



# Consumer Rights Act 2015

## 2015 CHAPTER 15

### PART 2

#### UNFAIR TERMS

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

#### **63 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 Part 2 of that Schedule; but a term listed in Part 2 of that Schedule may nevertheless be assessed for fairness under section 62 unless section 64 or 73 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) An order under subsection (3) may contain transitional or transitory provision or savings.
- (5) 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.
- (6) 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.
- (7) In subsection (6)—  
“the Distance Marketing Directive” means Directive [2002/65/EC](#) of the European Parliament and of the Council of 23 September 2002 concerning

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*Status: This is the original version (as it was originally enacted).*

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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.