

## SCHEDULES

### SCHEDULE 3

Section 70

#### ENFORCEMENT OF THE LAW ON UNFAIR CONTRACT TERMS AND NOTICES

##### *Application of Schedule*

- 1 This Schedule applies to—
- (a) a term of a consumer contract,
  - (b) a term proposed for use in a consumer contract,
  - (c) a term which a third party recommends for use in a consumer contract, or
  - (d) a consumer notice.

##### *Consideration of complaints*

- 2
- (1) A regulator may consider a complaint about a term or notice to which this Schedule applies (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 or interdict*

- 3
- (1) A regulator may apply for an injunction or (in Scotland) an interdict 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 this Schedule applies, and
    - (b) the term or notice falls within any one or more of sub-paragraphs (2), (3) or (5).
  - (2) A term or notice falls within this sub-paragraph if it purports to exclude or restrict liability of the kind mentioned in—
    - (a) section 31 (exclusion of liability: goods contracts),
    - (b) section 47 (exclusion of liability: digital content contracts),
    - (c) section 57 (exclusion of liability: services contracts), or
    - (d) section 65(1) (business liability for death or personal injury resulting from negligence).
  - (3) A term or notice falls within this sub-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 62(4) and (5) (assessment of fairness) as if it were a term of a contract.

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- (5) A term or notice falls within this sub-paragraph if it breaches section 68 (requirement for transparency).
- (6) A regulator may apply for an injunction or interdict under this paragraph in relation to a term or notice whether or not it has received a relevant complaint about the term or notice.

#### *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 for an injunction under paragraph 3, the court may grant an injunction on such conditions, and against such of the respondents, as it thinks appropriate.
- (2) On an application for an interdict under paragraph 3, the court may grant an interdict on such conditions, and against such of the defenders, as it thinks appropriate.
- (3) The injunction or interdict 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.
- (4) 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.
- (5) 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 or interdict 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 or interdict 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 or interdict under paragraph 3,
  - (b) any injunction or interdict 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, interdict 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 or interdict under this Schedule, the CMA must give the person making the request a copy of the injunction or interdict.
- (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 or interdict under this Schedule are to an injunction or interdict 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 Utility Regulation, or
  - (k) the Consumers’ Association.
- (2) The Secretary of State may by order made by statutory instrument amend subparagraph (1) so as to add, modify or remove an entry.

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- (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) may contain transitional or transitory provision or savings.
- (7) No order may be made under sub-paragraph (2) unless a draft of the statutory instrument containing it has been laid before, and approved by a resolution of, each House of Parliament.
- (8) 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 an interim injunction;
  - “interdict” includes an interim interdict.

#### *The Financial Conduct Authority*

- 10           The functions of the Financial Conduct Authority under this Schedule are to be treated as functions of the Authority under the Financial Services and Markets Act 2000.