract term or a notice which purports to exclude or restrict liability of the kind mentioned in section 1(2) (business liability for negligence other than in case of death or personal injury) to prove that the term or notice is fair and reasonable.

16 Consumer contracts

- (1) If an issue is raised as to whether a term in a consumer contract is fair and reasonable, it is for the business to prove that it is.
- (2) But in proceedings under Schedule 1 (regulation and enforcement of consumer contracts) it is for a person claiming that a term in a consumer contract, or a notice, is not fair and reasonable to prove that it is not.
- (3) It is for a person wishing to rely on a contract not being a consumer contract to prove that it is not.

17 Business contracts

- (1) It is for a person wishing to rely on a term of a business contract to prove that the term is fair and reasonable.
- (2) But in relation to a term to which section 11(2) (non-negotiated terms in small business contracts) applies, it is for a person claiming that the term is not fair and reasonable to prove that it is not.

PART 5

CHOICE OF LAW

18 Consumer contracts

- (1) Where a term of a consumer contract applies (or appears to apply) the law of somewhere outside the United Kingdom, this Act has effect in relation to the contract if –
 - (a) the consumer was living in the United Kingdom when the contract was made, and
 - (b) all the steps which the consumer had to take for the conclusion of the contract were taken there by him or on his behalf.
- (2) Subsection (3) applies where –
 - (a) a consumer contract has a close connection with the territory of the member States, and
 - (b) subsection (1) does not apply.
- (3) This Act has effect in relation to the contract unless, according to the law of the forum, the provisions of the law of a member State (other than the United Kingdom) which give effect to the Directive have effect in relation to the contract.
- (4) A court is not, for the purposes of this section, to treat a consumer contract as having a close connection with the territory of the member States if –
 - (a) the contract provides for goods to be supplied, or services to be performed, outside the European Union, and
 - (b) all the steps which the consumer had to take for the conclusion of the contract were taken outside the European Union by him or on his behalf.
- (5) Subsection (4) does not apply if it nevertheless appears to the court from all the circumstances of the case that the contract does have a close connection with the territory of the member States.
- (6) “Territory of the member States” means the same as it does for the purposes of the Treaty establishing the European Community (and, for the avoidance of doubt, any reference in this section to the territory of the member States is to be read as including a part of that territory).
- (7) “The Directive” means Council Directive 93/13/EEC on unfair terms in consumer contracts.

19 Business contracts

- (1) Part 1 (business liability for negligence) does not apply to a business contract term, and sections 9 to 11 (business contracts) do not apply to a business contract, if –
 - (a) the law applicable to the term, or contract, is the law of a part of the United Kingdom,
 - (b) it is the applicable law only by the choice of the parties, and
 - (c) were it not for that choice, the applicable law would be the law of somewhere outside the United Kingdom.

- (2) This Act has effect in relation to a business contract despite a term of the contract which applies (or appears to apply) the law of somewhere outside the United Kingdom if the contract is in every other respect wholly connected with the United Kingdom.

20 Small business contracts

- (1) This Act has effect in relation to a small business contract despite a term of the contract which applies (or appears to apply) the law of somewhere outside the United Kingdom if –
- (a) A had a place of business in the United Kingdom when the contract was made, and
 - (b) either of the following conditions applies in relation to the contract.
- (2) The first condition is that –
- (a) the making of the contract was preceded in the United Kingdom by an invitation addressed specifically to A, or by advertising, about the main subject-matter of the contract, and
 - (b) all the steps which A had to take for the making of the contract were taken in the United Kingdom by A through A’s place of business there or on A’s behalf.
- (3) The second is that A’s order was received by B in the United Kingdom.
- (4) “A” and “B” mean, respectively, the persons referred to as A and B in section 11.

PART 6

MISCELLANEOUS AND SUPPLEMENTARY

Miscellaneous

21 Unfairness issue raised by court

A court may, in proceedings before it, raise an issue about whether a contract term or a notice is fair and reasonable even if none of the parties to the proceedings has raised the issue or indicated that it intends to raise it.

22 Exceptions

Schedule 3 sets out types of contract, and of contract term, to which this Act does not apply or to which specified provisions of this Act do not apply.

23 Secondary contracts

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

24 Effect of unfair term on contract

Where a contract term cannot be relied on by a person as a result of this Act, the contract continues, so far as practicable, to have effect in every other respect.

Interpretation, etc.

25 Preliminary

Sections 26 to 32 define or otherwise explain expressions for the purposes of this Act.

26 “Consumer contract” and “business contract”

- (1) “Consumer contract” means a contract (other than one of employment) between—
 - (a) an individual (“the consumer”) who enters into it wholly or mainly for purposes unrelated to a business of his, and
 - (b) a person (“the business”) who enters into it wholly or mainly for purposes related to his business.

- (2) “Business contract” means a contract between two persons, each of whom enters into it wholly or mainly for purposes related to his business.

27 “Small business”

- (1) “Small business” means a person in whose business the number of employees does not exceed –
- (a) nine, or
 - (b) where the Secretary of State specifies by order another number for the purposes of this section, that number.
- (2) But a person is not a small business if adding the number of employees in his business to the number of employees in any other business of his, or in any business of an associated person, gives a total exceeding the number which for the time being applies for the purposes of subsection (1).
- (3) A reference to the number of employees in a business is to the number calculated according to Schedule 4.

28 “Associated person”

- (1) For the purposes of this Act, two persons are associated if –
- (a) one controls the other, or
 - (b) both are controlled by the same person.
- (2) A person (“A”) controls a body corporate (“B”) if A can secure that B’s affairs are conducted according to A’s wishes, directions or instructions.
- (3) The reference in subsection (2) to wishes, directions or instructions does not include advice given in a professional capacity.
- (4) Subsection (2) applies, with any necessary modifications, in relation to an unincorporated association (other than a partnership) as it applies in relation to a body corporate.
- (5) A person controls a partnership if he has the right to a share of more than half the assets or income of the partnership.
- (6) For the purposes of this section, one person does not control another just because he grants that other person a right to supply goods or services.

29 “Small business contract”

- (1) “Small business contract” means a business contract –
 - (a) to which at least one of the parties is, at the time the contract is made, a small business, and
 - (b) which does not come within any of four exceptions.
- (2) The first exception is that the price payable under the contract exceeds £500,000.
- (3) The second is that –
 - (a) the transaction provided for by the contract forms part of a larger transaction, or part of a scheme or arrangement, and
 - (b) the total price payable in respect of the larger transaction, or the scheme or arrangement, exceeds £500,000.
- (4) The third is that –
 - (a) a person agrees to carry on a regulated activity under the contract, and
 - (b) he is an authorised person or, in relation to that activity, an exempt person.
- (5) The fourth is that the contract is a series contract.
- (6) A contract is a series contract if –
 - (a) the transaction provided for by the contract forms part of a series, and
 - (b) during the period of two years ending with the date of the contract, the total price payable under contracts providing for transactions in the series exceeds £500,000.
- (7) A contract is also a series contract if, at the time the contract was made, both parties intended that –
 - (a) the transaction provided for by the contract would form part of a series, and
 - (b) the total price payable under contracts providing for transactions in the series and made during any period of two years, would exceed £500,000.
- (8) Where a contract is a series contract, every subsequent contract providing for a transaction in the series is a series contract.
- (9) The Secretary of State may by order vary the amount specified in subsections (2), (3), (6) and (7).
- (10) “Authorised person”, “exempt person” and “regulated activity” have the same meaning as in the Financial Services and Markets Act 2000 (c. 8).

30 “Excluding or restricting liability”

- (1) A reference to excluding or restricting a liability includes –
 - (a) making a right or remedy in respect of the liability subject to a restrictive or onerous condition;
 - (b) excluding or restricting a right or remedy in respect of the liability;
 - (c) putting a person at a disadvantage if he pursues a right or remedy in respect of the liability;
 - (d) excluding or restricting rules of evidence or procedure.
- (2) A reference in Part 1 or section 5, 6, 10 or 13 to excluding or restricting a liability includes preventing an obligation or duty arising or limiting its extent.
- (3) A written agreement to submit current or future differences to arbitration is not to be regarded as excluding or restricting the liability in question.

31 “Hire-purchase” and “hire”

- (1) A reference to a contract for the hire-purchase of goods is to a hire-purchase agreement within the meaning of the Consumer Credit Act 1974 (c. 39).
- (2) A reference to a contract for the hire of goods is to be read with the 1982 Act.

32 General interpretation

- (1) In this Act –
 - “the 1973 Act” means the Supply of Goods (Implied Terms) Act 1973 (c. 13),
 - “the 1979 Act” means the Sale of Goods Act 1979 (c. 54),
 - “the 1982 Act” means the Supply of Goods and Services Act 1982 (c. 29),
 - “associated person” has the meaning given in section 28,
 - “business contract” has the meaning given in section 26(2),
 - “business liability” has the meaning given in section 1(3) and (4),
 - “consumer”, in relation to a party to a consumer contract, has the meaning given by section 26(1)(a),
 - “consumer contract” has the meaning given in section 26(1),
 - “court” means –
 - (a) in England and Wales and Northern Ireland, the High Court or a county court, and
 - (b) in Scotland, the Court of Session or a sheriff,
 - and, except in Schedule 1, includes a tribunal, arbitrator or arbiter,
 - “enactment” includes –
 - (a) a provision of, or of an instrument made under, an Act of the Scottish Parliament or Northern Ireland legislation, and
 - (b) a provision of subordinate legislation (within the meaning of the Interpretation Act 1978 (c. 30)),
 - “fair and reasonable”, in relation to a contract term or a notice, has the meaning given in section 14,
 - “goods” has the same meaning as in the 1979 Act,
 - “injunction” includes interim injunction,
 - “interdict” includes interim interdict,
 - “negligence” has the meaning given in section 1(5),
 - “notice” includes an announcement, whether or not in writing, and any other communication,
 - “the OFT” means the Office of Fair Trading,
 - “personal injury” includes any disease and any impairment of physical or mental condition,
 - “public authority” has the same meaning as in section 6 of the Human Rights Act 1998 (c. 42),
 - “regulator” has the meaning given in paragraph 10 of Schedule 1,
 - “small business” has the meaning given in section 27,
 - “small business contract” has the meaning given in section 29,
 - “statutory” means conferred by an enactment,

“supplier”, in relation to a contract for the hire-purchase of goods or a contract for the hire of goods, means the person by whom goods are bailed or (in Scotland) hired to another person under the contract, and “transparent” has the meaning given in section 14(3).

- (2) A reference to a business includes a profession and the activities of a public authority.
- (3) A reference to excluding or restricting liability is to be read with section 30.
- (4) A reference to a contract for the hire-purchase or hire of goods is to be read with section 31.

Final provisions

33 Orders

- (1) Any power of the Secretary of State to make an order under this Act is exercisable by statutory instrument.
- (2) A statutory instrument containing an order under this Act, other than one containing an order under section 35 (commencement), is subject to annulment in pursuance of a resolution of either House of Parliament.

34 Consequential amendments and repeals, etc.

- (1) Schedule 5 contains minor and consequential amendments.
- (2) Schedule 6 contains repeals and revocations.

35 Short title, commencement and extent

- (1) This Act may be cited as the Unfair Contract Terms Act 2005.
- (2) The preceding provisions come into force on such day as the Secretary of State may by order appoint.
- (3) Different days may be appointed for different provisions.
- (4) No provision of this Act applies in relation to a contract term agreed before the commencement of the provision (except in so far as the term has been varied after that commencement).
- (5) An amendment, repeal or revocation contained in Schedule 5 or 6 has the same extent as the enactment to which it relates.
- (6) This Act extends to Northern Ireland.

SCHEDULES

SCHEDULE 1

Section 7

CONSUMER CONTRACT TERMS, ETC.: REGULATION AND ENFORCEMENT

Cases where this Schedule applies

- 1 (1) This Schedule applies to a complaint about –
 - (a) a consumer contract term,
 - (b) a term drawn up or proposed for use as a consumer contract term, or
 - (c) a term which a trade association recommends for use as a consumer contract term.
- (2) This Schedule also applies to a complaint about –
 - (a) a notice relating to the rights conferred or duties imposed by a consumer contract on the parties, or
 - (b) any other notice purporting to exclude or restrict liability for negligence.

Consideration of complaints

- 2 (1) If the OFT receives a complaint to which this Schedule applies, it must consider the complaint unless –
 - (a) it thinks that the complaint is frivolous or vexatious,
 - (b) it is notified by a regulator that that regulator intends to consider the complaint, or
 - (c) in the case of a complaint under paragraph 1(2)(b), it thinks that sub-paragraph (2) applies in relation to the notice.
- (2) This sub-paragraph applies in relation to a notice which –
 - (a) does not exclude or restrict business liability for negligence, or
 - (b) excludes or restricts such liability only in relation to a person who, at the time when the liability arises, is acting for purposes related to a business.
- (3) If the regulator intends to consider a complaint to which this Schedule applies, it must –
 - (a) notify the OFT that it intends to consider the complaint, and
 - (b) consider the complaint.

Application for injunction or interdict

- 3 (1) The OFT (or a regulator) may apply for an injunction or interdict against such persons as it considers appropriate if it thinks that the term or notice to which the complaint relates comes within this paragraph.

- (2) A term or notice comes within this paragraph if it purports to exclude or restrict liability of the kind mentioned in –
 - (a) section 1(1) (business liability for death or personal injury resulting from negligence), or
 - (b) section 5 (implied terms in supply of goods to consumer).
- (3) A term or notice also comes within this paragraph if it –
 - (a) is drawn up for general use, and
 - (b) is not fair and reasonable.
- (4) A term also comes within this paragraph if –
 - (a) however it is expressed, it is in its effect a term of a kind which the business usually seeks to include in the kind of consumer contract in question, and
 - (b) it is not fair and reasonable.
- (5) A term which comes within paragraph 1(b) or (c) (but not within paragraph 1(a)) is to be treated for the purposes of section 14 (the “fair and reasonable” test) as if it were a contract term.

Notification of application

- 4 (1) If a regulator intends to make an application under paragraph 3 –
 - (a) it must notify the OFT of its intention, and
 - (b) it may make the application only if this paragraph applies.
- (2) This paragraph applies if –
 - (a) the period of 14 days beginning with the date of the notification to the OFT has ended, or
 - (b) before the end of that period, the OFT allows the regulator to make the application.
- (3) Where the OFT (or a regulator), having considered a complaint to which this Schedule applies, decides not to make an application under paragraph 3 in response to the complaint, it must give its reasons to the person who made the complaint.

Determination of application

- 5 (1) On an application under paragraph 3, the court may grant an injunction or interdict on such conditions, and against such of the respondents, as it thinks appropriate.
- (2) The injunction or interdict may include provision about –
 - (a) a term or notice to which the application relates;
 - (b) any consumer contract term, or any notice, of a similar kind or like effect.
- (3) It is not a defence 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 makes the application, it must notify the OFT of –
 - (a) the outcome of the application, and
 - (b) if an injunction or interdict is granted, the conditions on which, and the identity of any person against whom, it is granted.

Undertakings

- 6 (1) The OFT (or a regulator) may accept from a relevant person an undertaking that he will comply with such conditions about the use of specified terms or notices, or of terms or notices of a specified kind, as he and the OFT (or the regulator) may agree.
- (2) If a regulator accepts an undertaking under this paragraph, it must notify the OFT of –
 - (a) the conditions on which the undertaking is accepted, and
 - (b) the identity of the person who gave it.
- (3) “Relevant person”, in relation to the OFT or a regulator, means a person against whom it has applied, or thinks it is entitled to apply, for an injunction or interdict under paragraph 3.
- (4) “Specified”, in relation to an undertaking, means specified in the undertaking.

Power to obtain information

- 7 (1) The OFT (or a regulator which is a public authority) may, for a purpose mentioned in sub-paragraph (2)(a) or (b), give notice to a person requiring him to provide it with specified information.
- (2) The purposes are –
 - (a) to facilitate the exercise of the OFT’s (or the regulator’s) functions for the purposes of this Schedule,
 - (b) to find out whether a person has complied, or is complying, with –
 - (i) an injunction or interdict granted under paragraph 5 on an application by the OFT (or the regulator), or
 - (ii) an undertaking accepted by it under paragraph 6.
- (3) The notice must –
 - (a) be in writing,
 - (b) specify the purpose for which the information is required, and
 - (c) specify how and when the notice is to be complied with.
- (4) The notice may require the production of specified documents or documents of a specified description.
- (5) The OFT (or the regulator) may take copies of any documents produced in compliance with the notice.
- (6) The notice may be varied or revoked by a subsequent notice under this paragraph.
- (7) The notice may not require a person to provide information or produce documents which he would be entitled to refuse to provide or produce –
 - (a) in proceedings in the High Court, on the grounds of legal professional privilege;
 - (b) in proceedings in the Court of Session, on the grounds of confidentiality of communication.
- (8) “Specified”, in relation to a notice under this paragraph, means specified in the notice.

Notices under paragraph 7: enforcement

- 8 (1) If the OFT (or the regulator) thinks that a person (a “defaulter”) has failed, or is failing, to comply with a notice given under paragraph 7, it may apply to the court for an order under this paragraph (a “compliance order”).
- (2) If the court thinks that the defaulter has failed to comply with the notice, it may make a compliance order.
- (3) A compliance order –
- (a) must specify such things as the court thinks it reasonable for the defaulter to do to ensure compliance with the notice;
 - (b) must require the defaulter to do those things;
 - (c) may require the defaulter to pay some or all of the costs or expenses of the application for the order (“the application costs”).
- (4) If the defaulter is a company or association, the court may, when acting under sub-paragraph (3)(c), require payment of some or all of the application costs by an officer of the company or association whom the court thinks responsible for the failure.
- (5) If a regulator applies for a compliance order, it must notify the OFT of –
- (a) the outcome of the application, and
 - (b) if the order is made, the conditions on which, and the identity of any person against whom, it is made.
- (6) “Officer” –
- (a) in relation to a company, means a director, manager, secretary or other similar officer of the company,
 - (b) in relation to a partnership, means a partner,
 - (c) in relation to any other association, means an officer of the association or a member of its governing body.

Publication, information and advice

- 9 (1) The OFT must arrange to publish details of any –
- (a) application it makes for an injunction or interdict under paragraph 3;
 - (b) injunction or interdict granted on an application by it under paragraph 3;
 - (c) injunction or interdict notified to it under paragraph 5(4)(b);
 - (d) undertaking it accepts under paragraph 6(1);
 - (e) undertaking notified to it under paragraph 6(2);
 - (f) application it makes for a compliance order under paragraph 8(1);
 - (g) compliance order made under paragraph 8(2);
 - (h) compliance order notified to it under paragraph 8(5)(b).
- (2) Sub-paragraph (3) applies where a person tells the OFT about a term or notice and asks the OFT whether that term or notice, or one of a similar kind or like effect, is or has been the subject of an injunction, interdict or undertaking under this Schedule.
- (3) The OFT must reply; and if it replies that the term or notice, or one of a similar kind or like effect, is or has been the subject of an injunction, interdict or undertaking under this Schedule, the OFT must give the person –
- (a) a copy of the injunction or interdict or details of the undertaking, and

- (b) if the person giving the undertaking has agreed to amend the term or notice concerned, a copy of the amendments.
- (4) The OFT may arrange to publish advice and information about the provisions of this Act.
- (5) A reference to an injunction or interdict under this Schedule is to an injunction or interdict –
 - (a) granted on an application by the OFT under paragraph 3, or
 - (b) notified to it under paragraph 5(4)(b).
- (6) A reference to an undertaking under this Schedule is to an undertaking –
 - (a) accepted by the OFT under paragraph 6(1), or
 - (b) notified to it under paragraph 6(2).

Meaning of “regulator”

- 10 (1) For the purposes of this Schedule, “regulator” means –
- (a) the Financial Services Authority,
 - (b) the Office of Communications,
 - (c) the Information Commissioner,
 - (d) the Gas and Electricity Markets Authority,
 - (e) the Water Services Regulation Authority,
 - (f) the Office of Rail Regulation,
 - (g) the Northern Ireland Authority for Energy Regulation,
 - (h) the Department of Enterprise, Trade and Investment in Northern Ireland,
 - (i) a local weights and measures authority in Great Britain, or
 - (j) a body designated as a regulator under sub-paragraph (3).
- (2) The Secretary of State may by order amend sub-paragraph (1) so as to add, modify or omit an entry.
- (3) Where the Secretary of State thinks that a body which is not a public authority represents the interests of consumers (or consumers of a particular description), he may by order designate the body as a regulator.
- (4) The Secretary of State may cancel the designation if he thinks that the body has failed, or is likely to fail, to comply with a duty imposed on it under this Act.
- (5) The Secretary of State must publish (and may from time to time vary) other criteria to be applied by him in deciding whether to make or cancel a designation under this paragraph.

The Financial Services Authority

- 11 Any function that the Financial Services Authority has under this Act is to be regarded, for the purposes of the Financial Services and Markets Act 2000 (c. 8), as a function that it has under that Act.

SCHEDULE 2

Section 14(6)

CONTRACT TERMS WHICH MAY BE REGARDED AS NOT FAIR AND REASONABLE

PART 1

INTRODUCTION

- 1 (1) A term of a consumer contract or small business contract may be regarded as not being fair and reasonable if it—
- (a) has the object or effect of a term listed in Part 2, and
 - (b) does not come within an exception mentioned in Part 3.
- (2) In this Schedule—
- (a) in relation to a consumer contract, “A” means the consumer and “B” means the business, and
 - (b) in relation to a small business contract, “A” and “B” mean, respectively, the persons referred to as A and B in section 11.

PART 2

LIST OF TERMS

- 2 A term excluding or restricting liability to A for breach of contract.
- 3 A term imposing obligations on A in circumstances where B’s obligation to perform depends on the satisfaction of a condition wholly within B’s control.
- 4 A term entitling B, if A exercises a right to cancel the contract or if B terminates the contract as a result of A’s breach, to keep sums that A has paid, the amount of which is unreasonable.
- 5 A term requiring A, when in breach of contract, to pay B a sum significantly above the likely loss to B.
- 6 A term entitling B to cancel the contract without incurring liability, unless there is also a term entitling A to cancel it without incurring liability.
- 7 A term entitling B, if A exercises a right to cancel the contract, to keep sums A has paid in respect of services which B has yet to supply.
- 8 A term in a fixed-term contract or a contract of indefinite duration entitling B to terminate the contract without giving A reasonable advance notice (except in an urgent case).

- 9 A term—
 - (a) providing for a contract of fixed duration to be renewed unless A indicates otherwise, and
 - (b) requiring A to give that indication a disproportionately long time before the contract is due to expire.
- 10 A term binding A to terms with which A did not have an opportunity to become familiar before the contract was made.
- 11 A term entitling B, without a good reason which is specified in the contract, to vary the terms of the contract.
- 12 A term entitling B, without a good reason, to vary the characteristics of the goods or services concerned.
- 13 A term requiring A to pay whatever price is set for the goods at the time of delivery (including a case where the price is set by reference to a list price), unless there is also a term entitling A to cancel the contract if that price is higher than the price indicated to A when the contract was made.
- 14 A term entitling B to increase the price specified in the contract, unless there is also a term entitling A to cancel the contract if the business does increase the price.
- 15 A term giving B the exclusive right (and, accordingly, excluding any power of a court) to determine—
 - (a) whether the goods or services supplied match the definition of them given in the contract, or
 - (b) the meaning of any term in the contract.
- 16 A term excluding or restricting B's liability for statements or promises made by B's employees or agents, or making B's liability for statements or promises subject to formalities.
- 17 A term requiring A to carry out its obligations in full (in particular, to pay the whole of the price specified in the contract) in circumstances where B has failed to carry out its obligations in full.
- 18 A term entitling B to transfer its obligations without A's consent.
- 19 A term entitling B to transfer its rights in circumstances where A's position might be weakened as a result.
- 20 A term excluding or restricting A's right—
 - (a) to bring or defend any action or other legal proceedings, or
 - (b) to exercise other legal remedies.
- 21 A term restricting the evidence on which A may rely.

PART 3

EXCEPTIONS

Financial services contracts

- 22 (1) Sub-paragraph (2) applies where a term in a financial services contract of indefinite duration provides that B may terminate the contract –
- (a) by giving A relatively short advance notice, or
 - (b) if B has a good reason for terminating the contract, without giving A any advance notice.
- (2) Paragraph 8 (termination without reasonable notice) does not apply to the term if the contract also provides that B must immediately inform A of the termination.
- (3) Sub-paragraph (4) applies where a term in a financial services contract of indefinite duration provides that B may vary the interest rate or other charges payable under it –
- (a) by giving A relatively short advance notice, or
 - (b) if B has a good reason for making the variation, without giving A any advance notice.
- (4) Paragraph 11 (variation without good reason) does not apply to a term if the contract also provides that –
- (a) B must as soon as practicable inform A of the variation, and
 - (b) A may then cancel the contract, without incurring liability.
- (5) “Financial services contract” means a contract for the supply by B of financial services to A.

Contracts of indefinite duration

- 23 Paragraph 11 (variation without good reason) does not apply to a term in a contract of indefinite duration if the contract also provides that –
- (a) B must give reasonable notice of the variation, and
 - (b) A may then cancel the contract, without incurring liability.

Contracts for sale of securities, foreign currency, etc.

- 24 (1) None of the following paragraphs applies to a contract term if sub-paragraph (2) or (3) applies –
- (a) paragraph 8 (termination without reasonable notice),
 - (b) paragraph 11 (variation without good reason),
 - (c) paragraph 13 (determination of price at time of delivery),
 - (d) paragraph 14 (increase in price).
- (2) This sub-paragraph applies if the contract is for the transfer of securities, financial instruments or anything else, the price of which is linked to –
- (a) fluctuations in prices quoted on a stock exchange, or
 - (b) a financial index or market rate that B does not control.
- (3) This sub-paragraph applies if the contract is for the sale of foreign currency (and, for this purpose, that includes foreign currency in the form of traveller’s cheques or international money orders).

Price index clauses

- 25 Neither paragraph 13 nor paragraph 14 (determination of price at time of delivery or increase in price) applies to a contract term if –
- (a) the term provides for the price of the goods or services to be varied by reference to an index of prices, and
 - (b) the contract specifies how a change to the index is to affect the price.

SCHEDULE 3

Section 22

EXCEPTIONS

Legal requirements

- 1 (1) This Act does not apply to a contract term –
- (a) required by an enactment or a rule of law,
 - (b) required or authorised by a provision in an international convention to which the United Kingdom or the European Community is a party, or
 - (c) required by, or incorporated as a result of a decision or ruling of, a competent authority acting in the exercise of its statutory jurisdiction or any of its functions.
- (2) Sub-paragraph 1(c) does not apply if the competent authority is itself a party to the contract.
- (3) “Competent authority” means a public authority other than a local authority.

Settlements of claims

- 2 (1) This Act does not apply to a contract term in so far as it is, or forms part of –
- (a) a settlement of a claim in tort;
 - (b) a discharge or indemnity given by a person in consideration of the receipt by him of compensation in settlement of any claim which he has.
- (2) In sub-paragraph (1) –
- (a) paragraph (a) does not extend to Scotland, and
 - (b) paragraph (b) extends only to Scotland.

Insurance

- 3 The following sections do not apply to an insurance contract (including a contract to pay an annuity on human life) –
- (a) section 1 (exclusion of business liability for negligence),
 - (b) section 9 (exclusion of liability for breach of business contract where one party deals on written standard terms of the other),
 - (c) section 11 (non-negotiated terms in small business contracts),
 - (d) section 12 (exclusion of employer’s liability under employment contract).

Land

- 4 The following sections do not apply to a contract term in so far as it relates to the creation, transfer, variation or termination of an interest or real right in land –
- (a) section 1 (exclusion of business liability for negligence),
 - (b) section 9 (exclusion of liability for breach of business contract where one party deals on written standard terms of the other),
 - (c) section 11 (non-negotiated terms in small business contracts).

Intellectual property

- 5 Nor do those sections apply to a contract term in so far as it relates to the creation, transfer, variation or termination of a right or interest in any patent, trade mark, copyright or design right, registered design, technical or commercial information or other intellectual property.

Company formation, etc.

- 6 Nor do those sections apply to a contract term in so far as it relates to –
- (a) the formation or dissolution of a body corporate or unincorporated association (including a partnership),
 - (b) its constitution, or
 - (c) the rights and obligations of its members.

Securities

- 7 Nor do those sections apply to a contract term in so far as it relates to the creation or transfer of securities or of a right or interest in securities.

International supply contracts

- 8 The following provisions do not apply to a business contract for the supply of goods where the supply is to be made to a place outside the United Kingdom –
- (a) section 1(2) (business liability for negligence other than in case of death or personal injury),
 - (b) sections 9 to 11 (unfair terms in business contracts),
 - (c) sections 19 and 20 (choice of law in business contracts).

Shipping

- 9 (1) Section 1(2) does not apply to a shipping contract unless it is also a consumer contract.
- (2) Sections 9 and 11 do not apply to a shipping contract.
- (3) “Shipping contract” means –
- (a) a contract of marine salvage or towage,
 - (b) a charterparty of a ship or hovercraft, or
 - (c) a contract for the carriage of goods by ship or hovercraft.

- 10 (1) This paragraph applies where goods are carried by ship or hovercraft under a contract which—
 - (a) specifies that as the means of transport for part of the journey, or
 - (b) does not specify a means of transport but does not exclude that one.
- (2) Section 1(2) does not apply to the contract, unless it is also a consumer contract, in so far as it relates to the carriage of the goods by that means of transport.
- (3) Sections 9 and 11 do not apply to the contract in so far as it relates to the carriage of the goods by that means of transport.

SCHEDULE 4

Section 27

CALCULATING THE NUMBER OF EMPLOYEES IN A BUSINESS

Introduction

- 1 (1) This Schedule sets out how to calculate the number of employees that a party to a business contract, or an associated person, has in its business.
- (2) “The business period” means a continuous period for which –
 - (a) the party to the business contract has been carrying on the business to which the contract relates, or
 - (b) an associated person has been carrying on business.

Calculation for established business

- 2 Where the business period is at least twelve months ending on the last day of the month immediately before the month including the contract date –
 - (a) work out how many full-time employees there are in the business on the last day of each of the twelve months ending with the last complete month before the contract date,
 - (b) add together the numbers for those twelve days, and
 - (c) divide the total by twelve.

Calculation for new business

- 3 Where the business period is at least one complete month ending on the last day of the month immediately before the month including the contract date (but paragraph 2 does not apply) –
 - (a) work out how many full-time employees there are in the business on the last day of each complete month,
 - (b) add together the numbers for those days, and
 - (c) divide the total by the number of complete months.
- 4 Where the business period is less than one complete month, but more than one day, before the contract date –
 - (a) work out how many full-time employees there are in the business on each day,
 - (b) add together the numbers for those days, and
 - (c) divide that total by the number of days.
- 5 Where the party to the contract enters into it on the first day on which it carries on the business to which the contract relates, or an associated person has been carrying on business for only one day, work out how many full-time employees there are in the business on the day in question.

The number of full-time employees in a business

- 6 (1) This paragraph sets out how to work out how many full-time employees there are in a business.
- (2) An employee who works for at least 35 hours a week for a business counts as one full-time employee.

- (3) An employee who works for under 35 hours a week for a business (a “part-time employee”) counts as a fraction of one full-time employee, with the fraction being calculated as –

$$\frac{A}{B}$$

where A and B are defined as follows.

- (4) A is the number of hours a week which the part-time employee works for the business.
- (5) B is –
- (a) the number of hours a week which a full-time employee of the same description as the part-time employee works for the business, or
 - (b) if there are no full-time employees of that description, 35 hours a week.
- (6) The number of hours a week which an employee works for a business is –
- (a) the number of hours a week which he is contractually required to work for the business, or
 - (b) if he ordinarily works for a longer period than that, or his contract does not specify for how many hours a week he is to work, the number of hours a week he ordinarily works for the business, but does not include any meal break, or rest period, exceeding 15 minutes.

Interpretation

- 7 “Contract date”, in relation to a business contract, means the date on which the contract is made.
- 8 “Employee” –
- (a) in relation to any business, means an individual who works in the business under a contract of employment or a contract for services;
 - (b) in relation to a business carried on by a partnership (or other unincorporated association), includes a partner (or member);
 - (c) in relation to a business carried on by only one individual, includes that individual.

SCHEDULE 5

Section 34(1)

MINOR AND CONSEQUENTIAL AMENDMENTS

Misrepresentation Act 1967 (c. 7)

- 1 In section 3 of the Misrepresentation Act 1967 (c. 7) (avoidance of provision excluding liability for misrepresentation), for the words from “that term” to the end, substitute “that term is of no effect unless it is fair and reasonable for the purposes of the Unfair Contract Terms Act 2005 (and, accordingly, Part 4 of that Act applies in relation to the term)”.

Misrepresentation Act (Northern Ireland) 1967 (c. 14 (NI))

- 2 In section 3 of the Misrepresentation Act (Northern Ireland) 1967 (c. 14 (NI)) (avoidance of provision excluding liability for misrepresentation), make the same substitution.

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

- 3 The Supply of Goods (Implied Terms) Act 1973 (c. 13) is amended as follows.

- 4 In section 10 (implied undertakings as to quality or fitness) –
- (a) in subsections (2D) and (2F), for the words from “the person” to “consumer contract”, substitute “the agreement is a consumer contract under which the goods are bailed or hired to the consumer”, and
 - (b) omit subsection (8).

- 5 In section 11A (the title to which becomes “Modification of remedies for breach of statutory condition where bailee not consumer”) –

- (a) in subsection (1), for “the person to whom the goods are bailed does not deal as consumer” substitute “the agreement is not a consumer contract under which the goods are bailed to the consumer”,
- (b) for subsection (3)(b) substitute –
 - “(b) that the agreement was not a consumer contract under which the goods were bailed to the consumer.”,
 - and
- (c) omit subsection (4).

- 6 In section 12A (remedies for breach of hire-purchase agreements in Scotland) –

- (a) in subsection (2), after “consumer contract” insert “under which the goods are hired to the consumer”, and
- (b) for subsection (3) substitute –
 - “(3) For the purposes of subsection (2), if the creditor wishes to rely on a hire-purchase contract not being a consumer contract under which goods are hired to the consumer, it is for the creditor to prove that it is not.”.

- 7 In section 14(1) (special provision about conditional sale agreements), for the words from “where” to the end substitute “which is a consumer contract under which the buyer is the consumer.”.

- 8 In section 15(1) (interpretation) –

- (a) for the definition of “business” substitute –
 - “ “business” includes a profession and the activities of a public authority (within the meaning of the Human Rights Act 1998 (c. 42))”, and
- (b) at the appropriate place insert –
 - “ “consumer contract”, and “the consumer” in relation to a consumer contract, have the same meaning as in section 26 of the Unfair Contract Terms Act 2005;”.

Sale of Goods Act 1979 (c. 54)

- 9 The Sale of Goods Act 1979 (c. 54) is amended as follows.
- 10 In section 14 (implied terms about quality or fitness), in subsections (2D) and (2F), for the words from “the buyer” to “consumer contract” substitute “the contract is a consumer contract under which the buyer is the consumer”.
- 11 In section 15A (the title to which becomes “Modifications of remedies for breach of condition where buyer not consumer”), for “the buyer does not deal as consumer” substitute “the contract is not a consumer contract under which the buyer is the consumer”.
- 12 In section 15B (remedies for breach of contract in Scotland), in subsection (2), after “consumer contract” insert “under which the buyer is the consumer”.
- 13 In section 20 (passing of risk), in subsection (4), for the words from “In a case” to “is a consumer” substitute “Where there is a consumer contract under which the buyer is the consumer”.
- 14 In section 30 (delivery of wrong quantity), in subsection (2A), for “A buyer who does not deal as consumer” substitute “Where the contract is not a consumer contract under which the buyer is the consumer, the buyer”.
- 15 In section 32 (delivery to carrier), in subsection (4), for the words from “In a case” to “is a consumer,” substitute “Where there is a consumer contract under which the buyer is the consumer,”.
- 16 In section 35 (acceptance), in subsection (3), for the words from “the buyer deals” to “consumer contract” substitute “there is a consumer contract under which the buyer is the consumer”.
- 17 In section 48A (additional rights of buyer in consumer cases), for subsection (1)(a) substitute –
 - “(a) there is a consumer contract under which the buyer is the consumer;”.
- 18 In section 55(1) (exclusion by parties of implied contractual terms), for “the Unfair Contract Terms Act 1977” substitute “the Unfair Contract Terms Act 2005”.
- 19 In section 61 (interpretation) –
 - (a) in subsection (1), for the definition of “consumer contract” substitute –
 - “ “consumer contract” and, in relation to a consumer contract, “the consumer” have the same meaning as in section 26 of the Unfair Contract Terms Act 2005”, and

(b) for subsection (5A) substitute –

“(5A) For the purposes of this Act, if the seller wishes to rely on a contract for the sale of goods not being a consumer contract under which the buyer is the consumer, it is for the seller to prove that it is not.”.

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

- 20 The Supply of Goods and Services Act 1982 (c. 29) is amended as follows.
- 21 In section 4 (implied terms about quality or fitness in contract for transfer of goods), in subsections (2B) and (2D), for “the transferee deals as consumer” substitute “the contract is a consumer contract under which the transferee is the consumer”.
- 22 In section 5A (the title to which becomes “Modification of remedies for breach of statutory condition where transferee not consumer”), in subsection (1), for “the transferee does not deal as consumer” substitute “the contract is not a consumer contract under which the transferee is the consumer”.
- 23 In section 9 (implied terms about quality or fitness), in subsections (2B) and (2D), for “the bailee deals as consumer” substitute “the contract is a consumer contract under which the bailee is the consumer”.
- 24 In section 10A (the title to which becomes “Modification of remedies for breach of statutory condition where bailee not consumer”), in subsection (1), for “the bailee does not deal as consumer” substitute “the contract is not a consumer contract under which the bailee is the consumer”.
- 25 In section 11(1) (exclusion of implied terms, etc.), for “the 1977 Act” substitute “the 2005 Act”.
- 26 In section 11D (implied terms about quality or fitness in contract for transfer of goods in Scotland), in subsections (3A) and (3C), after “consumer contract” insert “and the transferee is the consumer”.
- 27 In section 11F (remedies for breach of contract in Scotland), omit subsection (3).
- 28 In section 11J (implied terms about quality or fitness in contract for hire of goods in Scotland), in subsections (3A) and (3C), after “consumer contract” insert “and the person to whom the goods are hired is the consumer”.
- 29 In section 11L(1) (exclusion of implied terms, etc. in Scotland), for “the 1977 Act” substitute “the 2005 Act”.
- 30 In section 11M (additional rights of transferee in consumer cases), for subsection (1)(a) substitute –
- “(a) there is a consumer contract under which the transferee is the consumer,”.
- 31 In section 16(1) (exclusion of implied terms, etc.), for “the 1977 Act” substitute “the 2005 Act”.
- 32 In section 18 (general interpretation) –

- (a) in subsection (1), at the appropriate place insert—
 - ““consumer contract” and, in relation to a consumer contract, “the consumer” have the same meaning as in section 26 of the 2005 Act;”, and
- (b) for subsection (4) substitute—
 - “(4) For those purposes, if the transferor wishes to rely on a contract for the transfer of goods not being a consumer contract under which the transferee is the consumer, it is for the transferor to prove that it is not.
 - (5) Subsection (4) also applies in relation to a contract for the hire of goods; and for that purpose—
 - (a) “transferor” includes the bailor or supplier, and
 - (b) “transferee” includes the bailee or person to whom the goods are hired.

- 33 In section 19 (interpretation: references to Acts)—
- (a) omit the definition of “the 1977 Act” and the word “and” immediately following it, and
 - (b) at the end, insert “; and
“the 2005 Act” means the Unfair Contract Terms Act 2005”.

Merchant Shipping Act 1995 (c. 21)

- 34 In section 184 of the Merchant Shipping Act 1995 (c. 21) (Orders in Council relating to carriage within the British Islands), omit subsection (2).

Arbitration Act 1996 (c. 23)

- 35 The Arbitration Act 1996 (c. 23) is amended as follows.
- 36 In section 89 (the cross-heading immediately above which becomes “Consumer and small business arbitration agreements” and the title to which becomes “Application of the Unfair Contract Terms Act 2005”)—
- (a) for subsections (1) and (2) substitute—
 - “(1) Sections 90 and 91 extend the application of sections 4 and 11 of the 2005 Act (detrimental terms in consumer and small business contracts) in relation to a term which constitutes an arbitration agreement.
 - (2) For that purpose—
 - “the 2005 Act” means the Unfair Contract Terms Act 2005, and
 - “arbitration agreement” means an agreement to submit to arbitration present or future disputes or differences (whether or not contractual).”, and
 - (b) in subsection (3), for “Those sections” substitute “Sections 90 and 91”.

- 37 For section 90 substitute—

“90 Application where consumer is a legal person

Section 4 of the 2005 Act applies where the consumer is a legal person as it applies where the consumer is a natural person.”.

- 38 In section 91(1) (arbitration agreement unfair where modest amount sought) for “the Regulations” substitute “sections 4 and 11 of the 2005 Act”.

Late Payment of Commercial Debts (Interest) Act 1998 (c. 20)

- 39 In section 14 of the Late Payment of Commercial Debts (Interest) Act 1998 (c. 20) (postponement of date for payment of contract price) in subsection (2), for “Sections 3(2)(b) and 17(1)(b) of the Unfair Contract Terms Act 1977” substitute “Section 9 of the Unfair Contract Terms Act 2005”.

Contracts (Rights of Third Parties) Act 1999 (c. 31)

- 40 In section 7(2) of the Contracts (Rights of Third Parties) Act 1999 (c. 31) (disapplication of restriction on exclusion of liability for negligence) for “Section 2(2) of the Unfair Contract Terms Act 1977” substitute “Section 1(2) of the Unfair Contract Terms Act 2005”.

SCHEDULE 6

Section 34(2)

REPEALS AND REVOCATIONS

PART 1

REPEALS

<i>Reference</i>	<i>Extent of repeal</i>
Supply of Goods (Implied Terms) Act 1973 (c. 13)	Section 10(8). Section 11A(4).
Unfair Contract Terms Act 1977 (c. 50)	The whole Act.
Sale of Goods Act 1979 (c. 54)	In Schedule 2, paragraphs 19 to 22.
Supply of Goods and Services Act 1982 (c. 29)	Section 11B(6). Section 11D(10). Section 11F(3). Section 11J(10). Section 11M(5). Section 17(2) and (3). In section 19, the definition of “the 1977 Act” and the word “and” immediately following it.
Occupiers’ Liability Act 1984 (c. 3)	Section 2.
Copyright, Designs and Patents Act 1988 (c. 48)	In Schedule 7, paragraph 24.
Contracts (Applicable Law) Act 1990 (c. 36)	In Schedule 4, paragraph 4.
Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40)	Section 68.
Trade Marks Act 1994 (c. 26)	In Schedule 4, in paragraph 1(2), the reference to the Unfair Contract Terms Act 1977.
Sale and Supply of Goods Act 1994 (c. 35)	In Schedule 2, paragraph 5(9)(a)(i) and (c).
Merchant Shipping Act 1995 (c. 21)	Section 184(2).

PART 2

REVOCATIONS

<i>Reference</i>	<i>Extent of revocation</i>
Occupiers' Liability (Northern Ireland) Order 1987 (SI 1987/1280 (NI 15))	Article 4.
Unfair Terms in Consumer Contracts Regulations 1999 (SI 1999/2083)	The whole Regulations.
Unfair Terms in Consumer Contracts (Amendment) Regulations 2001 (SI 2001/1186)	The whole Regulations.
Financial Services and Markets Act 2000 (Consequential Amendments and Repeals) Order 2001 (SI 2001/3649)	Article 583.
Sale and Supply of Goods to Consumers Regulations 2002 (SI 2002/3045)	Regulation 14.
Enterprise Act 2002 (Part 9 Restrictions on Disclosure of Information (Amendment and Specification) Order 2003 (SI 2003/1400)	In Schedule 4, the reference to the Unfair Terms in Consumer Contracts Regulations 1999.
Enterprise Act 2002 (Part 8 Domestic Infringements) Order 2003 (SI 2003/1593)	In the Schedule, the reference to the Unfair Contract Terms Act 1977.
Communications Act 2003 (Consequential Amendments No 2) Order 2003 (SI 2003/3182)	Article 2.