

消費者法規翻譯叢書之二十三

外國消費者保護法

(第二十三輯)

行政院消費者保護處 編印
中華民國 106 年 11 月

序言

美國總統甘乃迪於 1962 年揭示消費者享有一講求安全、知道真相、選擇及表達意見四大權利；1963 年國際消費者組織聯盟（IOCU）再加入基本需求、請求賠償、消費教育及健康環境四大權利，宣示消費者應享有八大權利，並負五大義務—認知、行動、關懷、環保、團結義務；聯合國繼於 1985 年通過「保護消費者指導方針」。從以上之宣示，消費者保護事務已成為世界各國政府的共通關注之議題。

我國為更有效保護消費者權益，並順應世界潮流，於歷經個別立法保護時期及消費者保護方案時期後，終於民國(下同)83 年 1 月 11 日經總統公布施行消費者保護法，使我國正式進入消費者保護法時期，為我國消費者保護法制展開新紀元，嗣後並於 92 年、94 年、104 年修訂部分條文。

值此保障消費者之思想已蔚為世界潮流之際，為健全並周延我國有關消費者保護法制及充實消費者保護之新知，原行政院消費者保護委員會於 84 年起，即著手編印外國消費者保護法規選輯，自 84 年 6 月出版外國消費者保護法第 1 輯，而行政院消保處自 101 年 1 月 1 日改制後，仍承繼原行政院消費者保護委員會編印出版之初衷，賡續編印出版，截至 104 年止，共計出版 22 輯。選輯內容，則包括派員出國考察或開會時所蒐集，及經由國外政府機關、國際組織網站下載之消費者保護相關法規，並將之譯介，彙編成書，以供作該會及各界瞭解各國消費者保護相關法規及比較研究之參考。

本書為本處譯介外國消費者保護法第 23 輯，內容包括美國訪問買賣猶豫期施行細則、德國民法中之消費者保護相關規定、歐盟消費者線上紛爭解決機制規則令及英國 2015 年消費者權利法，本書採用中文翻譯及外文(英文、德文)左右對照方式印刷，俾供讀者閱讀之便利。

本選輯中譯文部分，前二篇，係由臺北大學法律系副教授游進發負責翻譯，後二篇，係由資策會科技法律研究所科技應用法制中心副主任兼應研組及業創組組長郭戎晉負責翻譯；謹此敘明，並表謝忱。

行政院消費者保護處 謹識

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法源：聯邦貿易委員會法第 1-23 條，編列於美國法典第 15 編第 41-58

§ 429.0 定義。

本部分適用定義如下

- a) 訪問買賣：凡消費性商品或服務之買賣租賃，由出賣人或其代表人親為面訪，而買受人承諾或為要約者，處於出賣人營業處所以外之其他場所（例於買受人之住居所，或其他臨時或短期租賃場地，如旅館或汽車旅館房間、會展中心、市集、餐廳，或買受人之工作地點或寄宿處交誼空間），且其於買受人住居所進行，而價金逾 25 美元者，或非於買受人住居所進行，而價金逾 130 美元者，不問當事人間所訂定者，為單一或多重契約，皆為訪問買賣。出賣人之親訪，雖出於買受人之請求者，亦屬之。以下交易型態，非訪問買賣：

Title 16: Commercial Practices

PART 429—RULE CONCERNING COOLING-OFF PERIOD FOR SALES MADE AT HOMES OR AT CERTAIN OTHER LOCATIONS

Contents

§429.0 Definitions.

§429.1 The Rule.

§429.2 Effect on State laws and municipal ordinances.

§429.3 Exemptions.

Authority: Sections 1-23, FTC Act, 15 U.S.C. 41-58.

§ 429.0 Definitions.

For the purposes of this part the following definitions shall apply:

- (a) *Door-to-Door Sale*—A sale, lease, or rental of consumer goods or services in which the seller or his representative personally solicits the sale, including those in response to or following an invitation by the buyer, and the buyer's agreement or offer to purchase is made at a place other than the place of business of the seller (*e.g.*, sales at the buyer's residence or at facilities rented on a temporary or short-term basis, such as hotel or motel rooms, convention centers, fairgrounds and restaurants, or sales at the buyer's workplace or in dormitory lounges), and which has a purchase price of \$25 or more if the sale is made at the buyer's residence or a purchase price of \$130 or more if the sale is made at locations other than the buyer's residence, whether under single or multiple contracts. The term *door-to-door sale* does not include a transaction:

- 1) 買受人親訪常設於定點，且以商品展售或服務銷售為常態之零售據點，而為磋商，嗣後據以成立之交易；
- 2) 消費者依消費者信用保護法（美國法典第 15 編第 1635 條）或相關施行細則，而有契約解除權之交易；
- 3) 善意買受人為應急所需之商品或服務，主動連絡出賣人，提供簽名且註明日期之手書聲明，說明事態緊急，並表明放棄於三個營業日內行使解除權之交易；
- 4) 全程僅以郵件或電話往返，且買受人與出賣人或其代表人，於商品運送或服務實施前，未再有任何連絡之交易；
- 5) 買受人為維修其財產，主動連絡並要求出賣人親訪其住居所之交易。但若出賣人於到訪期間，另行售出其他服務、或非屬維修必要置換零件之其他商品，仍屬訪問買賣；
- 6) 關於不動產租售、保單販售，或於證券交易委員會註冊之經紀自營商，就有價證券或商品期貨所為之銷售。

- (1) Made pursuant to prior negotiations in the course of a visit by the buyer to a retail business establishment having a fixed permanent location where the goods are exhibited or the services are offered for sale on a continuing basis; or
- (2) In which the consumer is accorded the right of rescission by the provisions of the Consumer Credit Protection Act (15 U.S.C. 1635) or regulations issued pursuant thereto; or
- (3) In which the buyer has initiated the contact and the goods or services are needed to meet a bona fide immediate personal emergency of the buyer, and the buyer furnishes the seller with a separate dated and signed personal statement in the buyer's handwriting describing the situation requiring immediate remedy and expressly acknowledging and waiving the right to cancel the sale within 3 business days; or
- (4) Conducted and consummated entirely by mail or telephone; and without any other contact between the buyer and the seller or its representative prior to delivery of the goods or performance of the services; or
- (5) In which the buyer has initiated the contact and specifically requested the seller to visit the buyer's home for the purpose of repairing or performing maintenance upon the buyer's personal property. If, in the course of such a visit, the seller sells the buyer the right to receive additional services or goods other than replacement parts necessarily used in performing the maintenance or in making the repairs, the sale of those additional goods or services would not fall within this exclusion; or
- (6) Pertaining to the sale or rental of real property, to the sale of insurance, or to the sale of securities or commodities by a broker-dealer registered with the Securities and Exchange Commission.

- b) 消費性商品或服務：凡為個人、家庭、或家用目的，而購買或租賃之商品或服務，皆屬之。其為教學或訓練課程者，不問目的為何，亦屬之。
- c) 出賣人：凡從事消費性商品或服務之訪問買賣者，不問其為自然人、合夥、公司或社團，皆為出賣人。
- d) 營業處所：指出賣人之主要事務所、常設分支或其駐在地址。
- e) 買賣價金：指為取得商品或服務所應支付，包括利息與服務費在內之全部金額。
- f) 營業日：指星期日及聯邦假日以外之日曆日。所謂聯邦假日，例如新年、總統日、馬丁路德金恩紀念日、陣亡將士紀念日、獨立紀念日、勞工節、哥倫布日、退伍軍人節、感恩節與聖誕節。

【1995年10月20日發布，載於聯邦公報第60卷第54186頁；2015年1月9日修正，載於聯邦公報第80卷第1332頁。】

§ 429.1 施行細則。

出賣人進行訪問買賣者，以有下列情形者為限，為不公平或詐欺行為：

- a) 出賣人於交易完成時，未提供買受人詳列明細之收據或書面契約，或雖提供，卻未以口頭推銷時主要使用之語言撰寫（例如西班牙文）、未註明交易日期或出賣人姓名地址；又或於應由買受人簽名之契約留白處周圍，或於以代契約之收據首頁，未以10點以上粗體字型聲明下文要旨：

- (b) *Consumer Goods or Services*—Goods or services purchased, leased, or rented primarily for personal, family, or household purposes, including courses of instruction or training regardless of the purpose for which they are taken.
- (c) *Seller*—Any person, partnership, corporation, or association engaged in the door-to-door sale of consumer goods or services.
- (d) *Place of Business*—The main or permanent branch office or local address of a seller.
- (e) *Purchase Price*—The total price paid or to be paid for the consumer goods or services, including all interest and service charges.
- (f) *Business Day*—Any calendar day except Sunday or any federal holiday (e.g., New Year's Day, Presidents' Day, Martin Luther King's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, and Christmas Day.)

[60 FR 54186, Oct. 20, 1995, as amended at 80 FR 1332, Jan. 9, 2015]

§ 429.1 The Rule.

In connection with any door-to-door sale, it constitutes an unfair and deceptive act or practice for any seller to:

- (a) Fail to furnish the buyer with a fully completed receipt or copy of any contract pertaining to such sale at the time of its execution, which is in the same language, e.g., Spanish, as that principally used in the oral sales presentation and which shows the date of the transaction and contains the name and address of the seller, and in immediate proximity to the space reserved in the contract for the signature of the buyer or on the front page of the receipt if a contract is not used and in bold face type of a minimum size of 10 points, a statement in substantially the following form:

「買受人得於此交易日期後第三個營業日午夜以前，解除交易。相關說明詳如附件之解約通知書。」

出賣人提供之解約通知書，得依本條 b 段所規定之範本全文照錄，但仍應使買受人於解除交易時，得保留完整之書面契約或收據。通知書非附於契約或收據者，出賣人應修改前述聲明之最末一句，以符合其實體所在位置。

- b) 出賣人於買受人訂定訪問買賣契約，或以其他方式同意購買時，未提供一式兩份標題註明為「行使解除權應注意事項」或「解約通知書」，而內文以 10 點粗體字型印刷，以契約所使用之同一語言（例如西班牙文）撰寫者，應記載事項如下：

解約通知書

【填寫交易日期】

（日期）

自上列日期起三個營業日內，您可以解除這筆交易，而毋須負擔違約金或任何義務。

若您解除交易，則您用以交易之財產、依契約或交易支付之款項，或由您簽發之票據，將在 10 個交易日內全數返還於您，並由出賣人為您的解約通知，開立收件證明。因交易而生有價證券孳息者，歸於消滅。

“You, the buyer, may cancel this transaction at any time prior to midnight of the third business day after the date of this transaction. See the attached notice of cancellation form for an explanation of this right.”

The seller may select the method of providing the buyer with the duplicate notice of cancellation form set forth in paragraph (b) of this section, provided however, that in the event of cancellation the buyer must be able to retain a complete copy of the contract or receipt. Furthermore, if both forms are not attached to the contract or receipt, the seller is required to alter the last sentence in the statement above to conform to the actual location of the forms.

- (b) Fail to furnish each buyer, at the time the buyer signs the door-to-door sales contract or otherwise agrees to buy consumer goods or services from the seller, a completed form in duplicate, captioned either “NOTICE OF RIGHT TO CANCEL” or “NOTICE OF CANCELLATION,” which shall (where applicable) contain in ten point bold face type the following information and statements in the same language, e.g., Spanish, as that used in the contract.

Notice of Cancellation

[enter date of transaction]

(Date)

You may CANCEL this transaction, without any Penalty or Obligation, within THREE BUSINESS DAYS from the above date.

If you cancel, any property traded in, any payments made by you under the contract or sale, and any negotiable instrument executed by you will be returned within TEN BUSINESS DAYS following receipt by the seller of your cancellation notice, and any security interest arising out of the transaction will be cancelled.

若您解除交易，應同意出賣人到宅取回依契約或交易運送之所有商品，並確保商品維持收件時狀態。您也可以依出賣人指示，以貨運退回，運費及風險由出賣人承擔。

若您確保出賣人得取回商品，但於發出解約通知後 20 日內，仍未為取回，您可以保留或拋棄該商品，而毋須負擔任何義務。若您未能確保出賣人得取回商品，或您同意退貨嗣後反悔，則您仍應履行契約所載一切義務。

若您要解除這筆交易，請在這份解約通知書或其他書面通知簽名，且註明日期後投郵，發送電報，亦可。收信人為【出賣人姓名】，收信地址為【出賣人營業處所地址】，但不得晚於【年月日】午夜以前。

本人謹此聲明，解除是項交易。

（日期）

（買受人簽名）

- c) 出賣人將一式兩份之解約通知書，提出於買受人之時，未預為填寫出賣人姓名、營業處所地址、交易日期，以及不得早於交易日期後第三個營業日之期日者，即買受人得發出解約通知之期限。

- d) 出賣人利用訪問買賣之契約或收據內文，使買受人預為認諾其債務，或預為拋棄本節所規定，包括解除權在內等各項權利。

If you cancel, you must make available to the seller at your residence, in substantially as good condition as when received, any goods delivered to you under this contract or sale, or you may, if you wish, comply with the instructions of the seller regarding the return shipment of the goods at the seller's expense and risk.

If you do make the goods available to the seller and the seller does not pick them up within 20 days of the date of your Notice of Cancellation, you may retain or dispose of the goods without any further obligation. If you fail to make the goods available to the seller, or if you agree to return the goods to the seller and fail to do so, then you remain liable for performance of all obligations under the contract.

To cancel this transaction, mail or deliver a signed and dated copy of this Cancellation Notice or any other written notice, or send a telegram, to [*Name of seller*], at [*address of seller's place of business*] NOT LATER THAN MIDNIGHT OF [*date*].

I HEREBY CANCEL THIS TRANSACTION.

(Date)

(Buyer's signature)

- (c) Fail, before furnishing copies of the “Notice of Cancellation” to the buyer, to complete both copies by entering the name of the seller, the address of the seller's place of business, the date of the transaction, and the date, not earlier than the third business day following the date of the transaction, by which the buyer may give notice of cancellation.
- (d) Include in any door-to-door contract or receipt any confession of judgment or any waiver of any of the rights to which the buyer is entitled under this section including specifically the buyer's right to cancel the sale in accordance with the provisions of this section.

- e) 出賣人未於買受人簽定契約或購買商品或服務時，口頭告知其享有解除權。
- f) 出賣人以任何方式，使買受人誤解其解除權。
- g) 出賣人未為或拒為接受有效之解約通知，且於收件後 10 個交易日內，未：
 - i) 返還依契約或交易所支付之全部款項；
 - ii) 返還用以交易之全部商品或財產，並維持收件時狀態；
 - iii) 取消並返還買受人為契約或交易所簽發之票據，並採取必要或適切措施，以中止有價證券因交易所生之孳息。
- h) 出賣人於契約簽定或商品或服務售出之日後第 5 個交易日午夜前，將買受人開立之票券或債權證明讓與融資機構或第三人。
- i) 出賣人於收到解約通知後 10 個交易日內，未告知買受人，其於已交付運送之商品意欲另為處置、或為拋棄。

【1972 年 10 月 26 日發布，載於聯邦公報第 39 卷第 22934 頁，1973 年 11 月 1 日修正，載於聯邦公報第 38 卷第 30105 頁；1973 年 11 月 19 日發布，載於聯邦公報第 38 卷第 31828 頁；1988 年 11 月 10 日發布，載於聯邦公報第 53 卷第 45459 頁；1995 年 10 月 20 日發布，載於聯邦公報第 60 卷第 54186 頁】

§ 429.2 於各州法律及地方自治條例之效力。

- a) 聯邦貿易委員會可以理解，各州法規就訪問買賣買受人之解除權規範各異、時有扞格，實為出賣人之重荷。但此尚不足援以為拒絕各州法律與地方自治法規之根據。相關立法紀錄顯示，

- (e) Fail to inform each buyer orally, at the time the buyer signs the contract or purchases the goods or services, of the buyer's right to cancel.
- (f) Misrepresent in any manner the buyer's right to cancel.
- (g) Fail or refuse to honor any valid notice of cancellation by a buyer and within 10 business days after the receipt of such notice, to:
 - (i) Refund all payments made under the contract or sale;
 - (ii) return any goods or property traded in, in substantially as good condition as when received by the seller;
 - (iii) cancel and return any negotiable instrument executed by the buyer in connection with the contract or sale and take any action necessary or appropriate to terminate promptly any security interest created in the transaction.
- (h) Negotiate, transfer, sell, or assign any note or other evidence of indebtedness to a finance company or other third party prior to midnight of the fifth business day following the day the contract was signed or the goods or services were purchased.
- (i) Fail, within 10 business days of receipt of the buyer's notice of cancellation, to notify the buyer whether the seller intends to repossess or to abandon any shipped or delivered goods.

[37 FR 22934, Oct. 26, 1972, as amended at 38 FR 30105, Nov. 1, 1973; 38 FR 31828, Nov. 19, 1973; 53 FR 45459, Nov. 10, 1988; 60 FR 54186, Oct. 20, 1995]

§ 429.2 Effect on State laws and municipal ordinances.

- (a) The Commission is cognizant of the significant burden imposed upon door-to-door sellers by the various and often inconsistent State laws that provide the buyer the right to cancel a door-to-door sales transaction. However, it does not believe that this

貿易委員會與各州政府及地方官員，應通力合作，確保出賣人經由訪問買賣，買入不想要、不需要，甚至無力負擔之商品或服務時，消費者得握有片面解約，而不負義務之權利。

- b) 出賣人不得援引本部分規定，以規避各州法律與地方自治法規有關訪問買賣之義務。但各該法規直接違反本部分規定者，不在此限。例如於訪問買賣之價金相當或高於本部分規定者，竟不許買受人有解約權；或使出賣人得於買受人行使解約權之際，收取任何費用或違約金；未要求出賣人依本部分所設定之程式，提供買受人有關交易解除權之說明；以上情形，均視為直接違反本部分規定。

【1995年10月20日發布，載於聯邦公報第60卷第54187頁。】

§ 429.3 免責事由。

- a) 本部分規定，於於汽車、廂型車與卡車之出賣人，或有常設營業處所，而於拍賣會、帳篷特賣會，或其他臨時營業場地銷售機動車輛之出賣人，不適用之。
- b) 本部分規定，於市集或其他相類場所出售藝品或手工藝品之出賣人，不適用之。

【1995年10月20日發布，載於聯邦公報第60卷第54187頁。】

constitutes sufficient justification for preempting all of the provisions of such laws and the ordinances of the political subdivisions of the various States. The rulemaking record in this proceeding supports the view that the joint and coordinated efforts of both the Commission and State and local officials are required to insure that consumers who have purchased from a door-to-door seller something they do not want, do not need, or cannot afford, be accorded a unilateral right to rescind, without penalty, their agreements to purchase those goods or services.

- (b) This part will not be construed to annul, or exempt any seller from complying with, the laws of any State or the ordinances of a political subdivision thereof that regulate door-to-door sales, except to the extent that such laws or ordinances, if they permit door-to-door selling, are directly inconsistent with the provisions of this part. Such laws or ordinances which do not accord the buyer, with respect to the particular transaction, a right to cancel a door-to-door sale that is substantially the same or greater than that provided in this part, which permit the imposition of any fee or penalty on the buyer for the exercise of such right, or which do not provide for giving the buyer a notice of the right to cancel the transaction in substantially the same form and manner provided for in this part, are among those which will be considered directly inconsistent.

[60 FR 54187, Oct. 20, 1995]

§ 429.3 Exemptions.

- (a) The requirements of this part do not apply for sellers of automobiles, vans, trucks or other motor vehicles sold at auctions, tent sales or other temporary places of business, provided that the seller is a seller of vehicles with a permanent place of business.
- (b) The requirements of this part do not apply for sellers of arts or crafts sold at fairs or similar places.

[60 FR 54187, Oct. 20, 1995]

德國民法中之消費者保護相關規定(摘錄)

制定日期：西元 1896 年 8 月 18 日。

完整引用：西元 2002 年 1 月 2 日公告內容，2015 年 4 月 21 日，經租賃權修正法第 1 條修正之德國民法典（德國聯邦法律公報，第 1 部份，第 42 頁、第 2909；2003 年，第 1 部份，第 738 頁）。

本法意旨在轉化以下指令：

1. 歐體 76/207 關於實現就業、職業教育、職業升遷與勞動條件之兩性平等原則指令；
2. 歐體 77/187 關於會員國企業、廠場或廠場一部轉讓時保護勞工請求權之法律規定同化指令；
3. 歐洲經濟共同體 85/577 關於交易場所外訂定契約情形之消費者保護指令；
4. 歐洲經濟共同體 87/102 關於會員國消費者信用法律規定與行政命令同化指令；

Bürgerliches Gesetzbuch (BGB)

Ausfertigungsdatum: 18.08.1896

Vollzitat: "Bürgerliches Gesetzbuch in der Fassung der Bekanntmachung vom 2. Januar 2002 (BGBl. I S. 42, 2909; 2003 I S. 738), das zuletzt durch Artikel 1 des Gesetzes vom 21. April 2015 (BGBl. I S. 610) geändert worden ist"

Stand: Neugefasst durch Bek. v. 2.1.2002 I 42, 2909; 2003, 738;
zuletzt geändert durch Art. 1 G v. 21.4.2015 I 610

Dieses Gesetz dient der Umsetzung folgender Richtlinien:

1. Richtlinie 76/207/EWG des Rates vom 9. Februar 1976 zur Verwirklichung des Grundsatzes der Gleichbehandlung von Männern und Frauen hinsichtlich des Zugangs zur Beschäftigung, zur Berufsbildung und zum beruflichen Aufstieg sowie in Bezug auf die Arbeitsbedingungen (ABl. EG Nr. L 39 S. 40),
2. Richtlinie 77/187/EWG des Rates vom 14. Februar 1977 zur Angleichung der Rechtsvorschriften der Mitgliedstaaten über die Wahrung von Ansprüchen der Arbeitnehmer beim Übergang von Unternehmen, Betrieben oder Betriebstellen (ABl. EG Nr. L 61 S. 26),
3. Richtlinie 85/577/EWG des Rates vom 20. Dezember 1985 betreffend den Verbraucherschutz im Falle von außerhalb von Geschäftsräumen geschlossenen Verträgen (ABl. EG Nr. L 372 S. 31),
4. Richtlinie 87/102/EWG des Rates zur Angleichung der Rechts- und Verwaltungsvorschriften der Mitgliedstaaten über den Verbraucherkredit (ABl. EG Nr. L 42 S. 48), zuletzt geändert durch die Richtlinie 98/7/EG des Europäischen Parlaments und des Rates vom 16. Februar 1998 zur Änderung der Richtlinie 87/102/EWG zur Angleichung der Rechts- und Verwaltungsvorschriften der Mitgliedstaaten über den Verbraucherkredit (ABl. EG Nr. L 101 S. 17),

5. 歐洲經濟共同體 90/314 旅遊指令；
6. 歐洲經濟共同體 93/13 消費者契約中條款濫用指令；
7. 歐體 94/47/不動產分期使用權取得契約之取得人保護指令；
8. 歐體 97/5 跨國匯款指令；
9. 歐體 97/7/遠距銷售契約之消費者保護指令；
10. 歐體 98/26/結算效力指令第 3 條至第 5 條；
11. 歐體 1999/44 消費財買賣與消費財擔保指令；
12. 歐體 2000/31 電子商務交易指令第 10 條、第 11 條、第 18 條；
13. 歐體 2000/35 對抗支付遲延指令。

5. Richtlinie 90/314/EWG des Europäischen Parlaments und des Rates vom 13. Juni 1990 über Pauschalreisen (ABl. EG Nr. L 158 S. 59),
6. Richtlinie 93/13/EWG des Rates vom 5. April 1993 über missbräuchliche Klauseln in Verbraucherverträgen (ABl. EG Nr. L 95 S. 29),
7. Richtlinie 94/47/EG des Europäischen Parlaments und des Rates vom 26. Oktober 1994 zum Schutz der Erwerber im Hinblick auf bestimmte Aspekte von Verträgen über den Erwerb von Teilzeitnutzungsrechten an Immobilien (ABl. EG Nr. L 280 S. 82),
8. der Richtlinie 97/5/EG des Europäischen Parlaments und des Rates vom 27. Januar 1997 über grenzüberschreitende Überweisungen (ABl. EG Nr. L 43 S. 25),
9. Richtlinie 97/7/EG des Europäischen Parlaments und des Rates vom 20. Mai 1997 über den Verbraucherschutz bei Vertragsabschlüssen im Fernabsatz (ABl. EG Nr. L 144 S. 19),
10. Artikel 3 bis 5 der Richtlinie 98/26/EG des Europäischen Parlaments und des Rates über die Wirksamkeit von Abrechnungen in Zahlungs- und Wertpapierliefer- und -abrechnungssystemen vom 19. Mai 1998 (ABl. EG Nr. L 166 S. 45),
11. Richtlinie 1999/44/EG des Europäischen Parlaments und des Rates vom 25. Mai 1999 zu bestimmten Aspekten des Verbrauchsgüterkaufs und der Garantien für Verbrauchsgüter (ABl. EG Nr. L 171 S. 12),
12. Artikel 10, 11 und 18 der Richtlinie 2000/31/EG des Europäischen Parlaments und des Rates vom 8. Juni 2000 über bestimmte rechtliche Aspekte der Dienste der Informationsgesellschaft, insbesondere des elektronischen Geschäftsverkehrs, im Binnenmarkt ("Richtlinie über den elektronischen Geschäftsverkehr", ABl. EG Nr. L 178 S. 1),
13. Richtlinie 2000/35/EG des Europäischen Parlaments und des Rates vom 29. Juni 2000 zur Bekämpfung von Zahlungsverzug im Geschäftsverkehr (ABl. EG Nr. L 200 S. 35).

第 13 條

凡自然人，其作成法律行為，主要並非出於，可認為其營業或獨立職業活動之目的者，為消費者。

第 14 條第 1 項

自然人、法人或有權利能力之合夥，其於作成法律行為時，乃於實施營業或獨立職業之活動，為企業經營者。

第 288 條第 1 項與第 2 項

金錢債務，於遲延期間，應支付利息。遲延利息之週年利率，為基本利率上加百分之五。

未有消費者參與之法律行為，其對價債權之週年利率，為基本利率上加百分之九。

第 310 條第 3 項

本節之規定，併以下之規定，於企業經營者與消費者間之契約（消費者契約），適用之：

- 一、一般交易條款，視為由企業經營者提出。但其由消費者納入契約者，不在此限；
- 二、第305c條第2項、第306條與第307條至第309條規定，以及民法施行法第46b之規定，於預先擬定，僅為一次使用之目的而約定之契約條款，以消費者因預先擬定而對其影響力者為限，亦適用之；

§ 13 Verbraucher

Verbraucher ist jede natürliche Person, die ein Rechtsgeschäft zu Zwecken abschließt, die überwiegend weder ihrer gewerblichen noch ihrer selbständigen beruflichen Tätigkeit zugerechnet werden können.

§ 14 Unternehmer (1)

Unternehmer ist eine natürliche oder juristische Person oder eine rechtsfähige Personengesellschaft, die bei Abschluss eines Rechtsgeschäfts in Ausübung ihrer gewerblichen oder selbständigen beruflichen Tätigkeit handelt.

§ 288 Verzugszinsen und sonstiger Verzugsschaden (1)(2)

Eine Geldschuld ist während des Verzugs zu verzinsen. Der Verzugszinssatz beträgt für das Jahr fünf Prozentpunkte über dem Basiszinssatz.

Bei Rechtsgeschäften, an denen ein Verbraucher nicht beteiligt ist, beträgt der Zinssatz für Entgeltforderungen neun Prozentpunkte über dem Basiszinssatz.

§ 310 Anwendungsbereich (3)

Bei Verträgen zwischen einem Unternehmer und einem Verbraucher (Verbraucherverträge) finden die Vorschriften dieses Abschnitts mit folgenden Maßgaben Anwendung:

1. Allgemeine Geschäftsbedingungen gelten als vom Unternehmer gestellt, es sei denn, dass sie durch den Verbraucher in den Vertrag eingeführt wurden;
2. § 305c Abs. 2 und die §§ 306 und 307 bis 309 dieses Gesetzes sowie Artikel 46b des Einführungsgesetzes zum Bürgerlichen Gesetzbuche finden auf vorformulierte Vertragsbedingungen auch dann Anwendung, wenn diese nur zur einmaligen Verwendung bestimmt sind und soweit der Verbraucher auf Grund der Vorformulierung auf ihren Inhalt keinen Einfluss nehmen konnte;

- 三、依第 307 條第 1 項與第 2 項規定，認定不當之不利益時，亦應顧及訂定契約時所伴隨之情事。

第 312 條（適用範圍）

本章第一節¹與第二節²之規定，僅於第 310 條第 3 項所規定，以企業經營者之對價給付為內容之消費者契約，適用之。

本章第一節與第二節之規定中，僅第 312a 條第 1 項、第 3 項、第 4 項與第 6 項規定，於下列之契約，適用之：

一、經公證之契約

- a) 於交易場所外訂定之金融服務契約；
- b) 非金融服務之契約；於法律對其未規定契約公證或契約表示之契約，以公證人已告知，第 312d 條第 1 項所規定之資訊義務，以及第 312g 條第 1 項所規定之解除權已消滅者為限，亦適用之；

二、關於所有權或其它土地權利之發生、取得或移轉之契約；

三、關於建築物新造，或現存建築物重大更新之契約；

四、第 651a 條所規定之旅遊給付之契約，以其有下列之情形者為限：

- a) 以遠距之方式所訂定者；
- b) 於交易場所外所訂定，且契約之訂定，以消費者先前訂購所致之言詞磋商為基礎者。

五、人身運送契約；

¹ 德國民法第 312 條至第 312a 條。

² 德國民法第 312b 條至第 312h 條。

3. bei der Beurteilung der unangemessenen Benachteiligung nach § 307 Abs. 1 und 2 sind auch die den Vertragsschluss begleitenden Umstände zu berücksichtigen.

§ 312 Anwendungsbereich

Die Vorschriften der Kapitel 1 und 2 dieses Untertitels sind nur auf Verbraucherverträge im Sinne des § 310 Absatz 3 anzuwenden, die eine entgeltliche Leistung des Unternehmers zum Gegenstand haben.

Von den Vorschriften der Kapitel 1 und 2 dieses Untertitels ist nur § 312a Absatz 1, 3, 4 und 6 auf folgende Verträge anzuwenden:

1. notariell beurkundete Verträge
 - a) über Finanzdienstleistungen, die außerhalb von Geschäftsräumen geschlossen werden,
 - b) die keine Verträge über Finanzdienstleistungen sind; für Verträge, für die das Gesetz die notarielle Beurkundung des Vertrags oder einer Vertragserklärung nicht vorschreibt, gilt dies nur, wenn der Notar darüber belehrt, dass die Informationspflichten nach § 312d Absatz 1 und das Widerrufsrecht nach § 312g Absatz 1 entfallen,
2. Verträge über die Begründung, den Erwerb oder die Übertragung von Eigentum oder anderen Rechten an Grundstücken,
3. Verträge über den Bau von neuen Gebäuden oder erhebliche Umbaumaßnahmen an bestehenden Gebäuden,
4. Verträge über Reiseleistungen nach § 651a, wenn diese
 - a) im Fernabsatz geschlossen werden oder
 - b) außerhalb von Geschäftsräumen geschlossen werden, wenn die mündlichen Verhandlungen, auf denen der Vertragsschluss beruht, auf vorhergehende Bestellung des Verbrauchers geführt worden sind,
5. Verträge über die Beförderung von Personen,

- 六、第 481 條至第 481b 條所規定之分時居住權、長期渡假商品，以及居間與互易系統契約；
- 七、第 630a 條規定之醫療契約；
- 八、契約，其由企業經營者於經常且固定車程範圍內，於消費者住所、居所或工作場送交生活用品、飲料或其它日常需求之家事客體者；
- 九、使用商品自動販賣機器與自動化交易場所，而訂定之契約；
- 十、與電信通訊工具營運者，以公共投幣與卡式電話之方式，為其使用，而訂定之契約；
- 十一、為使用消費者所啟動，個別電話、網路或傳真連結之契約；
- 十二、於交易場所外所訂定，於磋商結束時，立即給付與支付，且消費者所支付之對價，不超過 40 歐元之契約；
- 十三、因強制執行命令，或其它法院命令之動產買賣契約。

本章第 1 節與第 2 節之規定中，僅以下之規定，於關於社會服務，例如照顧兒童，或支援需求長期或短期救助之家庭或他人，包括長期照料之契約，適用之；

- 一、於交易場所外所訂定契約之定義，以及第 312b 條與第 312c 條所規定遠距銷售契約之定義；
- 二、第 312a 條第 1 項關於接聽電話時揭示義務之規定；

6. Verträge über Teilzeit-Wohnrechte, langfristige Urlaubsprodukte, Vermittlungen und Tauschsysteme nach den §§ 481 bis 481b,
7. Behandlungsverträge nach § 630a,
8. Verträge über die Lieferung von Lebensmitteln, Getränken oder sonstigen Haushaltsgegenständen des täglichen Bedarfs, die am Wohnsitz, am Aufenthaltsort oder am Arbeitsplatz eines Verbrauchers von einem Unternehmer im Rahmen häufiger und regelmäßiger Fahrten geliefert werden,
9. Verträge, die unter Verwendung von Warenautomaten und automatisierten Geschäftsräumen geschlossen werden,
10. Verträge, die mit Betreibern von Telekommunikationsmitteln mit Hilfe öffentlicher Münz- und Kartentelefone zu deren Nutzung geschlossen werden,
11. Verträge zur Nutzung einer einzelnen von einem Verbraucher hergestellten Telefon-, Internet- oder Telefaxverbindung,
12. außerhalb von Geschäftsräumen geschlossene Verträge, bei denen die Leistung bei Abschluss der Verhandlungen sofort erbracht und bezahlt wird und das vom Verbraucher zu zahlende Entgelt 40 Euro nicht überschreitet, und
13. Verträge über den Verkauf beweglicher Sachen auf Grund von Zwangsvollstreckungsmaßnahmen oder anderen gerichtlichen Maßnahmen.

Auf Verträge über soziale Dienstleistungen, wie Kinderbetreuung oder Unterstützung von dauerhaft oder vorübergehend hilfsbedürftigen Familien oder Personen, einschließlich Langzeitpflege, sind von den Vorschriften der Kapitel 1 und 2 dieses Untertitels nur folgende anzuwenden:

1. die Definitionen der außerhalb von Geschäftsräumen geschlossenen Verträge und der Fernabsatzverträge nach den §§ 312b und 312c,
2. § 312a Absatz 1 über die Pflicht zur Offenlegung bei Telefonanrufen,

- 三、第 312a 條第 3 項，關於支付超出為主給付所約定對價，所為約定之效力之規定；
- 四、第 312a 條第 4 項，關於為使用支付方式，所為使用對價約定之效力之規定；
- 五、第 312a 條第 6 項規定；
- 六、第 312d 第 1 項、民法施行法第 246a 條之 1 第 2 項與第 3 項，關於解除權資訊義務之規定；
- 七、第 312g 條關於解除權之規定。

本章第 1 節與第 2 節之規定中，僅第 312 第 3 項第 1 款至第 7 款之規定，於關於出租居住空間之契約，適用之。但第 3 項第 1 款第 6 款第 7 款規定，於居住租賃關係之成立，以承租人已察訪居住處所者為限，不適用之。

本章第 1 節與第 2 節之規定，於關於銀行服務，以及提供信用、保險、個人老年照養、金錢投資或支付（金融服務）服務之契約關係，其以同種類之過程具有時間關聯之方式，及於首次之約定以及由此接續而來之事件或任務者，僅於該首次之約定，適用之。第 312a 條第 1 項、第 3 項、第 4 項與第 6 項之規定，於任何過程，均適用之。第 1 句所指事件，並非由該約定接續而來者，關於企業經營者資訊義務之規定，僅於首次之事件，適用之。但超過一年未發生同種類之事件者，第二則事件，視為第 3 句所規定新排序之首次事件。

3. § 312a Absatz 3 über die Wirksamkeit der Vereinbarung, die auf eine über das vereinbarte Entgelt für die Hauptleistung hinausgehende Zahlung gerichtet ist,
4. § 312a Absatz 4 über die Wirksamkeit der Vereinbarung eines Entgelts für die Nutzung von Zahlungsmitteln,
5. § 312a Absatz 6,
6. § 312d Absatz 1 in Verbindung mit Artikel 246a § 1 Absatz 2 und 3 des Einführungsgesetzes zum Bürgerlichen Gesetzbuche über die Pflicht zur Information über das Widerrufsrecht und
7. § 312g über das Widerrufsrecht.

Auf Verträge über die Vermietung von Wohnraum sind von den Vorschriften der Kapitel 1 und 2 dieses Untertitels nur die in Absatz 3 Nummer 1 bis 7 genannten Bestimmungen anzuwenden. Die in Absatz 3 Nummer 1, 6 und 7 genannten Bestimmungen sind jedoch nicht auf die Begründung eines Mietverhältnisses über Wohnraum anzuwenden, wenn der Mieter die Wohnung zuvor besichtigt hat.

Bei Vertragsverhältnissen über Bankdienstleistungen sowie Dienstleistungen im Zusammenhang mit einer Kreditgewährung, Versicherung, Altersversorgung von Einzelpersonen, Geldanlage oder Zahlung (Finanzdienstleistungen), die eine erstmalige Vereinbarung mit daran anschließenden aufeinanderfolgenden Vorgängen oder eine daran anschließende Reihe getrennter, in einem zeitlichen Zusammenhang stehender Vorgänge gleicher Art umfassen, sind die Vorschriften der Kapitel 1 und 2 dieses Untertitels nur auf die erste Vereinbarung anzuwenden. § 312a Absatz 1, 3, 4 und 6 ist daneben auf jeden Vorgang anzuwenden. Wenn die in Satz 1 genannten Vorgänge ohne eine solche Vereinbarung aufeinanderfolgen, gelten die Vorschriften über Informationspflichten des Unternehmers nur für den ersten Vorgang. Findet jedoch länger als ein Jahr kein Vorgang der gleichen Art mehr statt, so gilt der nächste Vorgang als der erste Vorgang einer neuen Reihe im Sinne von Satz 3.

本章第1節與第2節之規定中，僅第312a條第3項、第4項與第6項規定，於保險契約以及對其居間之契約，適用之。

第312a條（於消費者契約之一般義務與原則；對價約定之界限）

企業經營者，或以其名義或受其委任而行為之人，為與消費者訂定契約，而電訪消費者，電訪之企業經營者於交談開始之際，應將其同一性，且以可能者為限，將其為何人進行電訪，以及電訪之交易目的，加以揭示之。

企業經營者，依民法施行法第246條規定，對消費者負有告知義務。企業經營者，以其已依民法施行法第246條第1項第3款規定，告知消費者船運、交付或寄送費用者為限，始得請求償還該等費用。第1句與第2句規定，於交易場所外所訂定之契約、遠距銷售契約與金融服務契約，不適用之。

約定以支付超出為主給付所約定之對價為目的者，企業經營者與消費者，應以明示之方式，始得為之。企業經營者與消費者，以電子交易之方式，訂定契約者，以企業經營者未默示為之者為限，該約定始構成契約之內容。

消費者為履行契約義務，使用特定之支付工具，而依約定，對此負有報酬義務者，該約定，於下列各款之情形，無效：

Von den Vorschriften der Kapitel 1 und 2 dieses Untertitels ist auf Verträge über Versicherungen sowie auf Verträge über deren Vermittlung nur § 312a Absatz 3, 4 und 6 anzuwenden.

§ 312a Allgemeine Pflichten und Grundsätze bei Verbraucherverträgen; Grenzen der Vereinbarung von Entgelten

Ruft der Unternehmer oder eine Person, die in seinem Namen oder Auftrag handelt, den Verbraucher an, um mit diesem einen Vertrag zu schließen, hat der Anrufer zu Beginn des Gesprächs seine Identität und gegebenenfalls die Identität der Person, für die er anruft, sowie den geschäftlichen Zweck des Anrufs offenzulegen.

Der Unternehmer ist verpflichtet, den Verbraucher nach Maßgabe des Artikels 246 des Einführungsgesetzes zum Bürgerlichen Gesetzbuche zu informieren. Der Unternehmer kann von dem Verbraucher Fracht-, Liefer- oder Versandkosten und sonstige Kosten nur verlangen, soweit er den Verbraucher über diese Kosten entsprechend den Anforderungen aus Artikel 246 Absatz 1 Nummer 3 des Einführungsgesetzes zum Bürgerlichen Gesetzbuche informiert hat. Die Sätze 1 und 2 sind weder auf außerhalb von Geschäftsräumen geschlossene Verträge noch auf Fernabsatzverträge noch auf Verträge über Finanzdienstleistungen anzuwenden.

Eine Vereinbarung, die auf eine über das vereinbarte Entgelt für die Hauptleistung hinausgehende Zahlung des Verbrauchers gerichtet ist, kann ein Unternehmer mit einem Verbraucher nur ausdrücklich treffen. Schließen der Unternehmer und der Verbraucher einen Vertrag im elektronischen Geschäftsverkehr, wird eine solche Vereinbarung nur Vertragsbestandteil, wenn der Unternehmer die Vereinbarung nicht durch eine Voreinstellung herbeiführt.

Eine Vereinbarung, durch die ein Verbraucher verpflichtet wird, ein Entgelt dafür zu zahlen, dass er für die Erfüllung seiner vertraglichen Pflichten ein bestimmtes Zahlungsmittel nutzt, ist unwirksam, wenn

- 一、對消費者而言，無償支付之可能，為無法接受且無可期待者；
- 二、約定之報酬，高於企業經營者因使用支付工具所生之費用。

消費者對與企業經營者所訂定之契約，有所疑問或表示，而以企業經營者為此目的所準備之電話號碼，去電企業經營者，消費者依約定，對此負有對價義務者，以約定之對價，高於單純使用電話通訊服務之對價者為限，該約定無效。約定依第 1 句規定，而無效者，消費者對電話通訊服務提供者，亦不負有支付該通訊之義務。電話通訊服務提供者，只得對與消費者訂定無效約定之企業經營者，請求單純使用電話通訊服務之對價。

約定依第 3 項至第 5 項規定，未構成契約之內容或無效者，契約之其它部分，仍有效。

第 312b 條（於交易場所外訂定之契約）

以下契約，乃於交易場所外訂定之契約，

- 一、企業經營者與消費者，同時親身於非企業經營者之交易場所，所訂定之契約；
- 二、消費者於第 1 款所指之情形，為該契約而發出要約者；

1. für den Verbraucher keine gängige und zumutbare unentgeltliche Zahlungsmöglichkeit besteht oder
2. das vereinbarte Entgelt über die Kosten hinausgeht, die dem Unternehmer durch die Nutzung des Zahlungsmittels entstehen.

Eine Vereinbarung, durch die ein Verbraucher verpflichtet wird, ein Entgelt dafür zu zahlen, dass der Verbraucher den Unternehmer wegen Fragen oder Erklärungen zu einem zwischen ihnen geschlossenen Vertrag über eine Rufnummer anruft, die der Unternehmer für solche Zwecke bereithält, ist unwirksam, wenn das vereinbarte Entgelt das Entgelt für die bloße Nutzung des Telekommunikationsdienstes übersteigt. Ist eine Vereinbarung nach Satz 1 unwirksam, ist der Verbraucher auch gegenüber dem Anbieter des Telekommunikationsdienstes nicht verpflichtet, ein Entgelt für den Anruf zu zahlen. Der Anbieter des Telekommunikationsdienstes ist berechtigt, das Entgelt für die bloße Nutzung des Telekommunikationsdienstes von dem Unternehmer zu verlangen, der die unwirksame Vereinbarung mit dem Verbraucher geschlossen hat.

Ist eine Vereinbarung nach den Absätzen 3 bis 5 nicht Vertragsbestandteil geworden oder ist sie unwirksam, bleibt der Vertrag im Übrigen wirksam.

§ 312b Außerhalb von Geschäftsräumen geschlossene Verträge

Außerhalb von Geschäftsräumen geschlossene Verträge sind Verträge,

1. die bei gleichzeitiger körperlicher Anwesenheit des Verbrauchers und des Unternehmers an einem Ort geschlossen werden, der kein Geschäftsraum des Unternehmers ist,
2. für die der Verbraucher unter den in Nummer 1 genannten Umständen ein Angebot abgegeben hat,

三、於企業經營者之交易場所，或以遠距通訊工具所訂定之契約，而消費者不久前，於企業經營者交易場所外，與企業經營者同時親身個別商談者；

四、為對消費者進行銷售商品或提供服務之廣告，以及與其訂定相關契約，而於企業經營者或因其協助組織而成之航程中，所訂定之契約；

以企業經營者名義，或受其委託而行為者，等同企業經營者。

第 1 項所指之交易場所，為不動產之營業場所，企業經營者於其中持續不斷實施其活動，以及動產之交易場所，企業經營者於其中實施其活動，且以之為通常者。於交易場所內，以企業經營者之名義或受其委託，持續不斷實施或通常實施其活動者，該交易場所，等同企業經營者之交易場所。

第 312c 條（遠距銷售契約）

遠距銷售契約，乃企業經營者或以其名義或受其委託而行為之人，與消費者，為契約磋商與訂定，僅使用遠距通訊工具，所訂定之契約。但契約之訂定，非於為遠距而組成之銷售或服務系統範圍內所為者，不在此限。

本法所指之遠距通訊工具，乃任何通訊工具，其為契約之準備或訂定，而得為使用，當事人因此無須同時親身在場者，例如信件、目錄、電話來電、電傳、電子郵件、透過行動通訊服務傳送之資訊（簡訊），以及廣播與電子媒體。

3. die in den Geschäftsräumen des Unternehmers oder durch Fernkommunikationsmittel geschlossen werden, bei denen der Verbraucher jedoch unmittelbar zuvor außerhalb der Geschäftsräume des Unternehmers bei gleichzeitiger körperlicher Anwesenheit des Verbrauchers und des Unternehmers persönlich und individuell angesprochen wurde, oder
4. die auf einem Ausflug geschlossen werden, der von dem Unternehmer oder mit seiner Hilfe organisiert wurde, um beim Verbraucher für den Verkauf von Waren oder die Erbringung von Dienstleistungen zu werben und mit ihm entsprechende Verträge abzuschließen.

Dem Unternehmer stehen Personen gleich, die in seinem Namen oder Auftrag handeln.

Geschäftsräume im Sinne des Absatzes 1 sind unbewegliche Gewerberäume, in denen der Unternehmer seine Tätigkeit dauerhaft ausübt, und bewegliche Gewerberäume, in denen der Unternehmer seine Tätigkeit für gewöhnlich ausübt. Gewerberäume, in denen die Person, die im Namen oder Auftrag des Unternehmers handelt, ihre Tätigkeit dauerhaft oder für gewöhnlich ausübt, stehen Räumen des Unternehmers gleich.

§ 312c Fernabsatzverträge

Fernabsatzverträge sind Verträge, bei denen der Unternehmer oder eine in seinem Namen oder Auftrag handelnde Person und der Verbraucher für die Vertragsverhandlungen und den Vertragsschluss ausschließlich Fernkommunikationsmittel verwenden, es sei denn, dass der Vertragsschluss nicht im Rahmen eines für den Fernabsatz organisierten Vertriebs- oder Dienstleistungssystems erfolgt.

Fernkommunikationsmittel im Sinne dieses Gesetzes sind alle Kommunikationsmittel, die zur Anbahnung oder zum Abschluss eines Vertrags eingesetzt werden können, ohne dass die Vertragsparteien gleichzeitig körperlich anwesend sind, wie Briefe, Kataloge, Telefonanrufe, Telekopien, E-Mails, über den Mobilfunkdienst versendete Nachrichten (SMS) sowie Rundfunk und Telemedien.

第 312d 條（告知義務）

於交易場所外訂定之契約，以及遠距銷售契約之情形，企業經營者，負有依民法施行法第 246a 條規定，告知消費者之義務。企業經營者於該義務履行中所為之說明，構成契約之內容。但契約當事人有相反之明示約定者，不在此限。

於交易場所外訂定之契約，以及金融服務契約之情形，企業經營者，負有依民法施行法第 246b 條規定，告知消費者之義務。前項規定，不適用之。

第 312e 條（違反費用告知義務）

企業經營者，就運送、交付、寄送費用與其它費用，以其已依第 312d 條與民法施行法第 246a 條之 1 第 1 項第 1 句第 4 款規定，告知消費者該等費用者為限，始得請求消費者償還。

第 312f 條（副本與證明文書）

企業經營者，於交易場所外訂定契約之情形，負有即時使消費者取得證明文件之義務：

- 一、經訂定契約之當事人簽名，而得認知其同一性之契約副本；
- 二、於其中複製契約內容之契約證書。

§ 312d Informationspflichten

Bei außerhalb von Geschäftsräumen geschlossenen Verträgen und bei Fernabsatzverträgen ist der Unternehmer verpflichtet, den Verbraucher nach Maßgabe des Artikels 246a des Einführungsgesetzes zum Bürgerlichen Gesetzbuche zu informieren. Die in Erfüllung dieser Pflicht gemachten Angaben des Unternehmers werden Inhalt des Vertrags, es sei denn, die Vertragsparteien haben ausdrücklich etwas anderes vereinbart.

Bei außerhalb von Geschäftsräumen geschlossenen Verträgen und bei Fernabsatzverträgen über Finanzdienstleistungen ist der Unternehmer abweichend von Absatz 1 verpflichtet, den Verbraucher nach Maßgabe des Artikels 246b des Einführungsgesetzes zum Bürgerlichen Gesetzbuche zu informieren.

§ 312e Verletzung von Informationspflichten über Kosten

Der Unternehmer kann von dem Verbraucher Fracht-, Liefer- oder Versandkosten und sonstige Kosten nur verlangen, soweit er den Verbraucher über diese Kosten entsprechend den Anforderungen aus § 312d Absatz 1 in Verbindung mit Artikel 246a § 1 Absatz 1 Satz 1 Nummer 4 des Einführungsgesetzes zum Bürgerlichen Gesetzbuche informiert hat.

§ 312f Abschriften und Bestätigungen

Bei außerhalb von Geschäftsräumen geschlossenen Verträgen ist der Unternehmer verpflichtet, dem Verbraucher alsbald auf Papier zur Verfügung zu stellen

1. eine Abschrift eines Vertragsdokuments, das von den Vertragsschließenden so unterzeichnet wurde, dass ihre Identität erkennbar ist, oder
2. eine Bestätigung des Vertrags, in der der Vertragsinhalt wiedergegeben ist.

為契約之副本或證書，以消費者同意者為限，亦得使用其它長期資料載體。企業經營者於訂定契約前，未於第 312d 條第 1 項所規定告知義務之履行中，告知可提供長期資料載體者，第 1 句規定之證明文書，應包括民法施行法第 246a 條規定所指之說明。

企業經營者，於遠距銷售契約之情形，於訂定契約後之適當期限內，但最遲於商品交付時或服務開始前起算，對消費者，負有以長期資料載體，提供重現契約內容契約證書之義務。第 1 句所規定之證書，應包括民法施行法第 246a 條所指之說明。但企業經營者，為履行第 312d 第 1 項所規定之告知義務，已於訂定契約前提供該說明者，不在此限。

契約不以於有形資料載體上資料之交付為內容，且以數位形式製出或供應該資料（數位內容）者，以消費者於契約實施前，有下列情形且可能者為限，亦應作成第 1 項與第 2 項所規定之契約副本或證書：

- 一、明示同意，企業經營者於解除期限屆至前實施契約；
- 二、確認其已知悉，將因其同意實施契約而喪失解除期限。

本條規定，於金融服務契約，不適用之。

Wenn der Verbraucher zustimmt, kann für die Abschrift oder die Bestätigung des Vertrags auch ein anderer dauerhafter Datenträger verwendet werden. Die Bestätigung nach Satz 1 muss die in Artikel 246a des Einführungsgesetzes zum Bürgerlichen Gesetzbuche genannten Angaben nur enthalten, wenn der Unternehmer dem Verbraucher diese Informationen nicht bereits vor Vertragsschluss in Erfüllung seiner Informationspflichten nach § 312d Absatz 1 auf einem dauerhaften Datenträger zur Verfügung gestellt hat.

Bei Fernabsatzverträgen ist der Unternehmer verpflichtet, dem Verbraucher eine Bestätigung des Vertrags, in der der Vertragsinhalt wiedergegeben ist, innerhalb einer angemessenen Frist nach Vertragsschluss, spätestens jedoch bei der Lieferung der Ware oder bevor mit der Ausführung der Dienstleistung begonnen wird, auf einem dauerhaften Datenträger zur Verfügung zu stellen. Die Bestätigung nach Satz 1 muss die in Artikel 246a des Einführungsgesetzes zum Bürgerlichen Gesetzbuche genannten Angaben enthalten, es sei denn, der Unternehmer hat dem Verbraucher diese Informationen bereits vor Vertragsschluss in Erfüllung seiner Informationspflichten nach § 312d Absatz 1 auf einem dauerhaften Datenträger zur Verfügung gestellt.

Bei Verträgen über die Lieferung von nicht auf einem körperlichen Datenträger befindlichen Daten, die in digitaler Form hergestellt und bereitgestellt werden (digitale Inhalte), ist auf der Abschrift oder in der Bestätigung des Vertrags nach den Absätzen 1 und 2 gegebenenfalls auch festzuhalten, dass der Verbraucher vor Ausführung des Vertrags

1. ausdrücklich zugestimmt hat, dass der Unternehmer mit der Ausführung des Vertrags vor Ablauf der Widerrufsfrist beginnt, und
2. seine Kenntnis davon bestätigt hat, dass er durch seine Zustimmung mit Beginn der Ausführung des Vertrags sein Widerrufsrecht verliert.

Diese Vorschrift ist nicht anwendbar auf Verträge über Finanzdienstleistungen.

第 312g 條（解除權）

於交易場所外訂定之契約，以及遠距銷售契約，消費者享有第 355 條所規定之解除權。

當事人未有相反之約定者，以下列契約為限，解除權不發生：

- 一、商品交付之契約，該商品非預先製成，且對其製造而言，消費者之個人選擇或指定具有決定性，或明確依消費者之個人需求；
- 二、商品交付之契約，該商品即將腐敗或超過保存期限者；
- 三、密封商品交付之契約，商品之密封於交付後為拆除，因健康保護或衛生之理由，該商品不適於返還者；
- 四、商品交付之契約，該商品於交付後，依其特性，與其它財貨混合，而無法分離者；
- 五、酒精飲料交付之契約，其價格於訂定契約時已約定，但最早於訂定契約後 30 天，始能交付該酒精飲料，且其時價取決於市場波動，而企業經營者對之並無影響力者；
- 六、密封包裝之聲音、影像錄製或電腦軟體交付之契約，其密封於交付後為拆除者；
- 七、報紙、期刊或雜誌交付之契約，其附有訂閱之例外約定者；

§ 312g Widerrufsrecht

Dem Verbraucher steht bei außerhalb von Geschäftsräumen geschlossenen Verträgen und bei Fernabsatzverträgen ein Widerrufsrecht gemäß § 355 zu.

Das Widerrufsrecht besteht, soweit die Parteien nichts anderes vereinbart haben, nicht bei folgenden Verträgen:

1. Verträge zur Lieferung von Waren, die nicht vorgefertigt sind und für deren Herstellung eine individuelle Auswahl oder Bestimmung durch den Verbraucher maßgeblich ist oder die eindeutig auf die persönlichen Bedürfnisse des Verbrauchers zugeschnitten sind,
2. Verträge zur Lieferung von Waren, die schnell verderben können oder deren Verfallsdatum schnell überschritten würde,
3. Verträge zur Lieferung versiegelter Waren, die aus Gründen des Gesundheitsschutzes oder der Hygiene nicht zur Rückgabe geeignet sind, wenn ihre Versiegelung nach der Lieferung entfernt wurde,
4. Verträge zur Lieferung von Waren, wenn diese nach der Lieferung auf Grund ihrer Beschaffenheit untrennbar mit anderen Gütern vermischt wurden,
5. Verträge zur Lieferung alkoholischer Getränke, deren Preis bei Vertragsschluss vereinbart wurde, die aber frühestens 30 Tage nach Vertragsschluss geliefert werden können und deren aktueller Wert von Schwankungen auf dem Markt abhängt, auf die der Unternehmer keinen Einfluss hat,
6. Verträge zur Lieferung von Ton- oder Videoaufnahmen oder Computersoftware in einer versiegelten Packung, wenn die Versiegelung nach der Lieferung entfernt wurde,
7. Verträge zur Lieferung von Zeitungen, Zeitschriften oder Illustrierten mit Ausnahme von Abonnement- Verträgen,

- 八、商品交付、服務提供之契約，包括金融服務，其價格取決於金融市場波動，而該價格波動，企業經營者對之並無影響力，且於解除期限內發生者，尤其是與股票、資本投資法第 1 條第 4 項所規定之公開投資財產股份，以及與其它可資商業交易之有價證券、外匯、衍生品或金融市場工具有關之服務；

- 九、除第 2 句所指情形外，於住居以外目的之住宿範圍內，提供服務之契約、商品運送、動力交通工具之出租、餐飲交付，以及提供其它與假期活動相關服務之契約，契約為提供服務之目的，訂有特定期限或期間者；

- 十、企業經營者於市場化形式範圍內訂定契約時，提供親身在場或能親身在場之消費者商品或服務，而且確切而言，乃於拍賣商所實施，以競爭要約為基礎，得標要約人，負有取得商品或服務義務之公開透明程序（公開拍賣）；

- 十一、消費者為緊急修繕或保養工作，而明示請求企業經營者對其檢查之契約。但於其它消費者未明示請求服務，而訪問時卻提供該服務，或此等訪問時所交付商品，其作為替代部分，並非保養或修繕上所必需者之情形，不適用之。

8. Verträge zur Lieferung von Waren oder zur Erbringung von Dienstleistungen, einschließlich Finanzdienstleistungen, deren Preis von Schwankungen auf dem Finanzmarkt abhängt, auf die der Unternehmer keinen Einfluss hat und die innerhalb der Widerrufsfrist auftreten können, insbesondere Dienstleistungen im Zusammenhang mit Aktien, mit Anteilen an offenen Investmentvermögen im Sinne von § 1 Absatz 4 des Kapitalanlagegesetzbuchs und mit anderen handelbaren Wertpapieren, Devisen, Derivaten oder Geldmarktinstrumenten,
9. vorbehaltlich des Satzes 2 Verträge zur Erbringung von Dienstleistungen in den Bereichen Beherbergung zu anderen Zwecken als zu Wohnzwecken, Beförderung von Waren, Kraftfahrzeugvermietung, Lieferung von Speisen und Getränken sowie zur Erbringung weiterer Dienstleistungen im Zusammenhang mit Freizeitbetätigungen, wenn der Vertrag für die Erbringung einen spezifischen Termin oder Zeitraum vorsieht,
10. Verträge, die im Rahmen einer Vermarktungsform geschlossen werden, bei der der Unternehmer Verbrauchern, die persönlich anwesend sind oder denen diese Möglichkeit gewährt wird, Waren oder Dienstleistungen anbietet, und zwar in einem vom Versteigerer durchgeführten, auf konkurrierenden Geboten basierenden transparenten Verfahren, bei dem der Bieter, der den Zuschlag erhalten hat, zum Erwerb der Waren oder Dienstleistungen verpflichtet ist (öffentlich zugängliche Versteigerung),
11. Verträge, bei denen der Verbraucher den Unternehmer ausdrücklich aufgefordert hat, ihn aufzusuchen, um dringende Reparatur- oder Instandhaltungsarbeiten vorzunehmen; dies gilt nicht hinsichtlich weiterer bei dem Besuch erbrachter Dienstleistungen, die der Verbraucher nicht ausdrücklich verlangt hat, oder hinsichtlich solcher bei dem Besuch gelieferter Waren, die bei der Instandhaltung oder Reparatur nicht unbedingt als Ersatzteile benötigt werden,

十二、賭博或樂透服務提供之契約。但消費者去電為契約之表示，或於交易場所外訂定契約者，不在此限；

十三、經公證之契約。但本款規定，於遠距銷售之金融服務契約，以公證人證明，消費者依第312d第2項規定所享有之權利，受有保障者為限，始適用之。

第1句所規定之例外，於第651a條所規定之旅遊給付契約，以其於交易場所外訂定者為限，不適用之。但作為契約訂定基礎之言詞協商，以消費者先發之訂購為基礎者，不在此限。

消費者依第495條、第506條至第512條規定，享有第355條所規定之解除權，以及非於交易場所外訂定契約之情形，消費者依資本投資保護法第305條第1項至第6項規定，已享有解除權者，解除權不發生。

第 312h 條（終止與終止之代理權授與）

企業經營者與消費者間，依本節規定發生繼續性債之關係，其應取代消費者與另一企業經營者間已存在之繼續性債之關係，且消費者因繼續性債之關係之發生，而為下列之行為者，其終止與為終止所為之代理權授與，應以書面為之：

- 一、終止已發生之繼續性債之關係，且企業經營者或受其委託之第三人，為向消費者先前之契約當事人傳達終止，而受消費者委任者；
- 二、企業經營者或受其委託之第三人，為向消費者先前契約當事人，表示終止，而受消費者授與代理權者。

12. Verträge zur Erbringung von Wett- und Lotteriedienstleistungen, es sei denn, dass der Verbraucher seine Vertragserklärung telefonisch abgegeben hat oder der Vertrag außerhalb von Geschäftsräumen geschlossen wurde, und
13. notariell beurkundete Verträge; dies gilt für Fernabsatzverträge über Finanzdienstleistungen nur, wenn der Notar bestätigt, dass die Rechte des Verbrauchers aus § 312d Absatz 2 gewahrt sind.

Die Ausnahme nach Satz 1 Nummer 9 gilt nicht für Verträge über Reiseleistungen nach § 651a, wenn diese außerhalb von Geschäftsräumen geschlossen worden sind, es sei denn, die mündlichen Verhandlungen, auf denen der Vertragsschluss beruht, sind auf vorhergehende Bestellung des Verbrauchers geführt worden.

Das Widerrufsrecht besteht ferner nicht bei Verträgen, bei denen dem Verbraucher bereits auf Grund der §§ 495, 506 bis 512 ein Widerrufsrecht nach § 355 zusteht, und nicht bei außerhalb von Geschäftsräumen geschlossenen Verträgen, bei denen dem Verbraucher bereits nach § 305 Absatz 1 bis 6 des Kapitalanlagegesetzbuchs ein Widerrufsrecht zusteht.

§ 312h Kündigung und Vollmacht zur Kündigung

Wird zwischen einem Unternehmer und einem Verbraucher nach diesem Untertitel ein Dauerschuldverhältnis begründet, das ein zwischen dem Verbraucher und einem anderen Unternehmer bestehendes Dauerschuldverhältnis ersetzen soll, und wird anlässlich der Begründung des Dauerschuldverhältnisses von dem Verbraucher

1. die Kündigung des bestehenden Dauerschuldverhältnisses erklärt und der Unternehmer oder ein von ihm beauftragter Dritter zur Übermittlung der Kündigung an den bisherigen Vertragspartner des Verbrauchers beauftragt oder
2. der Unternehmer oder ein von ihm beauftragter Dritter zur Erklärung der Kündigung gegenüber dem bisherigen Vertragspartner des Verbrauchers bevollmächtigt,

第 312i 條（於電子商務交易之一般義務）

企業經營者，為訂定商品交付或服務提供契約之目的，使用電信工具者（於電子商務交易中之契約），應向消費者為下列行為：

- 一、提供適當、有效與便利之科技工具，消費者因此得於發出其訂購前，認知與更正輸入錯誤者；
- 二、及時於其訂購發出前，以清楚且可資理解之方式，通知民法施行法第 246c 條所規定之資訊；
- 三、立即以電子之方式，證明其訂購已到達；
- 四、提供得下載，以及以得再製之方式，儲存契約約定，包括一般交易條款之機會。第 1 句第 1 款至第 3 款所規定，為當事人而製作之訂購與到達證明，以當事人於通常情況可將其下載者為限，視為已到達。

契約只以個別溝通之方式，而訂定者，第 1 項第 1 句第 1 款至第 3 款之規定，不適用之。非消費者之契約當事人另有約定者，第 1 項第 1 句第 1 款至第 3 款與第 2 句規定，不適用之。

依其他規定更進一步之資訊義務，不受影響。

第 312j 條（於電子商務交易中對消費者之特別義務）

企業經營者，於為與消費者電子商務交易之網頁上，除依第 312i

§ 312i Allgemeine Pflichten im elektronischen Geschäftsverkehr

Bedient sich ein Unternehmer zum Zwecke des Abschlusses eines Vertrags über die Lieferung von Waren oder über die Erbringung von Dienstleistungen der Telemedien (Vertrag im elektronischen Geschäftsverkehr), hat er dem Kunden

1. angemessene, wirksame und zugängliche technische Mittel zur Verfügung zu stellen, mit deren Hilfe der Kunde Eingabefehler vor Abgabe seiner Bestellung erkennen und berichtigen kann,
2. die in Artikel 246c des Einführungsgesetzes zum Bürgerlichen Gesetzbuche bestimmten Informationen rechtzeitig vor Abgabe von dessen Bestellung klar und verständlich mitzuteilen,
3. den Zugang von dessen Bestellung unverzüglich auf elektronischem Wege zu bestätigen und
4. die Möglichkeit zu verschaffen, die Vertragsbestimmungen einschließlich der Allgemeinen Geschäftsbedingungen bei Vertragsschluss abzurufen und in wiedergabefähiger Form zu speichern. Bestellung und Empfangsbestätigung im Sinne von Satz 1 Nummer 3 gelten als zugegangen, wenn die Parteien, für die sie bestimmt sind, sie unter gewöhnlichen Umständen abrufen können.

Absatz 1 Satz 1 Nummer 1 bis 3 ist nicht anzuwenden, wenn der Vertrag ausschließlich durch individuelle Kommunikation geschlossen wird. Absatz 1 Satz 1 Nummer 1 bis 3 und Satz 2 ist nicht anzuwenden, wenn zwischen Vertragsparteien, die nicht Verbraucher sind, etwas anderes vereinbart wird.

Weitergehende Informationspflichten auf Grund anderer Vorschriften bleiben unberührt.

§ 312j Besondere Pflichten im elektronischen Geschäftsverkehr gegenüber Verbrauchern

Auf Webseiten für den elektronischen Geschäftsverkehr mit

條第 1 項規定為說明外，亦應至遲於訂購程序開始前，清楚且明確說明，交付限制存在與否，以及得接受何等支付工具。

企業經營者，於電子商務交易中，以企業經營者有償給付為內容之消費者契約，應直接於消費者發出訂購之前，以清楚、可資理解，且更為顯明之方式，提供消費者，民法施行法第 246a 條之 1 第 1 項第 1 句第 1 款、第 4 款、第 5 款、第 11 款與第 12 款所規定之資訊。

企業經營者，於依第 2 項所為契約之情形，應以使消費者依其訂購，明示證明其負有支付義務之方式，形成訂購狀態。以按鈕之方式為訂購者，企業經營者依第 1 句所負之義務，僅以於按鈕上寫有易於閱讀，以及附有非不同於「負有支付義務之訂購」之字詞，或附有明顯相應之表達者為限，始生清償之效果。

企業經營者履行其依第 3 項所負之義務者，第 2 項所規定之契約成立。

契約只以個別溝通之方式，而訂定者，第 2 項至第 4 項規定，不適用之。第 1 項與第 2 項所規定之義務，於與金融服務有關之網頁，以及金融服務之契約，不適用之。

第 312k 條（相反之約定與舉證責任）

本節之規定，以未另有規定者為限，不得為消費者或顧客之不利利益，加以排除之。本節之規定，以未另有規定者為限，縱以其他方式加以規避者，亦適用之。

Verbrauchern hat der Unternehmer zusätzlich zu den Angaben nach § 312i Absatz 1 spätestens bei Beginn des Bestellvorgangs klar und deutlich anzugeben, ob Lieferbeschränkungen bestehen und welche Zahlungsmittel akzeptiert werden.

Bei einem Verbrauchervertrag im elektronischen Geschäftsverkehr, der eine entgeltliche Leistung des Unternehmers zum Gegenstand hat, muss der Unternehmer dem Verbraucher die Informationen gemäß Artikel 246a § 1 Absatz 1 Satz 1 Nummer 1, 4, 5, 11 und 12 des Einführungsgesetzes zum Bürgerlichen Gesetzbuche, unmittelbar bevor der Verbraucher seine Bestellung abgibt, klar und verständlich in hervorgehobener Weise zur Verfügung stellen.

Der Unternehmer hat die Bestellsituation bei einem Vertrag nach Absatz 2 so zu gestalten, dass der Verbraucher mit seiner Bestellung ausdrücklich bestätigt, dass er sich zu einer Zahlung verpflichtet. Erfolgt die Bestellung über eine Schaltfläche, ist die Pflicht des Unternehmers aus Satz 1 nur erfüllt, wenn diese Schaltfläche gut lesbar mit nichts anderem als den Wörtern „zahlungspflichtig bestellen“ oder mit einer entsprechenden eindeutigen Formulierung beschriftet ist.

Ein Vertrag nach Absatz 2 kommt nur zustande, wenn der Unternehmer seine Pflicht aus Absatz 3 erfüllt.

Die Absätze 2 bis 4 sind nicht anzuwenden, wenn der Vertrag ausschließlich durch individuelle Kommunikation geschlossen wird. Die Pflichten aus den Absätzen 1 und 2 gelten weder für Webseiten, die Finanzdienstleistungen betreffen, noch für Verträge über Finanzdienstleistungen.

§ 312k Abweichende Vereinbarungen und Beweislast

Von den Vorschriften dieses Untertitels darf, soweit nichts anderes bestimmt ist, nicht zum Nachteil des Verbrauchers oder Kunden abgewichen werden. Die Vorschriften dieses Untertitels finden, soweit nichts anderes bestimmt ist, auch Anwendung, wenn sie durch anderweitige Gestaltungen umgangen werden.

企業經營者對消費者，就本節所規定資訊義務之履行，負有舉證責任。

第 355 條（於消費者契約之解除權）

消費者依法律規定，享有本條所規定之解除權者，以其於期間內解除契約者為限，消費者與企業經營者，不再受其以訂定契約為目的之意思表示拘束。解除，應以意思表示，於期間內，向企業經營者為之。消費者解除契約之決定，應自表示明確而出。解除無須附有理由。即時發出解除者，即遵守期間。

解除期間為 14 日。以未另有規定者為限，解除期間，自訂定契約時起算。

於解除之情形，應立即返還受領之給付。法律規定返還之最長期間者，該期間對企業經營者，自到達時起算，對消費者，自解除表示發出時起算。消費者及時寄回商品者，即遵守該期間。於解除之情形，商品寄回之危險，由企業經營者承擔之。

第 356 條（於交易場所外訂定之契約與遠距銷售契約）

企業經營者，應使消費者得於企業經營者之網頁，填寫與傳送民法施行法第 246a 條之 1 第 2 項第 1 句第 1 款附件 2 所規定之解除表格範例，或其它明確之解除表示。消費者使用該項可能者，企業經營者應向消費者證明，解除及時到達長期資料載體。

Der Unternehmer trägt gegenüber dem Verbraucher die Beweislast für die Erfüllung der in diesem Untertitel geregelten Informationspflichten.

§ 355 Widerrufsrecht bei Verbraucherverträgen

Wird einem Verbraucher durch Gesetz ein Widerrufsrecht nach dieser Vorschrift eingeräumt, so sind der Verbraucher und der Unternehmer an ihre auf den Abschluss des Vertrags gerichteten Willenserklärungen nicht mehr gebunden, wenn der Verbraucher seine Willenserklärung fristgerecht widerrufen hat. Der Widerruf erfolgt durch Erklärung gegenüber dem Unternehmer. Aus der Erklärung muss der Entschluss des Verbrauchers zum Widerruf des Vertrags eindeutig hervorgehen. Der Widerruf muss keine Begründung enthalten. Zur Fristwahrung genügt die rechtzeitige Absendung des Widerrufs.

Die Widerrufsfrist beträgt 14 Tage. Sie beginnt mit Vertragsschluss, soweit nichts anderes bestimmt ist.

Im Falle des Widerrufs sind die empfangenen Leistungen unverzüglich zurückzugewähren. Bestimmt das Gesetz eine Höchstfrist für die Rückgewähr, so beginnt diese für den Unternehmer mit dem Zugang und für den Verbraucher mit der Abgabe der Widerrufserklärung. Ein Verbraucher wahrt diese Frist durch die rechtzeitige Absendung der Waren. Der Unternehmer trägt bei Widerruf die Gefahr der Rücksendung der Waren.

§ 356 Widerrufsrecht bei außerhalb von Geschäftsräumen geschlossenen Verträgen und Fernabsatzverträgen

Der Unternehmer kann dem Verbraucher die Möglichkeit einräumen, das Muster-Widerrufsformular nach Anlage 2 zu Artikel 246a § 1 Absatz 2 Satz 1 Nummer 1 des Einführungsgesetzes zum Bürgerlichen Gesetzbuche oder eine andere eindeutige Widerrufserklärung auf der Webseite des Unternehmers auszufüllen und zu übermitteln. Macht der Verbraucher von dieser Möglichkeit Gebrauch, muss der Unternehmer dem Verbraucher den Zugang des Widerrufs unverzüglich auf einem dauerhaften Datenträger bestätigen.

解除期間，於下列情形，自各款所定之時起算：

一、於消費財貨買賣：

- a) 其非屬第 2 款至第 4 款所規定者，消費者或由其指定非屬運送人之第三人，收受商品時；
- b) 消費者，於一次訂購範圍內，訂購數項商品，且分次交付商品者，消費者或由其指定非屬運送人之第三人，收受最後之商品時；
- c) 以分次或分批之方式，交付商品者，消費者或由其指定非屬運送人之第三人，收受最後一次或最後一批商品時；
- d) 其以於確定時段內，規律交付商品為目的者，消費者或由其指定非屬運送人之第三人，收受首次商品時。

二、於未有容量或數量提供限制之水、瓦斯、電氣供應、暖氣供應，或以非存於有形載體之數位客體為內容之契約，自訂定契約時。

企業經營者，未依民法施行法第246a條之1第2項第1句第1款，或第246b條之2第1項規定，告知消費者前，解除期間不起算。解除權，至遲於第2項或第355條第2項第2句規定所指之時，12個月與14日後，消滅。第2句規定，於關於金融服務契約，不適用之。

Die Widerrufsfrist beginnt

1. bei einem Verbrauchsgüterkauf,
 - a) der nicht unter die Buchstaben b bis d fällt, sobald der Verbraucher oder ein von ihm benannter Dritter, der nicht Frachtführer ist, die Waren erhalten hat,
 - b) bei dem der Verbraucher mehrere Waren im Rahmen einer einheitlichen Bestellung bestellt hat und die Waren getrennt geliefert werden, sobald der Verbraucher oder ein von ihm benannter Dritter, der nicht Frachtführer ist, die letzte Ware erhalten hat,
 - c) bei dem die Ware in mehreren Teilsendungen oder Stücken geliefert wird, sobald der Verbraucher oder ein vom Verbraucher benannter Dritter, der nicht Frachtführer ist, die letzte Teilsendung oder das letzte Stück erhalten hat,
 - d) der auf die regelmäßige Lieferung von Waren über einen festgelegten Zeitraum gerichtet ist, sobald der Verbraucher oder ein von ihm benannter Dritter, der nicht Frachtführer ist, die erste Ware erhalten hat,
2. bei einem Vertrag, der die nicht in einem begrenzten Volumen oder in einer bestimmten Menge angebotene Lieferung von Wasser, Gas oder Strom, die Lieferung von Fernwärme oder die Lieferung von nicht auf einem körperlichen Datenträger befindlichen digitalen Inhalten zum Gegenstand hat, mit Vertragsschluss.

Die Widerrufsfrist beginnt nicht, bevor der Unternehmer den Verbraucher entsprechend den Anforderungen des Artikels 246a § 1 Absatz 2 Satz 1 Nummer 1 oder des Artikels 246b § 2 Absatz 1 des Einführungsgesetzes zum Bürgerlichen Gesetzbuche unterrichtet hat. Das Widerrufsrecht erlischt spätestens zwölf Monate und 14 Tage nach dem in Absatz 2 oder § 355 Absatz 2 Satz 2 genannten Zeitpunkt. Satz 2 ist auf Verträge über Finanzdienstleistungen nicht anwendbar.

企業經營者於服務提供之契約，經消費者明示同意進行服務，且證明其已知悉，企業經營者完全履行契約時，喪失其解除權，而後始進行服務，且提供全部之服務者，解除權亦消滅。於金融服務提供之契約，依消費者明示之意思，於消費者行使解除權前，雙方已全部履行契約者，解除權消滅，第 1 句規定，不適用之。

於交付非儲存於有形載體數位內容之契約，企業經營者於消費者為下列行為後，始進行服務者，解除權亦消滅：

- 一、明示同意，解除期間經過前，企業經營者開始進行服務；
- 二、證明其知悉，依其同意，因實施契約而喪失解除權者。

第 356a 條（於分時居住權之契約、關於長期渡假商品之契約、居間契約與交換系統之契約）

解除期間，自訂定契約或訂定預約時起算。訂定消費者契約後，始取得契約證書或契約副本者，解除期間自取得時起算。

消費者於訂定契約前，未經告知或未經完全告知，或未經以第 482 條第 1 項所規定之語言告知，第 484 條第 1 項所指之先契約資訊，或未將、未完全將或未以第 482 條第 2 項所規定語言將民法施行法第 242 條之 1 第 2 項所指表格者，交付消費者者，解除期間自以規定之語言，完全取得先契約資訊與表格時，始起算。解除權，至遲

Das Widerrufsrecht erlischt bei einem Vertrag zur Erbringung von Dienstleistungen auch dann, wenn der Unternehmer die Dienstleistung vollständig erbracht hat und mit der Ausführung der Dienstleistung erst begonnen hat, nachdem der Verbraucher dazu seine ausdrückliche Zustimmung gegeben hat und gleichzeitig seine Kenntnis davon bestätigt hat, dass er sein Widerrufsrecht bei vollständiger Vertragserfüllung durch den Unternehmer verliert. Bei einem Vertrag über die Erbringung von Finanzdienstleistungen erlischt das Widerrufsrecht abweichend von Satz 1, wenn der Vertrag von beiden Seiten auf ausdrücklichen Wunsch des Verbrauchers vollständig erfüllt ist, bevor der Verbraucher sein Widerrufsrecht ausübt.

Das Widerrufsrecht erlischt bei einem Vertrag über die Lieferung von nicht auf einem körperlichen Datenträger befindlichen digitalen Inhalten auch dann, wenn der Unternehmer mit der Ausführung des Vertrags begonnen hat, nachdem der Verbraucher

1. ausdrücklich zugestimmt hat, dass der Unternehmer mit der Ausführung des Vertrags vor Ablauf der Widerrufsfrist beginnt, und
2. seine Kenntnis davon bestätigt hat, dass er durch seine Zustimmung mit Beginn der Ausführung des Vertrags sein Widerrufsrecht verliert.

§ 356a Widerrufsrecht bei Teilzeit-Wohnrechtverträgen, Verträgen über ein langfristiges Urlaubsprodukt, bei Vermittlungsverträgen und Tauschsystemverträgen

Die Widerrufsfrist beginnt mit dem Zeitpunkt des Vertragsschlusses oder des Abschlusses eines Vorvertrags. Erhält der Verbraucher die Vertragsurkunde oder die Abschrift des Vertrags erst nach Vertragsschluss, beginnt die Widerrufsfrist mit dem Zeitpunkt des Erhalts.

Sind dem Verbraucher die in § 482 Absatz 1 bezeichneten vorvertraglichen Informationen oder das in Artikel 242 § 1 Absatz 2 des Einführungsgesetzes zum Bürgerlichen Gesetzbuche bezeichnete Formblatt vor Vertragsschluss nicht, nicht vollständig oder nicht in der in § 483 Absatz 1 vorgeschriebenen Sprache überlassen worden, so beginnt

於第 1 項所指之時 3 個月與 14 日後，消滅；第 1 項規定，不適用之。

消費者訂定契約前，未受有或未完全受有，或未經以第 483 條第 1 項所規定之語言，受有第 482a 條所規定之解除告知者，解除期間，自以規定之語言，受有完全解除告知時，始起算，第 1 項規定，不適用之。解除權，以可能者為限，至遲於第 1 項所規定之時 12 個月與 14 日後，消滅；第 2 項第 2 句規定，不適用之。

消費者，訂定分時居住權契約與互易系統契約，且同時受該等契約之要約者，兩則契約之解除權，自第 1 項為分時居住權所規定之時起算。第 2 項與第 3 項規定，準用之。

第 356b 條（於消費者金錢借貸契約之解除權）

貸與人提供為借用人所規定之契約證書、借用人之書面要約，或契約證書副本或其要約副本於借用人前，解除期間不起算。

對借用人所提供第 1 項規定之證書，未包括第 492 條第 2 項所規定之義務說明者，期間自依第 492 條第 6 項規定補正說明時，始起算。解除期間，於此情形，為 1 個月。

於第 494 條第 7 項所規定之情形，解除期間，自借用人取得該條所規定之契約副本時，始起算。

die Widerrufsfrist abweichend von Absatz 1 erst mit dem vollständigen Erhalt der vorvertraglichen Informationen und des Formblatts in der vorgeschriebenen Sprache. Das Widerrufsrecht erlischt spätestens drei Monate und 14 Tage nach dem in Absatz 1 genannten Zeitpunkt.

Ist dem Verbraucher die in § 482a bezeichnete Widerrufsbelehrung vor Vertragsschluss nicht, nicht vollständig oder nicht in der in § 483 Absatz 1 vorgeschriebenen Sprache überlassen worden, so beginnt die Widerrufsfrist abweichend von Absatz 1 erst mit dem vollständigen Erhalt der Widerrufsbelehrung in der vorgeschriebenen Sprache. Das Widerrufsrecht erlischt gegebenenfalls abweichend von Absatz 2 Satz 2 spätestens zwölf Monate und 14 Tage nach dem in Absatz 1 genannten Zeitpunkt.

Hat der Verbraucher einen Teilzeit-Wohnrechtevertrag und einen Tauschsystemvertrag abgeschlossen und sind ihm diese Verträge zum gleichen Zeitpunkt angeboten worden, so beginnt die Widerrufsfrist für beide Verträge mit dem nach Absatz 1 für den Teilzeit-Wohnrechtevertrag geltenden Zeitpunkt. Die Absätze 2 und 3 gelten entsprechend.

§ 356b Widerrufsrecht bei Verbraucherdarlehensverträgen

Die Widerrufsfrist beginnt auch nicht, bevor der Darlehensgeber dem Darlehensnehmer eine für diesen bestimmte Vertragsurkunde, den schriftlichen Antrag des Darlehensnehmers oder eine Abschrift der Vertragsurkunde oder seines Antrags zur Verfügung gestellt hat.

Enthält die dem Darlehensnehmer nach Absatz 1 zur Verfügung gestellte Urkunde die Pflichtangaben nach § 492 Absatz 2 nicht, beginnt die Frist erst mit Nachholung dieser Angaben gemäß § 492 Absatz 6. In diesem Fall beträgt die Widerrufsfrist einen Monat.

Die Widerrufsfrist beginnt im Falle des § 494 Absatz 7 erst, wenn der Darlehensnehmer die dort bezeichnete Abschrift des Vertrags erhalten hat.

第 356c 條（於分期供給契約之解除權）

於非以遠距之方式，亦非於交易場所外訂定分期供給契約之情形，企業經營者依民法施行法第 246 條第 3 項規定，告知消費者其解除權前，解除期間不起算。

第 356 條第 1 項規定，準用之。解除權，至遲於第 355 條第 2 項第 2 句所規定之時 12 個與 14 日後，起算。

第 357a 條（解除金融服務契約之效果）

受領之給付，至遲於 30 日後，應返還之。

於解除交易場所外訂定之契約，或解除遠距銷售金融服務契約之情形，消費者就企業經營者至解除前所提供之服務，於下列情形，負有償還其價額之義務：

- 一、於其發出契約表示前，已受有該法律效果之指明者；
- 二、明示同意，企業經營者於解除期間經過前，開始進行服務者。

第 357 條第 5 項至第 8 項規定，於解除為第 506 條第 4 項所規定例外效力所及之有償金融協助契約，亦準用之。有償金融協助契約之客體，為交付非儲存於有形載體之數位內容者，消費者就至解除前所提供之數位內容，於下列情形，應償還其價額；

- 一、於其發出契約表示前，已受該法律效果之指明者；

§ 356c Widerrufsrecht bei Ratenlieferungsverträgen

Bei einem Ratenlieferungsvertrag, der weder im Fernabsatz noch außerhalb von Geschäftsräumen geschlossen wird, beginnt die Widerrufsfrist nicht, bevor der Unternehmer den Verbraucher gemäß Artikel 246 Absatz 3 des Einführungsgesetzes zum Bürgerlichen Gesetzbuche über sein Widerrufsrecht unterrichtet hat.

§ 356 Absatz 1 gilt entsprechend. Das Widerrufsrecht erlischt spätestens zwölf Monate und 14 Tage nach dem in § 355 Absatz 2 Satz 2 genannten Zeitpunkt.

§ 357a Rechtsfolgen des Widerrufs von Verträgen über Finanzdienstleistungen

Die empfangenen Leistungen sind spätestens nach 30 Tagen zurückzugewähren.

Im Falle des Widerrufs von außerhalb von Geschäftsräumen geschlossenen Verträgen oder Fernabsatzverträgen über Finanzdienstleistungen ist der Verbraucher zur Zahlung von Wertersatz für die vom Unternehmer bis zum Widerruf erbrachte Dienstleistung verpflichtet, wenn er

1. vor Abgabe seiner Vertragserklärung auf diese Rechtsfolge hingewiesen worden ist und
2. ausdrücklich zugestimmt hat, dass der Unternehmer vor Ende der Widerrufsfrist mit der Ausführung der Dienstleistung beginnt.

Im Falle des Widerrufs von Verträgen über eine entgeltliche Finanzierungshilfe, die von der Ausnahme des § 506 Absatz 4 erfasst sind, gilt auch § 357 Absatz 5 bis 8 entsprechend. Ist Gegenstand des Vertrags über die entgeltliche Finanzierungshilfe die Lieferung von nicht auf einem körperlichen Datenträger befindlichen digitalen Inhalten, hat der Verbraucher Wertersatz für die bis zum Widerruf gelieferten digitalen Inhalte zu leisten, wenn er

1. vor Abgabe seiner Vertragserklärung auf diese Rechtsfolge hingewiesen worden ist und

二、明示同意，企業經營者於解除期間經過前，開始交付數位內容者；

契約訂有對待給付者，計算償還價額時，應以其為基礎。約定之總價格過高者，應以已給付之市場價值為基礎，計算償還價額。

消費者金錢借貸契約經解除者，借用人就借貸金錢支付與返還間之期間，應支付約定之貸款利息。借貸金錢有土地質權之擔保者，得證明使用利益之價值，低於約定之貸款利息。於此情形，僅應支付較低之金額。解除不為第 506 條第 4 項所規定例外所及之有償金融協助契約者，準用第 2 項規定，以及以民法施行法第 247 條之 12 第 1 項、同條之 6 第 2 項所規定與解除權相關義務之說明，代替解除權之告知。借用人此外只應償還貸與人，其對行政機關所支出，且不能請求返還之費用。

第 357b 條（分時居住權契約、長期渡假契約與互易契約之解除）

消費者於解除時，無須負擔費用。企業經營者，應償還消費者契約之費用、契約實施與結算之費用。對已給付服務之報酬，以及對居住建築之交付與使用之報酬，亦於排除之列。

消費者，就第 481 條所規定居住處價值之減損，僅以價值因未依規定使用，而減損者為限，應償還之。

2. ausdrücklich zugestimmt hat, dass der Unternehmer vor Ende der Widerrufsfrist mit der Lieferung der digitalen Inhalte beginnt.

Ist im Vertrag eine Gegenleistung bestimmt, ist sie bei der Berechnung des Wertersatzes zu Grunde zu legen. Ist der vereinbarte Gesamtpreis unverhältnismäßig hoch, ist der Wertersatz auf der Grundlage des Marktwerts der erbrachten Leistung zu berechnen.

Im Falle des Widerrufs von Verbraucherdarlehensverträgen hat der Darlehensnehmer für den Zeitraum zwischen der Auszahlung und der Rückzahlung des Darlehens den vereinbarten Sollzins zu entrichten. Ist das Darlehen durch ein Grundpfandrecht gesichert, kann nachgewiesen werden, dass der Wert des Gebrauchsvorteils niedriger war als der vereinbarte Sollzins. In diesem Fall ist nur der niedrigere Betrag geschuldet. Im Falle des Widerrufs von Verträgen über eine entgeltliche Finanzierungshilfe, die nicht von der Ausnahme des § 506 Absatz 4 erfasst sind, gilt auch Absatz 2 entsprechend mit der Maßgabe, dass an die Stelle der Unterrichtung über das Widerrufsrecht die Pflichtangaben nach Artikel 247 § 12 Absatz 1 in Verbindung mit § 6 Absatz 2 des Einführungsgesetzes zum Bürgerlichen Gesetzbuche, die das Widerrufsrecht betreffen, treten. Darüber hinaus hat der Darlehensnehmer dem Darlehensgeber nur die Aufwendungen zu ersetzen, die der Darlehensgeber gegenüber öffentlichen Stellen erbracht hat und nicht zurückverlangen kann.

§ 357b Rechtsfolgen des Widerrufs von Teilzeit-Wohnrechtverträgen, Verträgen über ein langfristiges Urlaubsprodukt, Vermittlungsverträgen und Tauschsystemverträgen

Der Verbraucher hat im Falle des Widerrufs keine Kosten zu tragen. Die Kosten des Vertrags, seiner Durchführung und seiner Rückabwicklung hat der Unternehmer dem Verbraucher zu erstatten. Eine Vergütung für geleistete Dienste sowie für die Überlassung von Wohngebäuden zur Nutzung ist ausgeschlossen.

Der Verbraucher hat für einen Wertverlust der Unterkunft im Sinne des § 481 nur Wertersatz zu leisten, soweit der Wertverlust auf einer nicht bestimmungsgemäßen Nutzung der Unterkunft beruht.

第 357c 條（解除既非以遠距之方式，亦非於交易場所外訂定之分期交付契約之法律效果）

第 357 條第 1 項至第 5 項規定，於已受領給付之返還，準用之。消費者負擔返還受領物之直接費用。但企業經營者已表示負擔該費用者，不在此限。準用第 357 條第 7 項之規定，以及以民法施行法第 246 條第 3 項所規定之告知，代替同法第 246a 條之 1 第 2 項第 1 句第 1 款所規定之告知。

第 358 條（與經解除之契約連結之契約）

消費者有效解除，其以訂定商品交付，或其它給付提供之契約為目的之意思表示者，亦不受其以訂定與此契約連結之金錢借貸為目的之意思表示拘束。

消費者依第 495 條第 1 項規定，有效解除其以訂定消費者金錢借貸契約為目的之意思表示者，亦不受其以訂定與此契約連結之商品交付，或其他給付提供契約為目的之意思表示拘束。

商品交付或其他給付提供之契約，以貸與之金錢一部或全部有助其他契約之融資，且兩項契約形成經濟上之一體者為限，與第 1 項或第 2 項之金錢借貸契約相連結。企業經營者對消費者之對待給付予以融資，或於第三人融資之情形，貸與人於準備或訂定借貸契約時，使用企業經營者之協助者，尤其可認成立經濟上之一體。於對取得土地或取得與土地相同權利融資之情形，貸與人讓與土地或讓與與土地相同之權利於消費者，或其除提供金錢外，尚以使該讓與

§ 357c Rechtsfolgen des Widerrufs von weder im Fernabsatz noch außerhalb von Geschäftsräumen geschlossenen Ratenlieferungsverträgen

Für die Rückgewähr der empfangenen Leistungen gilt § 357 Absatz 1 bis 5 entsprechend. Der Verbraucher trägt die unmittelbaren Kosten der Rücksendung der empfangenen Sachen, es sei denn, der Unternehmer hat sich bereit erklärt, diese Kosten zu tragen. § 357 Absatz 7 ist mit der Maßgabe entsprechend anzuwenden, dass an die Stelle der Unterrichtung nach Artikel 246a § 1 Absatz 2 Satz 1 Nummer 1 des Einführungsgesetzes zum Bürgerlichen Gesetzbuche die Unterrichtung nach Artikel 246 Absatz 3 des Einführungsgesetzes zum Bürgerlichen Gesetzbuche tritt.

§ 358 Mit dem widerrufenen Vertrag verbundener Vertrag

Hat der Verbraucher seine auf den Abschluss eines Vertrags über die Lieferung einer Ware oder die Erbringung einer anderen Leistung durch einen Unternehmer gerichtete Willenserklärung wirksam widerrufen, so ist er auch an seine auf den Abschluss eines mit diesem Vertrag verbundenen Darlehensvertrags gerichtete Willenserklärung nicht mehr gebunden.

Hat der Verbraucher seine auf den Abschluss eines Verbraucherdarlehensvertrags gerichtete Willenserklärung auf Grund des § 495 Absatz 1 wirksam widerrufen, so ist er auch an seine auf den Abschluss eines mit diesem Verbraucherdarlehensvertrag verbundenen Vertrags über die Lieferung einer Ware oder die Erbringung einer anderen Leistung gerichtete Willenserklärung nicht mehr gebunden.

Ein Vertrag über die Lieferung einer Ware oder über die Erbringung einer anderen Leistung und ein Darlehensvertrag nach den Absätzen 1 oder 2 sind verbunden, wenn das Darlehen ganz oder teilweise der Finanzierung des anderen Vertrags dient und beide Verträge eine wirtschaftliche Einheit bilden. Eine wirtschaftliche Einheit ist insbesondere anzunehmen, wenn der Unternehmer selbst die Gegenleistung des Verbrauchers finanziert, oder im Falle der Finanzierung

利益全部或一部為自己所有之方式，促使企業經營者協助取得土地或與土地相同權利，於規劃、廣告或實施企劃案時，承擔讓與人之功能，或只以有利讓與人之方式為之者，始可認為成立經濟上之一體。

第 357 條至第 357b 條規定，於連結契約之回復原狀，無論第 355 條第 3 項之銷售型式，分別依連結契約之種類，準用之。連結之契約，為交付非儲存於有形載體之數位內容之契約，且企業經營者應提供消費者，第 312f 條所規定之契約證書或副本者，消費者依第 356 條第 5 項中段與後半段規定，應償還至解除前已交付數位內容之價額，第 357 條第 9 項規定，不適用之。連結之契約，為以遠距之方式，或於交易場所外訂定之分期交付契約者，除第 355 條第 3 項規定外，亦準用第 357 條規定；第 355 條第 3 項與第 357c 條規定，於分期交付契約，亦準用之。但於第 1 項之情形，不得請求利息與因金錢借貸契約回復原狀所生之費用。企業經營者於解除生效時，已取得貸與之金錢者，以與消費者關於解除法律效果之關係者為限，貸與人加入企業經營者因連結契約所生之權利與義務。

durch einen Dritten, wenn sich der Darlehensgeber bei der Vorbereitung oder dem Abschluss des Darlehensvertrags der Mitwirkung des Unternehmers bedient. Bei einem finanzierten Erwerb eines Grundstücks oder eines grundstücksgleichen Rechts ist eine wirtschaftliche Einheit nur anzunehmen, wenn der Darlehensgeber selbst dem Verbraucher das Grundstück oder das grundstücksgleiche Recht verschafft oder wenn er über die Zurverfügungstellung von Darlehen hinaus den Erwerb des Grundstücks oder grundstücksgleichen Rechts durch Zusammenwirken mit dem Unternehmer fördert, indem er sich dessen Veräußerungsinteressen ganz oder teilweise zu Eigen macht, bei der Planung, Werbung oder Durchführung des Projekts Funktionen des Veräußerers übernimmt oder den Veräußerer einseitig begünstigt.

Auf die Rückabwicklung des verbundenen Vertrags sind unabhängig von der Vertriebsform § 355 Absatz 3 und, je nach Art des verbundenen Vertrags, die §§ 357 bis 357b entsprechend anzuwenden. Ist der verbundene Vertrag ein Vertrag über die Lieferung von nicht auf einem körperlichen Datenträger befindlichen digitalen Inhalten und hat der Unternehmer dem Verbraucher eine Abschrift oder Bestätigung des Vertrags nach § 312f zur Verfügung gestellt, hat der Verbraucher abweichend von § 357 Absatz 9 unter den Voraussetzungen des § 356 Absatz 5 zweiter und dritter Halbsatz Wertersatz für die bis zum Widerruf gelieferten digitalen Inhalte zu leisten. Ist der verbundene Vertrag ein im Fernabsatz oder außerhalb von Geschäftsräumen geschlossener Ratenlieferungsvertrag, ist neben § 355 Absatz 3 auch § 357 entsprechend anzuwenden; im Übrigen gelten für verbundene Ratenlieferungsverträge § 355 Absatz 3 und § 357c entsprechend. Im Falle des Absatzes 1 sind jedoch Ansprüche auf Zahlung von Zinsen und Kosten aus der Rückabwicklung des Darlehensvertrags gegen den Verbraucher ausgeschlossen. Der Darlehensgeber tritt im Verhältnis zum Verbraucher hinsichtlich der Rechtsfolgen des Widerrufs in die Rechte und Pflichten des Unternehmers aus dem verbundenen Vertrag ein, wenn das Darlehen dem Unternehmer bei Wirksamwerden des Widerrufs bereits zugeflossen ist.

第 2 項與第 4 項規定，於金錢借貸契約，其有利於金融工具之取得者，不適用之。

第 359 條（於連結契約之抗辯）

消費者，以連結契約所生之抗辯，使其得對與自己訂定連結契約之企業經營者拒絕給付者為限，得拒絕返還借貸金錢。但該企業經營者與該消費者間之抗辯，其以消費者金錢借貸契約訂定後，而約定之更改契約為基礎者，不適用前句之規定。消費者得請求補正者，以補正未依本旨者為限，始得拒絕返還借貸之金錢。

第 1 項規定，於有助於取得金融工具融資之金錢借貸契約，或融資之對價少於 200 歐元時，不適用之。

第 360 條（關聯之契約）

消費者，有效解除其以訂定契約為目的之意思表示，且連結契約之要件不成立者，亦不再受其以訂定關聯契約為目的之意思表示拘束。第 358 條第 4 項第 1 句至第 3 句規定，於關聯契約之回復原狀，準用之。消費者解除分時居住權契約，或長期渡假商品契約者，亦不負擔關聯契約之費用；第 357b 條第 1 項第 2 句與第 3 句規定，準用之。

與經解除之契約有關，以及涉及經解除契約之企業經營者所為之給付，或涉及第三人依其與經解除契約之企業經營者之約定，所為之給付者，成立關聯之契約。借貸之金錢，只有助於經解除契約之融資，且於消費者金錢借貸契約內，詳細說明企業經營者依經解除契約所為之給付者，消費者金錢借貸契約，亦為關聯契約。

Die Absätze 2 und 4 sind nicht anzuwenden auf Darlehensverträge, die der Finanzierung des Erwerbs von Finanzinstrumenten dienen.

§ 359 Einwendungen bei verbundenen Verträgen

Der Verbraucher kann die Rückzahlung des Darlehens verweigern, soweit Einwendungen aus dem verbundenen Vertrag ihn gegenüber dem Unternehmer, mit dem er den verbundenen Vertrag geschlossen hat, zur Verweigerung seiner Leistung berechtigen würden. Dies gilt nicht bei Einwendungen, die auf einer zwischen diesem Unternehmer und dem Verbraucher nach Abschluss des Verbraucherdarlehensvertrags vereinbarten Vertragsänderung beruhen. Kann der Verbraucher Nacherfüllung verlangen, so kann er die Rückzahlung des Darlehens erst verweigern, wenn die Nacherfüllung fehlgeschlagen ist.

Absatz 1 ist nicht anzuwenden auf Darlehensverträge, die der Finanzierung des Erwerbs von Finanzinstrumenten dienen, oder wenn das finanzierte Entgelt weniger als 200 Euro beträgt.

§ 360 Zusammenhängende Verträge

Hat der Verbraucher seine auf den Abschluss eines Vertrags gerichtete Willenserklärung wirksam widerrufen und liegen die Voraussetzungen für einen verbundenen Vertrag nicht vor, so ist er auch an seine auf den Abschluss eines damit zusammenhängenden Vertrags gerichtete Willenserklärung nicht mehr gebunden. Auf die Rückabwicklung des zusammenhängenden Vertrags ist § 358 Absatz 4 Satz 1 bis 3 entsprechend anzuwenden. Widerruft der Verbraucher einen Teilzeit-Wohnrechtvertrag oder einen Vertrag über ein langfristiges Urlaubsprodukt, hat er auch für den zusammenhängenden Vertrag keine Kosten zu tragen; § 357b Absatz 1 Satz 2 und 3 gilt entsprechend.

Ein zusammenhängender Vertrag liegt vor, wenn er einen Bezug zu dem widerrufenen Vertrag aufweist und eine Leistung betrifft, die von dem Unternehmer des widerrufenen Vertrags oder einem Dritten auf der Grundlage einer Vereinbarung zwischen dem Dritten und dem Unternehmer des widerrufenen Vertrags erbracht wird. Ein

第 361 條（其它請求權、相反之規定與舉證責任）

除本節之規定外，其它對消費者之請求權，不因解除而發生。

本節之規定，以未另有規定者為限，不得以消費者之不利益，加以排除。本節之規定，以其它形式加以規避者，以未另有規定者為限，亦適用之。

解除期間之開始有爭執者，企業經營者負有舉證責任。

第 474 條（消費財買賣；可資適用之規定）

消費財買賣，乃消費者自出賣人買受動產之契約。以動產之出賣與企業經營者提供服務為內容之契約，亦為消費財買賣契約。

本節以下之規定，以未有其它規定者為限，於消費財買賣，準用之。但於消費者個人得參與，供公開使用之拍賣中，所出賣之中古物，不適用之。

就依第 433 條規定所應為之給付，既未規定時間，亦無法自情事得知者，債權人只得即時請求該給付，第 271 條第 1 項規定，不適用之。企業經營者，於此情形，應於訂定契約後 30 日內交付物。契約當事人，得立即給付。

Verbraucherdarlehensvertrag ist auch dann ein zusammenhängender Vertrag, wenn das Darlehen ausschließlich der Finanzierung des widerrufenen Vertrags dient und die Leistung des Unternehmers aus dem widerrufenen Vertrag in dem Verbraucherdarlehensvertrag genau angegeben ist.

§ 361 Weitere Ansprüche, abweichende Vereinbarungen und Beweislast

Über die Vorschriften dieses Untertitels hinaus bestehen keine weiteren Ansprüche gegen den Verbraucher infolge des Widerrufs.

Von den Vorschriften dieses Untertitels darf, soweit nicht ein anderes bestimmt ist, nicht zum Nachteil des Verbrauchers abgewichen werden. Die Vorschriften dieses Untertitels finden, soweit nichts anderes bestimmt ist, auch Anwendung, wenn sie durch anderweitige Gestaltungen umgangen werden.

Ist der Beginn der Widerrufsfrist streitig, so trifft die Beweislast den Unternehmer.

§ 474 Begriff des Verbrauchsgüterkaufs; anwendbare Vorschriften

Verbrauchsgüterkäufe sind Verträge, durch die ein Verbraucher von einem Unternehmer eine bewegliche Sache kauft. Um einen Verbrauchsgüterkauf handelt es sich auch bei einem Vertrag, der neben dem Verkauf einer beweglichen Sache die Erbringung einer Dienstleistung durch den Unternehmer zum Gegenstand hat.

Für den Verbrauchsgüterkauf gelten ergänzend die folgenden Vorschriften dieses Untertitels. Dies gilt nicht für gebrauchte Sachen, die in einer öffentlich zugänglichen Versteigerung verkauft werden, an der der Verbraucher persönlich teilnehmen kann.

Ist eine Zeit für die nach § 433 zu erbringenden Leistungen weder bestimmt noch aus den Umständen zu entnehmen, so kann der Gläubiger diese Leistungen abweichend von § 271 Absatz 1 nur unverzüglich verlangen. Der Unternehmer muss die Sache in diesem Fall spätestens 30 Tage nach Vertragsschluss übergeben. Die Vertragsparteien können die Leistungen sofort bewirken.

買受人委託運送人、承攬運送人，或委託其他為處理寄送而指定之人或機構進行寄送，且企業經營者於此前，未對買受人指名該人或機構者，買受人承擔不可抗力之滅失或毀損之危險，第 447 條第 1 項之規定，一併適用之。

第 439 條第 4 項規定，於本節所規定之買賣契約，適用之，而無須返還使用利益，或應償還其價額。第 445 條、第 447 條第 2 項規定，不適用之。

第 475 條（相反之約定）

於瑕疵通知企業經營者前所為之約定，以消費者之不利益，排除第 433 條至第 435 條、第 437 條、第 439 條至第 443 條規定，以及本節規定之適用者，企業經營者不得主張之。第 1 句規定所指之規定，以其它方法加以規避者，亦適用之。

第 437 條所指請求權之消滅時效，於瑕疵通知企業經營者前，以消滅時效期間之約定，自法定消滅時效開始前少於 2 年，於中古物，少於 1 年者為限，不得以法律行為減輕之。

第 1 項與第 2 項規定，於損害賠償請求權之排除或限制，不適用之，第 307 條與第 309 條規定，仍適用之。

第 476 條（舉證責任之轉換）

瑕疵於自危險移轉時起 6 個月內顯現者，推定於危險移轉時，物已有瑕疵。但該推定不符合物或瑕疵之種類者，不在此限。

§447 Absatz 1 gilt mit der Maßgabe, dass die Gefahr des zufälligen Untergangs und der zufälligen Verschlechterung nur dann auf den Käufer übergeht, wenn der Käufer den Spediteur, den Frachtführer oder die sonst zur Ausführung der Versendung bestimmte Person oder Anstalt mit der Ausführung beauftragt hat und der Unternehmer dem Käufer diese Person oder Anstalt nicht zuvor benannt hat.

Auf die in diesem Untertitel geregelten Kaufverträge ist § 439 Absatz 4 mit der Maßgabe anzuwenden, dass Nutzungen nicht herauszugeben oder durch ihren Wert zu ersetzen sind. Die §§ 445 und 447 Absatz 2 sind nicht anzuwenden.

§ 475 Abweichende Vereinbarungen

Auf eine vor Mitteilung eines Mangels an den Unternehmer getroffene Vereinbarung, die zum Nachteil des Verbrauchers von den §§ 433 bis 435, 437, 439 bis 443 sowie von den Vorschriften dieses Untertitels abweicht, kann der Unternehmer sich nicht berufen. Die in Satz 1 bezeichneten Vorschriften finden auch Anwendung, wenn sie durch anderweitige Gestaltungen umgangen werden.

Die Verjährung der in § 437 bezeichneten Ansprüche kann vor Mitteilung eines Mangels an den Unternehmer nicht durch Rechtsgeschäft erleichtert werden, wenn die Vereinbarung zu einer Verjährungsfrist ab dem gesetzlichen Verjährungsbeginn von weniger als zwei Jahren, bei gebrauchten Sachen von weniger als einem Jahr führt.

Die Absätze 1 und 2 gelten unbeschadet der §§ 307 bis 309 nicht für den Ausschluss oder die Beschränkung des Anspruchs auf Schadensersatz.

§ 476 Beweislastumkehr

Zeigt sich innerhalb von sechs Monaten seit Gefahrübergang ein Sachmangel, so wird vermutet, dass die Sache bereits bei Gefahrübergang mangelhaft war, es sei denn, diese Vermutung ist mit der Art der Sache oder des Mangels unvereinbar.

第 477 條（保證之特別規定）

擔保之意思表示（第 443 條），應以簡單、易懂之方式為之。其必須包括：

- 一、對消費者法定權利，以及不得以擔保排除或限制該權利之提示；
- 二、擔保之內容，與對擔保之適用為必要之重要說明，尤其是擔保之期間與空間上之適用範圍，以及擔保提供人之姓名與住址。

消費者得請求以書面，對其通知擔保之表示。

擔保義務之效力，不因以上要求之不履行，而受影響。

第 478 條（企業經營者之求償）

企業經營者，因出賣之新製物有瑕疵，而應將其取回，或消費者減少價金者，第 437 條所規定，企業經營者對為其出賣人之企業經營者（製造商）所享有權利，因消費者主張瑕疵，而無須經必要之定期催告。

企業經營者，於出賣新製物，以消費者所主張之瑕疵，於危險移轉至企業經營者時已存在者為限，得請求權其製造商，賠償其於對消費者之關係上，依第 439 條第 2 項規定應負擔之費用。

第 476 條規定，於第 1 項與第 2 項所指之情形，適用之，且期間自危險移轉至消費者時起算。

§ 477 Sonderbestimmungen für Garantien

Eine Garantieerklärung (§ 443) muss einfach und verständlich abgefasst sein. Sie muss enthalten

1. den Hinweis auf die gesetzlichen Rechte des Verbrauchers sowie darauf, dass sie durch die Garantie nicht eingeschränkt werden und
2. den Inhalt der Garantie und alle wesentlichen Angaben, die für die Geltendmachung der Garantie erforderlich sind, insbesondere die Dauer und den räumlichen Geltungsbereich des Garantieschutzes sowie Namen und Anschrift des Garantiegebers.

Der Verbraucher kann verlangen, dass ihm die Garantieerklärung in Textform mitgeteilt wird.

Die Wirksamkeit der Garantieverpflichtung wird nicht dadurch berührt, dass eine der vorstehenden Anforderungen nicht erfüllt wird.

§ 478 Rückgriff des Unternehmers

Wenn der Unternehmer die verkaufte neu hergestellte Sache als Folge ihrer Mangelhaftigkeit zurücknehmen musste oder der Verbraucher den Kaufpreis gemindert hat, bedarf es für die in § 437 bezeichneten Rechte des Unternehmers gegen den Unternehmer, der ihm die Sache verkauft hatte (Lieferant), wegen des vom Verbraucher geltend gemachten Mangels einer sonst erforderlichen Fristsetzung nicht.

Der Unternehmer kann beim Verkauf einer neu hergestellten Sache von seinem Lieferanten Ersatz der Aufwendungen verlangen, die der Unternehmer im Verhältnis zum Verbraucher nach § 439 Abs. 2 zu tragen hatte, wenn der vom Verbraucher geltend gemachte Mangel bereits beim Übergang der Gefahr auf den Unternehmer vorhanden war.

In den Fällen der Absätze 1 und 2 findet § 476 mit der Maßgabe Anwendung, dass die Frist mit dem Übergang der Gefahr auf den Verbraucher beginnt.

於瑕疵通知製造商前所為，不利於企業經營者，排除第 433 條至第 435 條、第 437 條、第 439 條至第 443 條、第 1 項至第 3 項，以及第 479 條規定適用之約定，以求償債權人不享有等值之賠償者為限，製造商不得主張之。第 1 句規定，於損害賠償請求權之排除或限制，不適用之，第 307 條規定不受影響。第 1 句所指之規定，以其它方法加以規避者，亦適用之。

第 1 項至第 4 項規定，於製造商與其他交付鏈上之買受人所享有，對各自出賣人之請求權，以債務人為企業經營者為限，準用之。

商法第 377 條規定，不受影響。

第 479 條（求償請求權之消滅時效）

第 478 條第 2 項所規定之費用賠償請求權，自物交付後 2 年間不行使，而消滅時效完成。

第 437 條與第 478 條第 2 項所規定，企業經營者對其製造商，因出賣於消費者之新製物，其瑕疵所生之請求權，最早自企業經營者履行消費者之請求權後，2 個月間不行使，而消滅時效完成。該消滅時效之未完成，至遲於製造商交付物於企業經營者後經 5 年而終了。

以上各項規定，於製造商與其他於交付鏈上之買受人，對各自出賣人所享有之請求權，以債務人為企業經營者為限，準用之。

第 481 條（分時居住權契約）

分時居住權契約，指企業經營者因此移轉或允諾移轉，超過一年之期間，多次於特定或可得特定之時段，以過夜之目的，使用居住

Auf eine vor Mitteilung eines Mangels an den Lieferanten getroffene Vereinbarung, die zum Nachteil des Unternehmers von den §§ 433 bis 435, 437, 439 bis 443 sowie von den Absätzen 1 bis 3 und von § 479 abweicht, kann sich der Lieferant nicht berufen, wenn dem Rückgriffsgläubiger kein gleichwertiger Ausgleich eingeräumt wird. Satz 1 gilt unbeschadet des § 307 nicht für den Ausschluss oder die Beschränkung des Anspruchs auf Schadensersatz. Die in Satz 1 bezeichneten Vorschriften finden auch Anwendung, wenn sie durch anderweitige Gestaltungen umgangen werden.

Die Absätze 1 bis 4 finden auf die Ansprüche des Lieferanten und der übrigen Käufer in der Lieferkette gegen die jeweiligen Verkäufer entsprechende Anwendung, wenn die Schuldner Unternehmer sind.

§ 377 des Handelsgesetzbuchs bleibt unberührt.

§ 479 Verjährung von Rückgriffsansprüchen

Die in § 478 Abs. 2 bestimmten Aufwendungsersatzansprüche verjähren in zwei Jahren ab Ablieferung der Sache.

Die Verjährung der in den §§ 437 und 478 Abs. 2 bestimmten Ansprüche des Unternehmers gegen seinen Lieferanten wegen des Mangels einer an einen Verbraucher verkauften neu hergestellten Sache tritt frühestens zwei Monate nach dem Zeitpunkt ein, in dem der Unternehmer die Ansprüche des Verbrauchers erfüllt hat. Diese Ablaufhemmung endet spätestens fünf Jahre nach dem Zeitpunkt, in dem der Lieferant die Sache dem Unternehmer abgeliefert hat.

Die vorstehenden Absätze finden auf die Ansprüche des Lieferanten und der übrigen Käufer in der Lieferkette gegen die jeweiligen Verkäufer entsprechende Anwendung, wenn die Schuldner Unternehmer sind.

§ 481 Teilzeit-Wohnrechtevertrag

Ein Teilzeit-Wohnrechtevertrag ist ein Vertrag, durch den ein Unternehmer einem Verbraucher gegen Zahlung eines Gesamtpreises das Recht verschafft oder zu verschaffen verspricht, für die Dauer von mehr

建築物之權利於消費者，以交換其支付總價之契約。計算契約期間時，應顧及於契約內所訂定之延長可能。

分時居住權，得為物權或其他權利，以及尤其亦得因社團之會員資格或合夥之股份而發生。以使用之目的，自居住建築物之構成部分，選出居住建築物者，亦得為分時居住權。

居住建築物之一部分，等同居住建築物，作為過夜處之動產或其一部者，亦同。

第 481a 條（長期渡假商品契約）

長期渡假商品契約，指企業經營者因此移轉或允諾移轉，超過一年期間，就居住取得折價或其它折扣之權利於消費者，以交換其支付總價之契約。第 481 條第 1 項第 2 句規定，準用之。

第 481b 條（居間契約、互易系統契約）

居間契約，指企業經營者因此以訂約機會之證明或契約之居間，受有消費者報酬之允諾，消費者依該契約，應讓與或取得因分時居住權或長期渡假商品契約所生權利之契約。

系統互易契約，指企業經營者因此以訂約機會之證明或契約之居間，受有消費者報酬之允諾，消費者依該契約，應互易，或以其它方式取得或讓與因分時居住權或長期渡假商品契約所生個別權利之契約。

als einem Jahr ein Wohngebäude mehrfach für einen bestimmten oder zu bestimmenden Zeitraum zu Übernachtungszwecken zu nutzen. Bei der Berechnung der Vertragsdauer sind sämtliche im Vertrag vorgesehenen Verlängerungsmöglichkeiten zu berücksichtigen.

Das Recht kann ein dingliches oder anderes Recht sein und insbesondere auch durch eine Mitgliedschaft in einem Verein oder einen Anteil an einer Gesellschaft eingeräumt werden. Das Recht kann auch darin bestehen, aus einem Bestand von Wohngebäuden ein Wohngebäude zur Nutzung zu wählen.

Einem Wohngebäude steht ein Teil eines Wohngebäudes gleich, ebenso eine bewegliche, als Übernachtungsunterkunft gedachte Sache oder ein Teil derselben.

§ 481a Vertrag über ein langfristiges Urlaubsprodukt

Ein Vertrag über ein langfristiges Urlaubsprodukt ist ein Vertrag für die Dauer von mehr als einem Jahr, durch den ein Unternehmer einem Verbraucher gegen Zahlung eines Gesamtpreises das Recht verschafft oder zu verschaffen verspricht, Preisnachlässe oder sonstige Vergünstigungen in Bezug auf eine Unterkunft zu erwerben. § 481 Absatz 1 Satz 2 gilt entsprechend.

§ 481b Vermittlungsvertrag, Tauschsystemvertrag

Ein Vermittlungsvertrag ist ein Vertrag, durch den sich ein Unternehmer von einem Verbraucher ein Entgelt versprechen lässt für den Nachweis der Gelegenheit zum Abschluss eines Vertrags oder für die Vermittlung eines Vertrags, durch den die Rechte des Verbrauchers aus einem Teilzeit-Wohnrechtevertrag oder einem Vertrag über ein langfristiges Urlaubsprodukt erworben oder veräußert werden sollen.

Ein Tauschsystemvertrag ist ein Vertrag, durch den sich ein Unternehmer von einem Verbraucher ein Entgelt versprechen lässt für den Nachweis der Gelegenheit zum Abschluss eines Vertrags oder für die Vermittlung eines Vertrags, durch den einzelne Rechte des Verbrauchers aus einem Teilzeit-Wohnrechtevertrag oder einem Vertrag

第 482 條（先契約資訊、出賣廣告，以及禁止作為金錢投資之出賣）

企業經營者，於消費者為訂定分時居住權、長期渡假、居間或互易系統契約之目的，而發出契約之表示前，應以書面之方式，及時提供消費者民法施行法第 242 條之 1 所規定之資訊。該資訊，應清楚且易懂。

於任何為該等契約之廣告內，應說明可取得先契約資訊，以及得於何處索取該等資訊。企業經營者，於廣告活動或出賣活動之邀請內，應清楚指明活動之營業特徵。應使消費者於該等活動，得隨時取得先契約資訊。

分時居住權，或因長期渡假商品契約所生之權利，不得作為金錢投資，而招募或出賣。

第 482a 條（解除之告知）

企業經營者，應於訂約前，以書面向消費者指明，解除權與解除期間，以及第 486 條所規定之預付禁止。消費者應以書面證明，取得相關契約約定。

第 483 條（契約之語言與先契約資訊）

über ein langfristiges Urlaubsprodukt getauscht oder auf andere Weise erworben oder veräußert werden sollen.

§ 482 Vorvertragliche Informationen, Werbung und Verbot des Verkaufs als Geldanlage

Der Unternehmer hat dem Verbraucher rechtzeitig vor Abgabe von dessen Vertragserklärung zum Abschluss eines Teilzeit-Wohnrechtevertrags, eines Vertrags über ein langfristiges Urlaubsprodukt, eines Vermittlungsvertrags oder eines Tauschsystemvertrags vorvertragliche Informationen nach Artikel 242 § 1 des Einführungsgesetzes zum Bürgerlichen Gesetzbuche in Textform zur Verfügung zu stellen. Diese müssen klar und verständlich sein.

In jeder Werbung für solche Verträge ist anzugeben, dass vorvertragliche Informationen erhältlich sind und wo diese angefordert werden können. Der Unternehmer hat bei der Einladung zu Werbe- oder Verkaufsveranstaltungen deutlich auf den gewerblichen Charakter der Veranstaltung hinzuweisen. Dem Verbraucher sind auf solchen Veranstaltungen die vorvertraglichen Informationen jederzeit zugänglich zu machen.

Ein Teilzeit-Wohnrecht oder ein Recht aus einem Vertrag über ein langfristiges Urlaubsprodukt darf nicht als Geldanlage beworben oder verkauft werden.

§ 482a Widerrufsbelehrung

Der Unternehmer muss den Verbraucher vor Vertragsschluss in Textform auf das Widerrufsrecht einschließlich der Widerrufsfrist sowie auf das Anzahlungsverbot nach § 486 hinweisen. Der Erhalt der entsprechenden Vertragsbestimmungen ist vom Verbraucher schriftlich zu bestätigen. Die Einzelheiten sind in Artikel 242 § 2 des Einführungsgesetzes zum Bürgerlichen Gesetzbuche geregelt.

§ 483 Sprache des Vertrags und der vorvertraglichen Informationen

分時居住權契約、長期渡假商品契約、居間契約或互易系統契約，應以消費者住所地之官方語言，住所地有數項官方語言者，以消費者所選擇歐盟會員國或歐洲經濟區協定契約國之官方語言，撰寫之。消費者為其他會員國之國民者，得選擇以其屬國之官方語言或其中一項官方語言，代替住所地國之官方語言。第1句與第2句規定，於先契約資訊與解除告知，亦適用之。

契約應經德國公證人作成公證書者，公證法第 5 條與第 16 條規定，適用之，且應將以消費者依第 1 項規定所選擇語言，經公證之契約翻譯，交付於消費者。

契約，違反第 1 項第 1 句與第 2 句或第 2 項規定者，無效。

第 484 條（契約之方式與內容）

分時居住權、長期渡假商品、居間與互易系統契約，以未規定更嚴格方式為限，應以書面為之。

依第 482 條第 1 項規定，對消費者所提供之先契約資訊，以消費者未對其同意，或企業經營者未單方對其更改者為限，構成契約之內容。企業經營者，僅得以適應因不可抗力所生契約變更之目的，單方更改先契約資訊。依第 1 句規定所為之更改，應於訂約前，以書面通知消費者。更改，以其經納入契約文件，且經指明，其與依第 482 條第 1 項規定所提供之先契約資訊，有不同者為限，始生效力。下列事項，應納入契約文件：

Der Teilzeit-Wohnrechtevertrag, der Vertrag über ein langfristiges Urlaubsprodukt, der Vermittlungsvertrag oder der Tauschsystemvertrag ist in der Amtssprache oder, wenn es dort mehrere Amtssprachen gibt, in der vom Verbraucher gewählten Amtssprache des Mitgliedstaats der Europäischen Union oder des Vertragsstaats des Abkommens über den Europäischen Wirtschaftsraum abzufassen, in dem der Verbraucher seinen Wohnsitz hat. Ist der Verbraucher Angehöriger eines anderen Mitgliedstaats, so kann er statt der Sprache seines Wohnsitzstaats auch die oder eine der Amtssprachen des Staats, dem er angehört, wählen. Die Sätze 1 und 2 gelten auch für die vorvertraglichen Informationen und für die Widerrufsbelehrung.

Ist der Vertrag von einem deutschen Notar zu beurkunden, so gelten die §§ 5 und 16 des Beurkundungsgesetzes mit der Maßgabe, dass dem Verbraucher eine beglaubigte Übersetzung des Vertrags in der von ihm nach Absatz 1 gewählten Sprache auszuhändigen ist.

Verträge, die Absatz 1 Satz 1 und 2 oder Absatz 2 nicht entsprechen, sind nichtig.

§ 484 Form und Inhalt des Vertrags

Der Teilzeit-Wohnrechtevertrag, der Vertrag über ein langfristiges Urlaubsprodukt, der Vermittlungsvertrag oder der Tauschsystemvertrag bedarf der schriftlichen Form, soweit nicht in anderen Vorschriften eine strengere Form vorgeschrieben ist.

Die dem Verbraucher nach § 482 Absatz 1 zur Verfügung gestellten vorvertraglichen Informationen werden Inhalt des Vertrags, soweit sie nicht einvernehmlich oder einseitig durch den Unternehmer geändert wurden. Der Unternehmer darf die vorvertraglichen Informationen nur einseitig ändern, um sie an Veränderungen anzupassen, die durch höhere Gewalt verursacht wurden. Die Änderungen nach Satz 1 müssen dem Verbraucher vor Abschluss des Vertrags in Textform mitgeteilt werden. Sie werden nur wirksam, wenn sie in die Vertragsdokumente mit dem Hinweis aufgenommen werden, dass sie von den nach § 482 Absatz 1 zur Verfügung gestellten vorvertraglichen Informationen abweichen. In die Vertragsdokumente sind aufzunehmen:

- 一、第 482 條第 1 項所規定之先契約資訊，但不影響其依第 1 句規定之適用；
- 二、雙方當事人之姓名與可資到達之住址；
- 三、於其中所包括之契約表示，其發出之時間與地點。

企業經營者，應交付契約證書或契約副本於消費者。於分時居住權契約，以契約語言與居住建築物所在地歐盟會員國，或歐洲經濟區協定契約國之官方語言，有不同者為限，應附加以居住建築物所在地國之官方語言所作成，經公證之契約翻譯。分時居住權契約，涉及數棟不同所在地國之居住建築物者，附加經公證翻譯之義務消滅。

第 485 條（解除權）

消費者，於分時居住權、長期渡假商品、居間與互易系統契約，享有第 355 條所規定之解除權。

第 486 條（預付禁止）

企業經營者，於解除期間經過前，不得請求消費者支付或受領其支付。

企業經營者於履行其因居間契約所生之義務前，或該契約關係消滅前，不得就與居間契約有關之事項，請求消費者支付或受領其支付。

第 486a 條（長期渡假商品契約之特別規定）

1. die vorvertraglichen Informationen nach § 482 Absatz 1 unbeschadet ihrer Geltung nach Satz 1,
2. die Namen und ladungsfähigen Anschriften beider Parteien sowie
3. Datum und Ort der Abgabe der darin enthaltenen Vertragserklärungen.

Der Unternehmer hat dem Verbraucher die Vertragsurkunde oder eine Abschrift des Vertrags zu überlassen. Bei einem Teilzeit-Wohnrechtevertrag hat er, wenn die Vertragssprache und die Amtssprache des Mitgliedstaats der Europäischen Union oder des Vertragsstaats des Abkommens über den Europäischen Wirtschaftsraum, in dem sich das Wohngebäude befindet, verschieden sind, eine beglaubigte Übersetzung des Vertrags in einer Amtssprache des Staats beizufügen, in dem sich das Wohngebäude befindet. Die Pflicht zur Beifügung einer beglaubigten Übersetzung entfällt, wenn sich der Teilzeit-Wohnrechtevertrag auf einen Bestand von Wohngebäuden bezieht, die sich in verschiedenen Staaten befinden.

§ 485 Widerrufsrecht

Dem Verbraucher steht bei einem Teilzeit-Wohnrechtevertrag, einem Vertrag über ein langfristiges Urlaubsprodukt, einem Vermittlungsvertrag oder einem Tauschsystemvertrag ein Widerrufsrecht nach § 355 zu.

§ 486 Anzahlungsverbot

Der Unternehmer darf Zahlungen des Verbrauchers vor Ablauf der Widerrufsfrist nicht fordern oder annehmen.

Es dürfen keine Zahlungen des Verbrauchers im Zusammenhang mit einem Vermittlungsvertrag gefordert oder angenommen werden, bis der Unternehmer seine Pflichten aus dem Vermittlungsvertrag erfüllt hat oder diese Vertragsbeziehung beendet ist.

§ 486a Besondere Vorschriften für Verträge über langfristige Urlaubsprodukte

於長期度假商品契約之情形，民法施行法第 242 條之 1 第 2 項所規定之表格，應包括分期支付計劃。企業經營者，就該計劃所指支付形式之適用，不得加以排除。企業經營者，以其事前以電子書面，請求消費者支付部份金額者為限，始得請求依表格已屆期之分期年金。請求消費者支付，應於分期年金屆期前至少 2 週為之。

消費者，自第 1 項為第 2 次分期年金支付所規定之時起，得於依第 1 項規定所為之屆期支付請求到達後 2 週內，終止契約。

第 487 條（相反之約定）

本節之規定，不得以消費者之不利益，加以排除。本節之規定，以未另有規定者為限，以其它方法加以規避者，亦適用之。

第 491 條（消費者金錢借貸契約）

本章規定，於作為貸與人之企業經營者與作為借用人之消費者，兩者間之金錢借貸契約（消費者借貸契約），以第 2 項、第 3 項與第 503 條至第 505 條未另有規定者為限，適用之。

下列之契約，非消費者金錢借貸契約：

- 一、貸與之金錢（民法施行法第 247 條之 3 第 2 項），稅後少於 200 歐元者；
- 二、借用人責任，限於以出質為目的，而交付於貸與人之質物；

Bei einem Vertrag über ein langfristiges Urlaubsprodukt enthält das in Artikel 242 § 1 Absatz 2 des Einführungsgesetzes zum Bürgerlichen Gesetzbuche bezeichnete Formblatt einen Ratenzahlungsplan. Der Unternehmer darf von den dort genannten Zahlungsmodalitäten nicht abweichen. Er darf den laut Formblatt fälligen jährlichen Teilbetrag vom Verbraucher nur fordern oder annehmen, wenn er den Verbraucher zuvor in Textform zur Zahlung dieses Teilbetrags aufgefordert hat. Die Zahlungsaufforderung muss dem Verbraucher mindestens zwei Wochen vor Fälligkeit des jährlichen Teilbetrags zugehen.

Ab dem Zeitpunkt, der nach Absatz 1 für die Zahlung des zweiten Teilbetrags vorgesehen ist, kann der Verbraucher den Vertrag innerhalb von zwei Wochen ab Zugang der Zahlungsaufforderung zum Fälligkeitstermin gemäß Absatz 1 kündigen.

§ 487 Abweichende Vereinbarungen

Von den Vorschriften dieses Titels darf nicht zum Nachteil des Verbrauchers abgewichen werden. Die Vorschriften dieses Titels finden, soweit nicht ein anderes bestimmt ist, auch Anwendung, wenn sie durch anderweitige Gestaltungen umgangen werden.

§ 491 Verbraucherdarlehensvertrag

Die Vorschriften dieses Kapitels gelten für entgeltliche Darlehensverträge zwischen einem Unternehmer als Darlehensgeber und einem Verbraucher als Darlehensnehmer (Verbraucherdarlehensvertrag), soweit in den Absätzen 2 oder 3 oder in den §§ 503 bis 505 nichts anderes bestimmt ist.

Keine Verbraucherdarlehensverträge sind Verträge,

1. bei denen der Nettodarlehensbetrag (Artikel 247 § 3 Abs. 2 des Einführungsgesetzes zum Bürgerlichen Gesetzbuche) weniger als 200 Euro beträgt,
2. bei denen sich die Haftung des Darlehensnehmers auf eine dem Darlehensgeber zum Pfand übergebene Sache beschränkt,

- 三、借用人應於 3 個月內，返還貸與之金錢，且僅約定較低之費用；
- 四、僱主與其勞工，以較低於市場通常有效折算年息（價格說明法規第 6 條）作為勞動契約從給付義務所訂定之契約，且未向第三人為要約者。
- 五、契約中約定，對借用人而言，較市場上通常條件優遇之條件，以及至多市場上通常貸款利率者，而僅與有限之人，依法律規定，為公共利益，所訂定之契約。

第 358 條第 2 項、第 4 項與第 491a 條至第 495 條規定，於金錢借貸契約，其經依民事訴訟法規定所製成之法院記錄納入，或因法院就當事人和解之成立與內容，所作成裁定而確定者，以貸款利率、訂定契約時所考量之金錢借貸費用，以及得調整貸款利率或費用之條件，經納入於記錄或決議者，不適用之。

第 491a 條（於消費者金錢借貸契約之先契約資訊義務）

於消費者金錢借貸契約，貸與人應以民法施行法第 247 條所規定之方式，告知借用人該條所規定之方式。

借用人，得請求貸與人給與消費者金錢借貸契約之草案。但貸與人尚未準備訂定契約者，不在此限。

3. bei denen der Darlehensnehmer das Darlehen binnen drei Monaten zurückzahlen hat und nur geringe Kosten vereinbart sind,
4. die von Arbeitgebern mit ihren Arbeitnehmern als Nebenleistung zum Arbeitsvertrag zu einem niedrigeren als dem marktüblichen effektiven Jahreszins (§ 6 der Preisangabenverordnung) abgeschlossen werden und anderen Personen nicht angeboten werden,
5. die nur mit einem begrenzten Personenkreis auf Grund von Rechtsvorschriften in öffentlichem Interesse abgeschlossen werden, wenn im Vertrag für den Darlehensnehmer günstigere als marktübliche Bedingungen und höchstens der marktübliche Sollzinssatz vereinbart sind.

§ 358 Abs. 2 und 4 sowie die §§ 491a bis 495 sind nicht auf Darlehensverträge anzuwenden, die in ein nach den Vorschriften der Zivilprozessordnung errichtetes gerichtliches Protokoll aufgenommen oder durch einen gerichtlichen Beschluss über das Zustandekommen und den Inhalt eines zwischen den Parteien geschlossenen Vergleichs festgestellt sind, wenn in das Protokoll oder den Beschluss der Sollzinssatz, die bei Abschluss des Vertrags in Rechnung gestellten Kosten des Darlehens sowie die Voraussetzungen aufgenommen worden sind, unter denen der Sollzinssatz oder die Kosten angepasst werden können.

§ 491a Vorvertragliche Informationspflichten bei Verbraucherdarlehensverträgen

Der Darlehensgeber hat den Darlehensnehmer bei einem Verbraucherdarlehensvertrag über die sich aus Artikel 247 des Einführungsgesetzes zum Bürgerlichen Gesetzbuche ergebenden Einzelheiten in der dort vorgesehenen Form zu unterrichten.

Der Darlehensnehmer kann vom Darlehensgeber einen Entwurf des Verbraucherdarlehensvertrags verlangen. Dies gilt nicht, solange der Darlehensgeber zum Vertragsabschluss nicht bereit ist.

貸與人，於訂定消費者金錢借貸契約前，負有提供消費者適當解釋之義務，以使其能判斷，契約對其追求之目的與財產關係，是否妥當。第 1 項所規定之先契約資訊、貸與人要約之主要因素，以及其對借用人契約典型之影響，包括支付遲延時之效果，以可能者為限，應加以解釋之。

第 492 條（書面、契約內容）

消費者金錢借貸契約，以未規定較嚴格之方式者為限，應以書面訂定之。契約當事人之要約與承諾，分別以書面表示者，即作成書面。貸與人之表示，以自動設備作成者，無須簽名。

契約，應包括民法施行法第 247 條之 6 至 13，為消費者金錢借貸契約所規定之說明。

貸與人於訂定契約後，應提供借用人契約副本。借貸金錢返還之時經確定者，借用人得隨時請求貸與人，給與民法施行法第 247 條之 14 所規定之清償計劃。

第 1 項與第 2 項規定，於借用人為訂定消費者金錢借貸契約，所授與之代理權，亦適用之。第 1 句規定，於訴訟代理權與經公證之代理權，不適用之。

貸與人於訂定後，對借用人所發出之表示，應於長期資料載體上為之。

Der Darlehensgeber ist verpflichtet, dem Darlehensnehmer vor Abschluss eines Verbraucherdarlehensvertrags angemessene Erläuterungen zu geben, damit der Darlehensnehmer in die Lage versetzt wird, zu beurteilen, ob der Vertrag dem von ihm verfolgten Zweck und seinen Vermögensverhältnissen gerecht wird. Hierzu sind gegebenenfalls die vorvertraglichen Informationen gemäß Absatz 1, die Hauptmerkmale der vom Darlehensgeber angebotenen Verträge sowie ihre vertragstypischen Auswirkungen auf den Darlehensnehmer, einschließlich der Folgen bei Zahlungsverzug, zu erläutern.

§ 492 Schriftform, Vertragsinhalt

Verbraucherdarlehensverträge sind, soweit nicht eine strengere Form vorgeschrieben ist, schriftlich abzuschließen. Der Schriftform ist genügt, wenn Antrag und Annahme durch die Vertragsparteien jeweils getrennt schriftlich erklärt werden. Die Erklärung des Darlehensgebers bedarf keiner Unterzeichnung, wenn sie mit Hilfe einer automatischen Einrichtung erstellt wird.

Der Vertrag muss die für den Verbraucherdarlehensvertrag vorgeschriebenen Angaben nach Artikel 247 §§ 6 bis 13 des Einführungsgesetzes zum Bürgerlichen Gesetzbuche enthalten.

Nach Vertragsschluss stellt der Darlehensgeber dem Darlehensnehmer eine Abschrift des Vertrags zur Verfügung. Ist ein Zeitpunkt für die Rückzahlung des Darlehens bestimmt, kann der Darlehensnehmer vom Darlehensgeber jederzeit einen Tilgungsplan nach Artikel 247 § 14 des Einführungsgesetzes zum Bürgerlichen Gesetzbuche verlangen.

Die Absätze 1 und 2 gelten auch für die Vollmacht, die ein Darlehensnehmer zum Abschluss eines Verbraucherdarlehensvertrags erteilt. Satz 1 gilt nicht für die Prozessvollmacht und eine Vollmacht, die notariell beurkundet ist.

Erklärungen des Darlehensgebers, die dem Darlehensnehmer gegenüber nach Vertragsabschluss abzugeben sind, müssen auf einem dauerhaften Datenträger erfolgen.

契約未包括或未完全包括，第2項所規定之說明者，得於契約生效後，或第494條第2項第1句所規定之情形，於契約生效後，於長期資料載體上補正之。依第2項規定欠缺說明，致生第494條第2項第2句至第6句所規定之契約條件變更者，僅得以借用人取得第494條第7項所規定契約必要副本之方式，補正說明。於其它情形，借用人應至遲於補正時，取得第356b條第1項所規定之文件。應以第2項所規定之說明補正，於長期資料載體上向借用人指明，1個月之解除期間，自取得補正後起算。

第 493 條（契約關係存續時期內之資訊）

於消費者金錢借貸契約，發生貸款利息者之拘束，且該利息之拘束，於返還期限屆至前結束者，貸與人應至遲於貸款利息拘束消滅前3個月，告知借用人，其就另為貸款利息之約定，是否已有準備。貸與人表示，就此已有準備者，該告知應包括，貸與人於告知時所提供之貸款利息利率。

貸與人，應至遲於消費者金錢借貸契約消滅前3個月，告知消費者其就借貸關係之延展，是否已有準備。貸與人表示，就延展已有準備者，其告知應包括，依第491a條第1項規定，於告知時所適用之義務說明。

將消費者金錢借貸契約之貸款利率，調整為浮動貸款利率，僅於貸與人告知借用人，民法施行法第247條之15所規定之事項後，始有效。關於效力所為之相反約定，於民法施行法第247條之15第2項規定範圍內，有效。

Enthält der Vertrag die Angaben nach Absatz 2 nicht oder nicht vollständig, können sie nach wirksamem Vertragsschluss oder in den Fällen des § 494 Absatz 2 Satz 1 nach Gültigwerden des Vertrags auf einem dauerhaften Datenträger nachgeholt werden. Hat das Fehlen von Angaben nach Absatz 2 zu Änderungen der Vertragsbedingungen gemäß § 494 Absatz 2 Satz 2 bis Absatz 6 geführt, kann die Nachholung der Angaben nur dadurch erfolgen, dass der Darlehensnehmer die nach § 494 Absatz 7 erforderliche Abschrift des Vertrags erhält. In den sonstigen Fällen muss der Darlehensnehmer spätestens im Zeitpunkt der Nachholung der Angaben eine der in § 356b Absatz 1 genannten Unterlagen erhalten. Mit der Nachholung der Angaben nach Absatz 2 ist der Darlehensnehmer auf einem dauerhaften Datenträger darauf hinzuweisen, dass die Widerrufsfrist von einem Monat nach Erhalt der nachgeholtten Angaben beginnt.

§ 493 Informationen während des Vertragsverhältnisses

Ist in einem Verbraucherdarlehensvertrag der Sollzinssatz gebunden und endet die Sollzinsbindung vor der für die Rückzahlung bestimmten Zeit, unterrichtet der Darlehensgeber den Darlehensnehmer spätestens drei Monate vor Ende der Sollzinsbindung darüber, ob er zu einer neuen Sollzinsbindungsabrede bereit ist. Erklärt sich der Darlehensgeber hierzu bereit, muss die Unterrichtung den zum Zeitpunkt der Unterrichtung vom Darlehensgeber angebotenen Sollzinssatz enthalten.

Der Darlehensgeber unterrichtet den Darlehensnehmer spätestens drei Monate vor Beendigung eines Verbraucherdarlehensvertrags darüber, ob er zur Fortführung des Darlehensverhältnisses bereit ist. Erklärt sich der Darlehensgeber zur Fortführung bereit, muss die Unterrichtung die zum Zeitpunkt der Unterrichtung gültigen Pflichtangaben gemäß § 491a Abs. 1 enthalten.

Die Anpassung des Sollzinssatzes eines Verbraucherdarlehensvertrags mit veränderlichem Sollzinssatz wird erst wirksam, nachdem der Darlehensgeber den Darlehensnehmer über die Einzelheiten unterrichtet hat, die sich aus Artikel 247 § 15 des Einführungsgesetzes zum

讓與金錢借貸契約所生之債權者，以貸與人與新債權人未約定，僅其就與借用人之關係，仍為債權人為限，債權人亦負有第 1 項至第 3 項所規定之義務。

第 494 條（方式欠缺之法律效果）

消費者金錢借貸契約，以及以訂定該等契約為目的，所為之代理權授與，以未依規定作成方式，或未經告知民法施行法第 247 條之 6、第 247 條之 9 至之 13 為消費者金錢借貸契約所規定之說明者為限，無效。

消費者金錢借貸契約，縱依第 1 項規定欠缺方式，以借用人受領或請求借貸之金錢者為限，有效。但未說明貸款利率、有效年息或總額者，因消費者金錢借貸契約所生之貸款利息，縮減至法定利息。

經告知之有效年息過低者，因消費者金錢借貸契約所生之貸款利息，縮減至該過低說明有折年息之百分比率。

借用人不負擔未經告知之費用。契約內未告知，於何等條件得調整費用或利息者，不得以借用人之不利益，調整之。

Bürgerlichen Gesetzbuche ergeben. Abweichende Vereinbarungen über die Wirksamkeit sind im Rahmen des Artikels 247 § 15 Abs. 2 des Einführungsgesetzes zum Bürgerlichen Gesetzbuche zulässig.

Wurden Forderungen aus dem Darlehensvertrag abgetreten, treffen die Pflichten aus den Absätzen 1 bis 3 auch den neuen Gläubiger, wenn nicht der bisherige Darlehensgeber mit dem neuen Gläubiger vereinbart hat, dass im Verhältnis zum Darlehensnehmer weiterhin allein der bisherige Darlehensgeber auftritt.

§ 494 Rechtsfolgen von Formmängeln

Der Verbraucherdarlehensvertrag und die auf Abschluss eines solchen Vertrags vom Verbraucher erteilte Vollmacht sind nichtig, wenn die Schriftform insgesamt nicht eingehalten ist oder wenn eine der in Artikel 247 §§ 6 und 9 bis 13 des Einführungsgesetzes zum Bürgerlichen Gesetzbuche für den Verbraucherdarlehensvertrag vorgeschriebenen Angaben fehlt.

Ungeachtet eines Mangels nach Absatz 1 wird der Verbraucherdarlehensvertrag gültig, soweit der Darlehensnehmer das Darlehen empfängt oder in Anspruch nimmt. Jedoch ermäßigt sich der dem Verbraucherdarlehensvertrag zugrunde gelegte Sollzinssatz auf den gesetzlichen Zinssatz, wenn die Angabe des Sollzinssatzes, des effektiven Jahreszinses oder des Gesamtbetrags fehlt.

Ist der effektive Jahreszins zu niedrig angegeben, so vermindert sich der dem Verbraucherdarlehensvertrag zugrunde gelegte Sollzinssatz um den Prozentsatz, um den der effektive Jahreszins zu niedrig angegeben ist.

Nicht angegebene Kosten werden vom Darlehensnehmer nicht geschuldet. Ist im Vertrag nicht angegeben, unter welchen Voraussetzungen Kosten oder Zinsen angepasst werden können, so entfällt die Möglichkeit, diese zum Nachteil des Darlehensnehmers anzupassen.

約定分期支付者，借用人應以經減少利息或費用之考量，重新計算其金額。

契約內未告知期間與終止權者，借用人得隨時終止之。未告知擔保者，不得請求之。第 1 句規定，以借貸之金錢稅後超過 7 萬 5 千歐元者為限，適用之。

貸與人應提供借用人，已顧及第 2 項至第 6 項所規定契約更改之契約副本。

第 495（解除權）

於消費者金錢借貸契約，借用人享有第 355 條所規定之解除權。

解除權，於下列金錢借貸契約，不發生：

- 一、金錢借貸契約，其因返還之約定，而補充或取代貸與人因借用人支付遲延，所得解除之金錢借貸契約者，以因此避免法院程序，且總金額（民法施行法第 247 條之 3）低於原契約所剩餘之債務者為限；
- 二、應經作成公證書者，以公證人證明，借用人依第 491a 條與第 492 條規定所享有之權利，受有保障者為限；
- 三、依第 504 條第 2 項或第 505 條所規定者。

第 496 條（拋棄抗辯、禁止支票與匯票）

約定借用人拋棄對貸與人抗辯之權利，其依第 404 條規定，得以之對抗讓與債權人者，或借用人對貸與人所享有之債權，依第 406 條規定，亦對讓與債權人抵銷之者，該約定無效。

Wurden Teilzahlungen vereinbart, ist deren Höhe vom Darlehensgeber unter Berücksichtigung der verminderten Zinsen oder Kosten neu zu berechnen.

Fehlen im Vertrag Angaben zur Laufzeit oder zum Kündigungsrecht, ist der Darlehensnehmer jederzeit zur Kündigung berechtigt. Fehlen Angaben zu Sicherheiten, können sie nicht gefordert werden. Satz 2 gilt nicht, wenn der Nettodarlehensbetrag 75 000 Euro übersteigt.

Der Darlehensgeber stellt dem Darlehensnehmer eine Abschrift des Vertrags zur Verfügung, in der die Vertragsänderungen berücksichtigt sind, die sich aus den Absätzen 2 bis 6 ergeben.

§ 495 Widerrufsrecht

Dem Darlehensnehmer steht bei einem Verbraucherdarlehensvertrag ein Widerrufsrecht nach § 355 zu.

Ein Widerrufsrecht besteht nicht bei Darlehensverträgen,

1. die einen Darlehensvertrag, zu dessen Kündigung der Darlehensgeber wegen Zahlungsverzugs des Darlehensnehmers berechtigt ist, durch Rückzahlungsvereinbarungen ergänzen oder ersetzen, wenn dadurch ein gerichtliches Verfahren vermieden wird und wenn der Gesamtbetrag (Artikel 247 § 3 des Einführungsgesetzes zum Bürgerlichen Gesetzbuche) geringer ist als die Restschuld des ursprünglichen Vertrags,
2. die notariell zu beurkunden sind, wenn der Notar bestätigt, dass die Rechte des Darlehensnehmers aus den §§ 491a und 492 gewahrt sind, oder
3. die § 504 Abs. 2 oder § 505 entsprechen.

§ 496 Einwendungsverzicht, Wechsel- und Scheckverbot

Eine Vereinbarung, durch die der Darlehensnehmer auf das Recht verzichtet, Einwendungen, die ihm gegenüber dem Darlehensgeber zustehen, gemäß § 404 einem Abtretungsgläubiger entgegenzusetzen oder eine ihm gegen den Darlehensgeber zustehende Forderung gemäß § 406 auch dem Abtretungsgläubiger gegenüber aufzurechnen, ist unwirksam.

貸與人因金錢借貸契約所生之債權，讓與於第三人，或貸與人變更者，除應即時將之告知借用人外，並應將新債權人之聯絡資料，依民法施行法第 246b 條之 1 第 1 項第 1 款、第 3 款與第 4 款規定，即時告知借用人。貸與人與新債權人約定，就與借用人之關係，仍僅其為貸與人者，無須告知。第 2 句所規定之要件嗣後不成立者，應即時追補告知。

為消費者金錢借貸契約所生之請求權，而負擔本票義務之義務，不得使借用人負有之。貸與人，不得為擔保其因消費者金錢借貸契約所生之請求權，而受領借用人所簽發之支票。借用人，得隨時請求貸與人返還違反第 1 句或第 2 句所簽發之本票或支票。貸與人，就借用人因簽發該本票或支票所生之損害，負賠償之責。

第 497 條（借用人之遲延）

借用人，以其消費者金錢借貸契約所負支付義務，陷於遲延者為限，應依第 288 條第 1 項規定，就其所負金額支付利息。貸與人於個案中，得證明有更多之損害，借用人得證明有較少之損害。

因遲延所生之利息，應記入另一帳戶，且不得記入與借貸金額或貸與人其他債權往來之帳戶。關於該利息，適用第 289 條第 2 句規定，併貸與人僅得於法定利率（第 246 條）之限度內，請求賠償損害。

Wird eine Forderung des Darlehensgebers aus einem Darlehensvertrag an einen Dritten abgetreten oder findet in der Person des Darlehensgebers ein Wechsel statt, ist der Darlehensnehmer unverzüglich darüber sowie über die Kontaktdaten des neuen Gläubigers nach Artikel 246b § 1 Absatz 1 Nummer 1, 3 und 4 des Einführungsgesetzes zum Bürgerlichen Gesetzbuche zu unterrichten. Die Unterrichtung ist bei Abtretungen entbehrlich, wenn der bisherige Darlehensgeber mit dem neuen Gläubiger vereinbart hat, dass im Verhältnis zum Darlehensnehmer weiterhin allein der bisherige Darlehensgeber auftritt. Fallen die Voraussetzungen des Satzes 2 fort, ist die Unterrichtung unverzüglich nachzuholen.

Der Darlehensnehmer darf nicht verpflichtet werden, für die Ansprüche des Darlehensgebers aus dem Verbraucherdarlehensvertrag eine Wechselverbindlichkeit einzugehen. Der Darlehensgeber darf vom Darlehensnehmer zur Sicherung seiner Ansprüche aus dem Verbraucherdarlehensvertrag einen Scheck nicht entgegennehmen. Der Darlehensnehmer kann vom Darlehensgeber jederzeit die Herausgabe eines Wechsels oder Schecks, der entgegen Satz 1 oder 2 begeben worden ist, verlangen. Der Darlehensgeber haftet für jeden Schaden, der dem Darlehensnehmer aus einer solchen Wechsel- oder Scheckbegebung entsteht.

§ 497 Verzug des Darlehensnehmers

Soweit der Darlehensnehmer mit Zahlungen, die er auf Grund des Verbraucherdarlehensvertrags schuldet, in Verzug kommt, hat er den geschuldeten Betrag nach § 288 Abs. 1 zu verzinsen. Im Einzelfall kann der Darlehensgeber einen höheren oder der Darlehensnehmer einen niedrigeren Schaden nachweisen.

Die nach Eintritt des Verzugs anfallenden Zinsen sind auf einem gesonderten Konto zu verbuchen und dürfen nicht in ein Kontokorrent mit dem geschuldeten Betrag oder anderen Forderungen des Darlehensgebers eingestellt werden. Hinsichtlich dieser Zinsen gilt § 289 Satz 2 mit der Maßgabe, dass der Darlehensgeber Schadensersatz nur bis zur Höhe des gesetzlichen Zinssatzes (§ 246) verlangen kann.

借用人之支付，不足以清償全部已屆期之債務者，應先抵充權利追訴之費用，次抵其他所負剩餘之額，最後抵充利息（第 2 項），第 367 條第 1 項，不適用之。貸與人不得拒絕一部支付。借貸金錢返還與利息請求權之消滅時效，自第 1 項所規定之遲延發生時起，至請求權以第 197 條第 1 項第 3 款至第 5 款所指事由而確定前，中斷，但不超過自請求權發生時起 10 年。第 197 條第 2 項規定，於利息請求權，不適用之。第 1 句至第 4 句規定，以已依執行名義支付主要債權之利息者為限，不適用之。

（廢除）。

第 498 條（分期支付金錢借貸之全部屆期）

貸與人因借用人支付遲延，以下列情形為限，始得終止，應以分期支付借貸金錢之方式，予以清償之消費者金錢借貸契約：

- 一、借用人至少前後接連二期之支付，全部或一部，以及至少借貸金額面值之百分之十，於消費者金錢借貸契約期間長於 3 年者，至少百分之五，陷於遲延者；
- 二、貸與人定二週期限，催告借用人支付未支付之金額，以及如借用人於期限內未支付，則得請求全部剩餘金額，而貸與人未於期限內支付者。

貸與人應至遲於定期催告時，與借用人就可能之約定，進行對話。

第 499 條（貸與人之終止權、拒絕受領）

Zahlungen des Darlehensnehmers, die zur Tilgung der gesamten fälligen Schuld nicht ausreichen, werden abweichend von § 367 Abs. 1 zunächst auf die Kosten der Rechtsverfolgung, dann auf den übrigen geschuldeten Betrag (Absatz 1) und zuletzt auf die Zinsen (Absatz 2) angerechnet. Der Darlehensgeber darf Teilzahlungen nicht zurückweisen. Die Verjährung der Ansprüche auf Darlehensrückzahlung und Zinsen ist vom Eintritt des Verzugs nach Absatz 1 an bis zu ihrer Feststellung in einer in § 197 Abs. 1 Nr. 3 bis 5 bezeichneten Art gehemmt, jedoch nicht länger als zehn Jahre von ihrer Entstehung an. Auf die Ansprüche auf Zinsen findet § 197 Abs. 2 keine Anwendung. Die Sätze 1 bis 4 finden keine Anwendung, soweit Zahlungen auf Vollstreckungstitel geleistet werden, deren Hauptforderung auf Zinsen lautet.

(weggefallen)

§ 498 Gesamtfälligkeit bei Teilzahlungsdarlehen

Wegen Zahlungsverzugs des Darlehensnehmers kann der Darlehensgeber den Verbraucherdarlehensvertrag bei einem Darlehen, das in Teilzahlungen zu tilgen ist, nur kündigen, wenn

1. der Darlehensnehmer mit mindestens zwei aufeinander folgenden Teilzahlungen ganz oder teilweise und mit mindestens 10 Prozent, bei einer Laufzeit des Verbraucherdarlehensvertrags von mehr als drei Jahren mit mindestens 5 Prozent des Nennbetrags des Darlehens in Verzug ist und
2. der Darlehensgeber dem Darlehensnehmer erfolglos eine zweiwöchige Frist zur Zahlung des rückständigen Betrags mit der Erklärung gesetzt hat, dass er bei Nichtzahlung innerhalb der Frist die gesamte Restschuld verlange.

Der Darlehensgeber soll dem Darlehensnehmer spätestens mit der Fristsetzung ein Gespräch über die Möglichkeiten einer einverständlichen Regelung anbieten.

§ 499 Kündigungsrecht des Darlehensgebers; Leistungsverweigerung

於消費者金錢借貸契約，關於貸與人終止權之約定，以其約定特定契約期限，或終止期間少於2個月者為限，無效。

貸與人，以有相關約定，且未就借貸金錢之返還約定期限者為限，得以客觀之理由，拒絕支付借貸金錢。貸與人欲行使該權利者，應立即將之通知借用人，以及盡可能於行使權利前，或至遲於權利行使後，立即告以借用人理由。以告知理由將危及公共安全或秩序者為限，無須告知理由。

第 500 條（借用人之終止權、期前返還）

借用人，以未約定返還期限者為限，得隨時全部或一部終止消費者金錢借貸契約。約定終止期間長於1個月，該約定無效。

借用人得期前，全部或一部履行其因消費者金錢借貸契約所生之義務。

第 501 條（減少費用）

借用人期前履行，或剩餘之債務因終止而屆期者，全部費用（價格說明法規第6條第3項）減至利息，以及其它以期限為前提，於分期計算時，分攤至屆期或履行後時間之費用。

第 502 條（期前賠償）

貸與人於期前返還時，就與期前返還直接相關之損害，以借用人就返還，負有依訂約時所約定有拘束力利率之利息債務者為限，得

In einem Verbraucherdarlehensvertrag ist eine Vereinbarung über ein Kündigungsrecht des Darlehensgebers unwirksam, wenn eine bestimmte Vertragslaufzeit vereinbart wurde oder die Kündigungsfrist zwei Monate unterschreitet.

Der Darlehensgeber ist bei entsprechender Vereinbarung berechtigt, die Auszahlung eines Darlehens, bei dem eine Zeit für die Rückzahlung nicht bestimmt ist, aus einem sachlichen Grund zu verweigern. Beabsichtigt der Darlehensgeber dieses Recht auszuüben, hat er dies dem Darlehensnehmer unverzüglich mitzuteilen und ihn über die Gründe möglichst vor, spätestens jedoch unverzüglich nach der Rechtsausübung zu unterrichten. Die Unterrichtung über die Gründe unterbleibt, soweit hierdurch die öffentliche Sicherheit oder Ordnung gefährdet würde.

§ 500 Kündigungsrecht des Darlehensnehmers; vorzeitige Rückzahlung

Der Darlehensnehmer kann einen Verbraucherdarlehensvertrag, bei dem eine Zeit für die Rückzahlung nicht bestimmt ist, ganz oder teilweise kündigen, ohne eine Frist einzuhalten. Eine Vereinbarung über eine Kündigungsfrist von mehr als einem Monat ist unwirksam.

Der Darlehensnehmer kann seine Verbindlichkeiten aus einem Verbraucherdarlehensvertrag jederzeit ganz oder teilweise vorzeitig erfüllen.

§ 501 Kostenermäßigung

Soweit der Darlehensnehmer seine Verbindlichkeiten vorzeitig erfüllt oder die Restschuld vor der vereinbarten Zeit durch Kündigung fällig wird, vermindern sich die Gesamtkosten (§ 6 Abs. 3 der Preisangabenverordnung) um die Zinsen und sonstigen laufzeitabhängigen Kosten, die bei gestaffelter Berechnung auf die Zeit nach der Fälligkeit oder Erfüllung entfallen.

§ 502 Vorfälligkeitsentschädigung

Der Darlehensgeber kann im Fall der vorzeitigen Rückzahlung eine angemessene Vorfälligkeitsentschädigung für den unmittelbar mit der

請求適當之期前賠償。期前賠償，各不得超過以下金額：

- 一、期前返還金額之百分之 1，期前至約定返還時，未超過一年者，期前返還金額之百分之 0.5；
- 二、借用人原應清償，期前至約定返還時之貸款利息金額。

期前賠償，以有下列情形之一者為限，不得請求之：

- 一、為擔保返還因金錢借貸契約所生之義務，而訂定之保險契約，返還義務因此為清償者；
- 二、契約內，關於契約期間、借用人之終止權或期前賠償計算之說明，有不足者。

第 503 條（不動產金錢借貸契約）

第 497 條第 2 項與第 3 項第 1 句、第 2 句、第 4 句與第 5 句、第 499 條、第 500 條與第 502 條規定，於借貸金錢之提供，應以土地質權擔保為前提，且以對土地質權擔保之契約與期間之融資而言，屬通常之條件而發生者，不適用之。依建築儲蓄銀行法第 7 條第 3 項至第 5 項規定，排除土地質權之擔保者，等同土地質權之擔保。

遲延利率之週年利率，為基本利率上加百分之 2.5，第 497 條第 1 項規定，不適用之。

vorzeitigen Rückzahlung zusammenhängenden Schaden verlangen, wenn der Darlehensnehmer zum Zeitpunkt der Rückzahlung Zinsen zu einem bei Vertragsabschluss vereinbarten, gebundenen Sollzinssatz schuldet. Die Vorfälligkeitsentschädigung darf folgende Beträge jeweils nicht überschreiten:

1. Prozent beziehungsweise, wenn der Zeitraum zwischen der vorzeitigen und der vereinbarten Rückzahlung ein Jahr nicht übersteigt, 0,5 Prozent des vorzeitig zurückgezahlten Betrags,
2. den Betrag der Sollzinsen, den der Darlehensnehmer in dem Zeitraum zwischen der vorzeitigen und der vereinbarten Rückzahlung entrichtet hätte.

Der Anspruch auf Vorfälligkeitsentschädigung ist ausgeschlossen, wenn

1. die Rückzahlung aus den Mitteln einer Versicherung bewirkt wird, die auf Grund einer entsprechenden Verpflichtung im Darlehensvertrag abgeschlossen wurde, um die Rückzahlung zu sichern, oder
2. im Vertrag die Angaben über die Laufzeit des Vertrags, das Kündigungsrecht des Darlehensnehmers oder die Berechnung der Vorfälligkeitsentschädigung unzureichend sind.

§ 503 Immobiliardarlehenverträge

§ 497 Abs. 2 und 3 Satz 1, 2, 4 und 5 sowie die §§ 499, 500 und 502 sind nicht anzuwenden auf Verträge, bei denen die Zurverfügungstellung des Darlehens von der Sicherung durch ein Grundpfandrecht abhängig gemacht wird und zu Bedingungen erfolgt, die für grundpfandrechlich abgesicherte Verträge und deren Zwischenfinanzierung üblich sind; der Sicherung durch ein Grundpfandrecht steht es gleich, wenn von einer solchen Sicherung nach § 7 Abs. 3 bis 5 des Gesetzes über Bausparkassen abgesehen wird.

Der Verzugszinssatz beträgt abweichend von § 497 Abs. 1 für das Jahr 2,5 Prozentpunkte über dem Basiszinssatz.

借用人至少前後接連二期之分期支付，全部或一部，且至少達借貸金錢面值百分之 2.5，陷於遲延者，第 498 條第 1 句第 1 款規定，適用之。

第 504 條（提領授權）

以貸與人於流通帳戶契約關係內，授與借用人自其帳戶提領特定額度之方式（提領授權），提供消費者金錢借貸者，貸與人應定期告知借用人民法施行法第 247 條之 16 所規定之事項。第 502 條所規定之期前賠償請求權，不發生。第 493 條第 3 項規定，僅於貸款利率提高之情形，適用之，於約定費用提高之情形，準用之。第 499 條第 1 項規定，不適用之。

於提領授權內約定，於支付之後，期限最長為 3 個月，或貸與人得不遵守期間，而終止契約者，第 491a 條第 3 項、第 495 條、第 499 條第 2 項與第 500 條第 1 項第 2 句規定，不適用之。第 492 條第 1 項規定，以除貸款利率外未約定其它經常費用，貸款利率非於短於 3 個月之期限屆至，且貸與人至遲於訂定契約後，於長期資料載體之上即時通知借用人為限，不適用之。

第 505 條（容認提領）

企業經營者於契約內，就容認自經常帳戶之領取，而與消費者約定報酬，但未授權領取者，應以書面之方式，將民法施行法第 247 條之 17 第 1 項所規定之說明，包括於契約之內，且定期於長期資料載體之上通知消費者。貸與人於契約內，就有領取授權之經常帳戶，為

§ 498 Satz 1 Nr. 1 gilt mit der Maßgabe, dass der Darlehensnehmer mit mindestens zwei aufeinander folgenden Teilzahlungen ganz oder teilweise und mit mindestens 2,5 Prozent des Nennbetrags des Darlehens in Verzug sein muss.

§ 504 Eingeräumte Überziehungsmöglichkeit

Ist ein Verbraucherdarlehen in der Weise gewährt, dass der Darlehensgeber in einem Vertragsverhältnis über ein laufendes Konto dem Darlehensnehmer das Recht einräumt, sein Konto in bestimmter Höhe zu überziehen (Überziehungsmöglichkeit), hat der Darlehensgeber den Darlehensnehmer in regelmäßigen Zeitabständen über die Angaben zu unterrichten, die sich aus Artikel 247 § 16 des Einführungsgesetzes zum Bürgerlichen Gesetzbuche ergeben. Ein Anspruch auf Vorfälligkeitsentschädigung aus § 502 ist ausgeschlossen. § 493 Abs. 3 ist nur bei einer Erhöhung des Sollzinssatzes anzuwenden und gilt entsprechend bei einer Erhöhung der vereinbarten sonstigen Kosten. § 499 Abs. 1 ist nicht anzuwenden.

Ist in einer Überziehungsmöglichkeit vereinbart, dass nach der Auszahlung die Laufzeit höchstens drei Monate beträgt oder der Darlehensgeber kündigen kann, ohne eine Frist einzuhalten, sind § 491a Abs. 3, die §§ 495, 499 Abs. 2 und § 500 Abs. 1 Satz 2 nicht anzuwenden. § 492 Abs. 1 ist nicht anzuwenden, wenn außer den Sollzinsen keine weiteren laufenden Kosten vereinbart sind, die Sollzinsen nicht in kürzeren Zeiträumen als drei Monaten fällig werden und der Darlehensgeber dem Darlehensnehmer den Vertragsinhalt spätestens unverzüglich nach Vertragsabschluss auf einem dauerhaften Datenträger mitteilt.

§ 505 Geduldete Überziehung

Vereinbart ein Unternehmer in einem Vertrag mit einem Verbraucher über ein laufendes Konto ohne eingeräumte Überziehungsmöglichkeit ein Entgelt für den Fall, dass er eine Überziehung des Kontos duldet, müssen in diesem Vertrag die Angaben nach Artikel 247 § 17 Abs. 1 des Einführungsgesetzes zum Bürgerlichen Gesetzbuche in Textform enthalten

帳戶領取超過契約約定額度之情形，與借用人約定報酬者，準用第 1 句規定。

於第 1 項所指情形，發生超過一個月之大量領取者，貸與人應於長期載體之上即時告知（教育）借用人，民法施行法第 247 條之 17 第 2 項所規定之事項。

企業經營者違反第 1 項或第 2 項規定者，不得請求借貸金錢以外之費用與利息。

第 491a 條至第 496 條，以及第 499 條至第 502 條規定，於依第 1 項規定而成立之消費者金錢借貸契約，不適用之。

第 506 條（延期支付與其他融資協助）

第 358 條至第 360 條、第 491a 條至第 502 條規定、第 492 條第 4 項所規定之例外，以及第 3 項與第 4 項規定，於企業經營者應提供消費者，有償延期支付或其他有償融資協助之契約，準用之。

企業經營者與消費者間，有償使用客體之契約，以有下列之約定者為限，視為有償融資協助：

- 一、消費者負有取得客體之義務；
- 二、企業經營者得請求消費者取得客體；
- 三、消費者於契約消滅時，應擔保客體之特定價值。

sein und dem Verbraucher in regelmäßigen Zeitabständen auf einem dauerhaften Datenträger mitgeteilt werden. Satz 1 gilt entsprechend, wenn ein Darlehensgeber mit einem Darlehensnehmer in einem Vertrag über ein laufendes Konto mit eingeräumter Überziehungsmöglichkeit ein Entgelt für den Fall vereinbart, dass er eine Überziehung des Kontos über die vertraglich bestimmte Höhe hinaus duldet.

Kommt es im Fall des Absatzes 1 zu einer erheblichen Überziehung von mehr als einem Monat, unterrichtet der Darlehensgeber den Darlehensnehmer unverzüglich auf einem dauerhaften Datenträger über die sich aus Artikel 247 § 17 Abs. 2 des Einführungsgesetzes zum Bürgerlichen Gesetzbuche ergebenden Einzelheiten.

Verstößt der Unternehmer gegen Absatz 1 oder Absatz 2, kann der Darlehensgeber über die Rückzahlung des Darlehens hinaus Kosten und Zinsen nicht verlangen.

Die §§ 491a bis 496 und 499 bis 502 sind auf Verbraucherdarlehensverträge, die unter den in Absatz 1 genannten Voraussetzungen zustande kommen, nicht anzuwenden.

§ 506 Zahlungsaufschub, sonstige Finanzierungshilfe

Die Vorschriften der §§ 358 bis 360 und 491a bis 502 sind mit Ausnahme des § 492 Abs. 4 und vorbehaltlich der Absätze 3 und 4 auf Verträge entsprechend anzuwenden, durch die ein Unternehmer einem Verbraucher einen entgeltlichen Zahlungsaufschub oder eine sonstige entgeltliche Finanzierungshilfe gewährt.

Verträge zwischen einem Unternehmer und einem Verbraucher über die entgeltliche Nutzung eines Gegenstandes gelten als entgeltliche Finanzierungshilfe, wenn vereinbart ist, dass

1. der Verbraucher zum Erwerb des Gegenstandes verpflichtet ist,
2. der Unternehmer vom Verbraucher den Erwerb des Gegenstandes verlangen kann oder
3. der Verbraucher bei Beendigung des Vertrags für einen bestimmten Wert des Gegenstandes einzustehen hat.

第 500 條第 2 項與第 502 條規定，於第 1 句第 3 款所規定之契約，不適用之。

第 4 項規定，以及第 507 條與第 508 條所規定之特性，於以特定物交付或其他特定給付，交換分期支付為內容之契約，適用之。

本節之規定，於第 491 條第 2 項與第 3 項所規定範圍內，不適用之。以依契約種類，未有稅後借貸金額（第 491 條第 2 項第 1 款）者為限，以現金支付價格取代之，企業經營者為消費者取得客體者，則以購買價格取代之。

第 507 條（分期支付行為）

第 494 條第 1 項至第 3 項與第 6 項第 3 句規定，於分期支付行為，不適用之。由出售價目表或可供比較之電子媒介可得而知，現金價、貸款利率、有效利息、依據範例總額之清償計劃，以及應提供之擔保與保險，消費者因此以遠距方式，發出要約者，第 492 條第 1 項規定，以企業經營者至遲於訂定契約後，即時於長期資料載體之上，通知消費者契約之內容者為限，亦不適用之。

分期支付行為，未依第 492 條第 1 項規定，以書面為之，或於契約欠缺民法施行法第 247 條之 6、12 與 13 所規定之說明者，無效。分期支付行為，縱依第 1 句規定而有所欠缺，以已交付物於消費者或已為給付者為限，有效。但現金支付價格，以欠缺總額告知或有效年利息者為限，最高應依法律利率，計算利息。未有現金支付價格者，有疑問者，市場價格視為現金支付價格。告知過低之有效年利息者，總額縮減至過低說明有效利息之百分比率。

Auf Verträge gemäß Satz 1 Nr. 3 sind § 500 Abs. 2 und § 502 nicht anzuwenden.

Für Verträge, die die Lieferung einer bestimmten Sache oder die Erbringung einer bestimmten anderen Leistung gegen Teilzahlungen zum Gegenstand haben (Teilzahlungsgeschäfte), gelten vorbehaltlich des Absatzes 4 zusätzlich die in den §§ 507 und 508 geregelten Besonderheiten.

Die Vorschriften dieses Untertitels sind in dem in § 491 Abs. 2 und 3 bestimmten Umfang nicht anzuwenden. Soweit nach der Vertragsart ein Nettodarlehensbetrag (§ 491 Abs. 2 Nr. 1) nicht vorhanden ist, tritt an seine Stelle der Barzahlungspreis oder, wenn der Unternehmer den Gegenstand für den Verbraucher erworben hat, der Anschaffungspreis.

§ 507 Teilzahlungsgeschäfte

§ 494 Abs. 1 bis 3 und 6 Satz 3 ist auf Teilzahlungsgeschäfte nicht anzuwenden. Gibt der Verbraucher sein Angebot zum Vertragsabschluss im Fernabsatz auf Grund eines Verkaufsprospekts oder eines vergleichbaren elektronischen Mediums ab, aus dem der Barzahlungspreis, der Sollzinssatz, der effektive Jahreszins, ein Tilgungsplan anhand beispielhafter Gesamtbeträge sowie die zu stellenden Sicherheiten und Versicherungen ersichtlich sind, ist auch § 492 Abs. 1 nicht anzuwenden, wenn der Unternehmer dem Verbraucher den Vertragsinhalt spätestens unverzüglich nach Vertragsabschluss auf einem dauerhaften Datenträger mitteilt.

Das Teilzahlungsgeschäft ist nichtig, wenn die vorgeschriebene Schriftform des § 492 Abs. 1 nicht eingehalten ist oder im Vertrag eine der in Artikel 247 §§ 6, 12 und 13 des Einführungsgesetzes zum Bürgerlichen Gesetzbuche vorgeschriebenen Angaben fehlt. Ungeachtet eines Mangels nach Satz 1 wird das Teilzahlungsgeschäft gültig, wenn dem Verbraucher die Sache übergeben oder die Leistung erbracht wird. Jedoch ist der Barzahlungspreis höchstens mit dem gesetzlichen Zinssatz zu verzinsen, wenn die Angabe des Gesamtbetrags oder des effektiven Jahreszinses fehlt. Ist ein Barzahlungspreis nicht genannt, so gilt im Zweifel der Marktpreis als Barzahlungspreis. Ist der effektive Jahreszins zu niedrig angegeben, so vermindert sich der Gesamtbetrag um den Prozentsatz, um den der effektive Jahreszins zu niedrig angegeben ist.

以企業經營者只為分期支付而交付物或給付者為限，無須於先契約資訊與契約內加以說明，現金支付價格與有效年利息，第 491a 條與第 492 條第 2 項規定，以及民法施行法第 247 條之 3、6 與 12 規定，不適用之。於第 501 條所規定之情形，費用減少之計算，應以法定利率（第 246 條）為基礎。期前賠償請求權，不發生。

第 508 條（分期支付行為之解除）

企業經營者因消費者支付遲延，僅得於第 498 條第 1 句所指之要件下，解除分期支付行為。總額符合面值額。消費者亦應賠償，企業經營者依契約所支出之費用。計算應返還物之使用利益之報酬時，亦應顧及期間所生之價值減損。企業經營者，請求返還依契約所交付之物者，視為行使解除權。但企業經營者與消費者同意，支付消費者物於取回時通常出賣價值之報酬者，不在此限。交付物之契約與消費者金錢借貸契約連結，且貸與人請求返還物者（第 358 條第 3 項），第 5 句規定，準用之；於解除之情形，貸與人與消費者間之關係，依第 3 句與第 4 句規定定之。

第 509 條（可信用度之檢測）

企業經營者應於訂定有償融資協助契約前，評估消費者之可信用度。評估之基礎，得為消費者之資訊，以及必要時，得為其職位之資訊，且得為檢查之目的，提出、儲存或變更，為消費者信用之評估所得使用之交易上與人身相關資料。關於人身相關資料保護之規定，仍適用之。

Abweichend von den §§ 491a und 492 Abs. 2 dieses Gesetzes und von Artikel 247 §§ 3, 6 und 12 des Einführungsgesetzes zum Bürgerlichen Gesetzbuche müssen in der vorvertraglichen Information und im Vertrag der Barzahlungspreis und der effektive Jahreszins nicht angegeben werden, wenn der Unternehmer nur gegen Teilzahlungen Sachen liefert oder Leistungen erbringt. Im Fall des § 501 ist der Berechnung der Kostenermäßigung der gesetzliche Zinssatz (§ 246) zugrunde zu legen. Ein Anspruch auf Vorfälligkeitsentschädigung ist ausgeschlossen.

§ 508 Rücktritt bei Teilzahlungsgeschäften

Der Unternehmer kann von einem Teilzahlungsgeschäft wegen Zahlungsverzugs des Verbrauchers nur unter den in § 498 Satz 1 bezeichneten Voraussetzungen zurücktreten. Dem Nennbetrag entspricht der Gesamtbetrag. Der Verbraucher hat dem Unternehmer auch die infolge des Vertrags gemachten Aufwendungen zu ersetzen. Bei der Bemessung der Vergütung von Nutzungen einer zurückzugewährenden Sache ist auf die inzwischen eingetretene Wertminderung Rücksicht zu nehmen. Nimmt der Unternehmer die auf Grund des Teilzahlungsgeschäfts gelieferte Sache wieder an sich, gilt dies als Ausübung des Rücktrittsrechts, es sei denn, der Unternehmer einigt sich mit dem Verbraucher, diesem den gewöhnlichen Verkaufswert der Sache im Zeitpunkt der Wegnahme zu vergüten. Satz 5 gilt entsprechend, wenn ein Vertrag über die Lieferung einer Sache mit einem Verbraucherdarlehensvertrag verbunden ist (§ 358 Absatz 3) und wenn der Darlehensgeber die Sache an sich nimmt; im Fall des Rücktritts bestimmt sich das Rechtsverhältnis zwischen dem Darlehensgeber und dem Verbraucher nach den Sätzen 3 und 4.

§ 509 Prüfung der Kreditwürdigkeit

Vor dem Abschluss eines Vertrags über eine entgeltliche Finanzierungshilfe hat der Unternehmer die Kreditwürdigkeit des Verbrauchers zu bewerten. Grundlage für die Bewertung können Auskünfte des Verbrauchers und erforderlichenfalls Auskünfte von Stellen sein, die geschäftsmäßig personenbezogene Daten, die zur Bewertung

第 510 條（分期交付契約）

消費者與企業經營者間之契約，以有下列之情形者為限，無須以書面為之：

- 一、以交付數項視為相結合，而分期給付出賣之物為內容者，且應以分期支付之方式，為物之整體而支付價金；
- 二、以定期交付同種類之物為內容者；
- 三、以定期取得或購買物為內容者。但消費者於訂定契約時，得下載契約規定，包括一般交易條款，且得以可複製之方式，加以儲存者，不在此限。企業經營者應以書面通知消費者契約內容。

消費者，於非以遠距之方式，且非於交易場所外，依第 1 項規定訂定契約之情形，享有第 355 條所規定之解除權。

第 2 項所規定之解除權，於第 491 條第 2 項與第 3 項所規定之範圍內，不適用之。所有應由消費者清償，直至最早得終止時之分期付款總額，符合第 491 條第 2 項第 1 款所指之稅後金錢借貸額。

第 511 條（相反之約定）

第 491 條至第 510 條規定，以未另有規定者為限，不得以消費者之不利益，加以排除。此等規定，以其他方法加以規避者，亦適用之。

der Kreditwürdigkeit von Verbrauchern genutzt werden dürfen, zum Zweck der Übermittlung erheben, speichern oder verändern. Die Bestimmungen zum Schutz personenbezogener Daten bleiben unberührt.

§ 510 Ratenlieferungsverträge

Der Vertrag zwischen einem Verbraucher und einem Unternehmer bedarf der schriftlichen Form, wenn der Vertrag

1. die Lieferung mehrerer als zusammengehörend verkaufter Sachen in Teilleistungen zum Gegenstand hat und das Entgelt für die Gesamtheit der Sachen in Teilzahlungen zu entrichten ist,
2. die regelmäßige Lieferung von Sachen gleicher Art zum Gegenstand hat oder
3. die Verpflichtung zum wiederkehrenden Erwerb oder Bezug von Sachen zum Gegenstand hat. Dies gilt nicht, wenn dem Verbraucher die Möglichkeit verschafft wird, die Vertragsbestimmungen einschließlich der Allgemeinen Geschäftsbedingungen bei Vertragsschluss abzurufen und in wiedergabefähiger Form zu speichern. Der Unternehmer hat dem Verbraucher den Vertragsinhalt in Textform mitzuteilen.

Dem Verbraucher steht vorbehaltlich des Absatzes 3 bei Verträgen nach Absatz 1, die weder im Fernabsatz noch außerhalb von Geschäftsräumen geschlossen werden, ein Widerrufsrecht nach § 355 zu.

Das Widerrufsrecht nach Absatz 2 gilt nicht in dem in § 491 Absatz 2 und 3 bestimmten Umfang. Dem in §491 Absatz 2 Nummer 1 genannten Nettodarlehensbetrag entspricht die Summe aller vom Verbraucher bis zum frühestmöglichen Kündigungszeitpunkt zu entrichtenden Teilzahlungen.

§ 511 Abweichende Vereinbarungen

Von den Vorschriften der §§ 491 bis 510 darf, soweit nicht ein anderes bestimmt ist, nicht zum Nachteil des Verbrauchers abgewichen werden. Diese Vorschriften finden auch Anwendung, wenn sie durch anderweitige Gestaltungen umgangen werden.

第 512 條（於創業者之適用）

第 491 條至第 511 條規定，於自然人，其為展開營業或獨立職業活動，而促使借貸金錢、延期支付或其他融資協助，或為這項目的而訂定分期支付契約者，亦適用之。但稅後借貸金額或現金支付價格，超過 7 萬 5 千歐元者，不在此限。

第 655a 條（金錢借貸居間契約）

以下規定，併第 2 句規定，於契約，其使企業經營者對消費者，居間消費者金錢借貸契約或有償融資協助，或對消費者指明訂定此等契約之機會，以交換消費者或第三人支付報酬者，適用之。但於第 491 條第 2 項所規定之範圍內，不適用之。

金錢借貸居間人，應以民法施行法第 247 條之 13 第 2 項所規定之方式，告知消費者該條所規定之事項。金錢借貸居間人對消費者，負有如同貸與人依第 491a 條所規定之義務。第 2 句規定，於商品製造商或提供服務者，其作為金錢借貸居間人，僅以次要之功能而為行為者，例如居間訂定連結之消費金錢借貸契約，且以之為從給付義務，不適用之。

第 655b 條（與消費者訂定之契約及書面）

與消費者訂定金錢借貸居間契約，無須以書面為之。契約不得與借貸金錢之要約連結。金錢借貸居間人應以書面之方式，通知消費者契約內容。

與消費者訂定之金錢借貸居間契約，未依第 1 項第 1 句與第 2 句所規定，或於其訂定前，未履行民法施行法第 247 條之 13 第 2 項所

§ 512 Anwendung auf Existenzgründer

Die §§ 491 bis 511 gelten auch für natürliche Personen, die sich ein Darlehen, einen Zahlungsaufschub oder eine sonstige Finanzierungshilfe für die Aufnahme einer gewerblichen oder selbständigen beruflichen Tätigkeit gewähren lassen oder zu diesem Zweck einen Ratenlieferungsvertrag schließen, es sei denn, der Nettodarlehensbetrag oder Barzahlungspreis übersteigt 75 000 Euro

§ 655a Darlehensvermittlungsvertrag

Für einen Vertrag, nach dem es ein Unternehmer unternimmt, einem Verbraucher gegen ein vom Verbraucher oder einem Dritten zu leistendes Entgelt einen Verbraucherdarlehensvertrag oder eine entgeltliche Finanzierungshilfe zu vermitteln oder ihm die Gelegenheit zum Abschluss eines solchen Vertrags nachzuweisen, gelten vorbehaltlich des Satzes 2 die folgenden Vorschriften. Dies gilt nicht in dem in § 491 Abs. 2 bestimmten Umfang.

Der Darlehensvermittler hat den Verbraucher über die sich aus Artikel 247 § 13 Absatz 2 des Einführungsgesetzes zum Bürgerlichen Gesetzbuche ergebenden Einzelheiten in der dort vorgesehenen Form zu unterrichten. Der Darlehensvermittler ist gegenüber dem Verbraucher zusätzlich wie ein Darlehensgeber gemäß § 491a verpflichtet. Satz 2 gilt nicht für Warenlieferanten oder Dienstleistungserbringer, die in lediglich untergeordneter Funktion als Darlehensvermittler tätig werden, etwa indem sie als Nebenleistung den Abschluss eines verbundenen Verbraucherdarlehensvertrags vermitteln.

§ 655b Schriftform bei einem Vertrag mit einem Verbraucher

Der Darlehensvermittlungsvertrag mit einem Verbraucher bedarf der schriftlichen Form. Der Vertrag darf nicht mit dem Antrag auf Hingabe des Darlehens verbunden werden. Der Darlehensvermittler hat dem Verbraucher den Vertragsinhalt in Textform mitzuteilen.

Ein Darlehensvermittlungsvertrag mit einem Verbraucher, der den Anforderungen des Absatzes 1 Satz 1 und 2 nicht genügt oder vor dessen

規定之義務者，無效。

第 655c 條（報酬）

消費者，以其因居間或金錢借貸居間人之指明，而受借貸金錢之給付，且依第 355 條規定，亦不得再解除契約者為限，僅負有支付報酬之義務。以消費者金錢借貸契約，以及金錢借貸居間人所知悉者，有助其他金錢借貸之預先移轉（債務移轉），且有效年利息不提升者為限，始發生報酬請求權；為應移轉之金錢借貸計算有效年利息時，可能之居間費用，不在考量之列。

第 655d 條（從報酬）

金錢借貸居間人，除第 655c 條第 1 句所規定之報酬外，不得為與消費者金錢借貸契約，或指明訂定消費者金錢借貸契約之機會，有關聯之給付，另約定報酬。但得約定，應償還金錢借貸居間人所支出之必要費用。該請求權，不得超過金錢借貸居間人依民法施行法第 247 條之 13 第 3 項第 1 句第 4 款規定，向消費者所通知之額或最高額。

第 655e 條（相反之約定、於創業者之適用）

本節之規定，不得以消費者之不利益，加以排除。本節之規定，以其他方法加以規避者，亦適用之。

第 512 條所規定之創業者，於本節之規定內，等同消費者。

Abschluss die Pflichten aus Artikel 247 § 13 Abs. 2 des Einführungsgesetzes zum Bürgerlichen Gesetzbuche nicht erfüllt worden sind, ist nichtig.

§ 655c Vergütung

Der Verbraucher ist zur Zahlung der Vergütung nur verpflichtet, wenn infolge der Vermittlung oder des Nachweises des Darlehensvermittlers das Darlehen an den Verbraucher geleistet wird und ein Widerruf des Verbrauchers nach § 355 nicht mehr möglich ist. Soweit der Verbraucherdarlehensvertrag mit Wissen des Darlehensvermittlers der vorzeitigen Ablösung eines anderen Darlehens (Umschuldung) dient, entsteht ein Anspruch auf die Vergütung nur, wenn sich der effektive Jahreszins nicht erhöht; bei der Berechnung des effektiven Jahreszinses für das abzulösende Darlehen bleiben etwaige Vermittlungskosten außer Betracht.

§ 655d Nebenentgelte

Der Darlehensvermittler darf für Leistungen, die mit der Vermittlung des Verbraucherdarlehensvertrags oder dem Nachweis der Gelegenheit zum Abschluss eines Verbraucherdarlehensvertrags zusammenhängen, außer der Vergütung nach § 655c Satz 1 ein Entgelt nicht vereinbaren. Jedoch kann vereinbart werden, dass dem Darlehensvermittler entstandene, erforderliche Auslagen zu erstatten sind. Dieser Anspruch darf die Höhe oder die Höchstbeträge, die der Darlehensvermittler dem Verbraucher gemäß Artikel 247 § 13 Absatz 2 Satz 1 Nummer 4 des Einführungsgesetzes zum Bürgerlichen Gesetzbuche mitgeteilt hat, nicht übersteigen.

§ 655e Abweichende Vereinbarungen, Anwendung auf Existenzgründer

Von den Vorschriften dieses Untertitels darf nicht zum Nachteil des Verbrauchers abgewichen werden. Die Vorschriften dieses Untertitels finden auch Anwendung, wenn sie durch anderweitige Gestaltungen umgangen werden.

Existenzgründer im Sinne des § 512 stehen Verbrauchern in diesem Untertitel gleich.

歐盟 524/2013/EU 規則

2013 年 5 月 21 日

針對消費者爭議解決之權利，修正 2006/2004/EC 規則以及
2009/22/EC 指令（消費者線上紛爭解決機制規則）

歐洲議會及歐盟理事會，依據歐盟條約第 114 條規定，就歐盟執委會提出之草案，並於立法草案傳送內國議會後，依循歐盟經濟與社會委員會之意見，經通常立法程序，立法如下：

- (1) 歐洲聯盟運作方式條約(TFEU)第 169 條第(1)項及第 169 條第(2)項第(a)點規定，歐盟應藉由採取依據條約第 114 條規定所得採取之措施，資以促進高水平之消費者保護。歐洲聯盟基本權利憲章第 38 條規定，則聲明歐盟負有確保高水平消費者保護之政策。
- (2) 根據 TFEU 第 26 條第(2)項規定，內部市場旨在建構一個不存在內部疆界的區域，並確保商品及服務之自由流通。為了獲取消費者對於內部市場中的數位層面的信心，並使其自該部分獲取利益，應有必要使消費者得以簡便、高效率、迅速及低成本的方法，解決因網路商品銷售或服務提供而產生之紛爭。此點於消費者從事跨境消費時尤為重要。
- (3) 在 2011 年 4 月 13 日所提出、名為「單一市場法：透過 12 項立法推動促進成長並提高信心，『藉由合作創造嶄新之成長』」文件中，歐盟執委會確認了進行替代性紛爭解決機制(ADR)的立法，包括將電子商務列入十二個立法重點之中，以期刺激單一市場之成長並強化市場信心。

REGULATIONS

**REGULATION (EU) No 524/2013 OF THE EUROPEAN
PARLIAMENT AND OF THE COUNCIL of 21 May 2013
on online dispute resolution for consumer disputes and amending
Regulation (EC) No 2006/2004 and Directive 2009/22/EC
(Regulation on consumer ODR)**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION, Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof, Having regard to the proposal from the European Commission, After transmission of the draft legislative act to the national parliaments, Having regard to the opinion of the European Economic and Social Committee (1), Acting in accordance with the ordinary legislative procedure (2), Whereas:

- (1) Article 169(1) and point (a) of Article 169(2) of the Treaty on the Functioning of the European Union (TFEU) provide that the Union is to contribute to the attainment of a high level of consumer protection through measures adopted pursuant to Article 114 TFEU. Article 38 of the Charter of Fundamental Rights of the European Union provides that Union policies are to ensure a high level of consumer protection.
- (2) In accordance with Article 26(2) TFEU, the internal market is to comprise an area without internal frontiers in which the free movement of goods and services is ensured. In order for consumers to have confidence in and benefit from the digital dimension of the internal market, it is necessary that they have access to simple, efficient, fast and low-cost ways of resolving disputes which arise from the sale of goods or the supply of services online. This is particularly important when consumers shop cross-border.
- (3) In its Communication of 13 April 2011 entitled ‘Single Market Act — Twelve levers to boost growth and strengthen confidence — “Working together to create new growth” ’, the Commission identified legislation on alternative dispute resolution (ADR) which includes an electronic commerce dimension as one of the twelve levers to boost growth and strengthen confidence in the Single Market.

- (4) 內部市場的分裂，阻礙了在激勵競爭與成長上之動能。此外，儘管著眼於商品銷售或服務提供所衍生的講求效率、快速及較低成本之解決紛爭方法，已隨之出現，但相關方法卻也存在可用性、品質及識別性參差不齊等問題，仍將構築內部市場上的障礙，並減損消費者及企業經營者對於跨境交易行為之信心。
- (5) 基於 2011 年 3 月 24、25 日及同年 10 月 23 日之會議結論，歐盟理事會籲請歐盟議會及理事會本身採納截至 2012 年為止，為帶動單一市場所推行的首波優先措施。
- (6) 內部市場已在消費者的日常生活中，包括當其從事旅遊、購買並進行支付等相關行為時成真。由於消費者係內部市場的關鍵參與者，故應當由其扮演類似心臟般的重要角色。而內部市場中的數位領域，對於消費者及企業經營者而言亦已變得至關重要。愈來愈多消費者於網路上從事消費，亦有愈來愈多的企業經營者利用網路進行銷售。當消費者與企業經營者從事網路交易時，應使其感到放心，故實有必要去除既存的障礙，同時增進消費者之信心。準此，具可靠性且富效率的線上替代性紛爭解決機制(ODR)，應有助於實現此一目標。
- (7) 若能尋找出簡易且低成本的紛爭解決機制，實有助於提升消費者及企業經營者在數位單一市場中的信心。然而，消費者及企業經營者雙方仍然在尋求訴訟外紛爭解決機制此事上遭致困境，特別是當紛爭係因為跨境線上交易所引起時。在此之下，相關糾紛往往無法得到有效之解決。
- (8) 針對線上交易，ODR 提供了一個簡易、有效率、快速及低成本的訴訟外紛爭解決模式。然而，現階段仍缺乏讓消費者及企業經營者可得透過電子方式解決紛爭之相關機制；此一情形將肇致消費者之損害，特別是在消費者從事跨境線上交易時，形成一道阻礙，並產生企業經營不公平競爭之情形，從而妨礙了網路商務的全面發展。

- (4) Fragmentation of the internal market impedes efforts to boost competitiveness and growth. Furthermore, the uneven availability, quality and awareness of simple, efficient, fast and low-cost means of resolving disputes arising from the sale of goods or provision of services across the Union constitutes a barrier within the internal market which undermines consumers' and traders' confidence in shopping and selling across borders.
- (5) In its conclusions of 24-25 March and 23 October 2011, the European Council invited the European Parliament and the Council to adopt, by the end of 2012, a first set of priority measures to bring a new impetus to the Single Market.
- (6) The internal market is a reality for consumers in their daily lives, when they travel, make purchases and make payments. Consumers are key players in the internal market and should therefore be at its heart. The digital dimension of the internal market is becoming vital for both consumers and traders. Consumers increasingly make purchases online and an increasing number of traders sell online. Consumers and traders should feel confident in carrying out transactions online so it is essential to dismantle existing barriers and to boost consumer confidence. The availability of reliable and efficient online dispute resolution (ODR) could greatly help achieve this goal.
- (7) Being able to seek easy and low-cost dispute resolution can boost consumers' and traders' confidence in the digital Single Market. Consumers and traders, however, still face barriers to finding out-of-court solutions in particular to their disputes arising from cross-border online transactions. Thus, such disputes currently are often left unresolved.
- (8) ODR offers a simple, efficient, fast and low-cost out-of-court solution to disputes arising from online transactions. However, there is currently a lack of mechanisms which allow consumers and traders to resolve such disputes through electronic means; this leads to consumer detriment, acts as a barrier, in particular, to cross-border online transactions, and creates an uneven playing field for traders, and thus hampers the overall development of online commerce.

- (9) 本規則適用於居住於歐盟領域範圍內之消費者，與設立於歐盟領域範圍內、並受到 2013 年消費者 ADR 指令規範之企業經營者，雙方之間所採行的訴訟外紛爭解決機制。
- (10) 為助益 ODR 平台得使用於供企業經營者處理消費者申訴之用之 ADR 流程，規則本身亦應適用於企業經營者針對消費者所發動之訴訟外紛爭解決機制，而其所涉之相關 ADR 流程，應當由依據 2013 年 ADR 指令規定所揭載之 ADR 機構加以提供。面對紛爭，在本規則適用上，不得將強加成員國負有要求 ADR 機構應當提供紛爭處理程序之義務。
- (11) 儘管可自 ODR 平台獲致利益者，以消費者與企業經營者所進行之跨境線上交易活動，尤為顯著，本規則亦應適用於內國的線上交易活動，以利網路商務領域形塑一個真正公平的競爭環境。
- (12) 本規則應不妨害 2008 年歐盟民商事調解指令(Directive 2008/52/EC)之行使。
- (13) 關於「消費者」之定義，泛指並未從事貿易、商業、工藝或專門職業活動之自然人。惟業已締結且部分內容涉及個人交易行為、部分則無之契約(亦即雙重目的契約)，若出於交易之目的，係受到限制並未構成整體契約之主要部分時，該契約當事人亦應視為消費者。

- (9) This Regulation should apply to the out-of-court resolution of disputes initiated by consumers resident in the Union against traders established in the Union which are covered by Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes (Directive on consumer ADR).
- (10) In order to ensure that the ODR platform can also be used for ADR procedures which allow traders to submit complaints against consumers, this Regulation should also apply to the out-of-court resolution of disputes initiated by traders against consumers where the relevant ADR procedures are offered by ADR entities listed in accordance with Article 20(2) of Directive 2013/11/EU. The application of this Regulation to such disputes should not impose any obligation on Member States to ensure that the ADR entities offer such procedures.
- (11) Although in particular consumers and traders carrying out cross-border online transactions will benefit from the ODR platform, this Regulation should also apply to domestic online transactions in order to allow for a true level playing field in the area of online commerce.
- (12) This Regulation should be without prejudice to Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters
- (13) The definition of ‘consumer’ should cover natural persons who are acting outside their trade, business, craft or profession. However, if the contract is concluded for purposes partly within and partly outside the person’s trade (dual purpose contracts) and the trade purpose is so limited as not to be predominant in the overall context of the supply, that person should also be considered as a consumer.

- (14) 關於「線上銷售或服務契約」，泛指企業經營者或企業經營者之中介者，透過網站或其他電子方式提供商品或服務，而消費者亦可透過該等網站或電子方式完成商品或服務之訂購之銷售或服務契約。其亦應包括消費者透過行動電話等行動電子裝置，連結網站或其他資訊社會服務之情形。
- (15) 本規則並不適用於消費者與企業經營者之間，以離線方式所締結之銷售或服務契約之衍生紛爭，亦不適用於企業經營者彼此之間產生之糾紛。
- (16) 本規則應與 2013 年 ADR 指令併同運行，基此要求會員國確保居住於歐盟的消費者，於其與設立於歐盟之企業經營者，因商品銷售或服務提供產生紛爭時，得提交予 ADR 機構處理。
- (17) 在消費者透過網路平台提交申訴予 ADR 機構之前，會員國應鼓勵消費者藉由適當方式聯繫企業經營者，並以和平地解決其紛爭為目標。
- (18) 本規則旨在打造一個歐盟層級的 ODR 平台。該 ODR 平台應採取互動網站模式，並針對從事網路交易活動而擬尋求訴訟外紛爭解決機制之消費者與企業經營者，提供單一窗口。該 ODR 平台應針對網路銷售或服務契約下之消費者與企業經營者，提供其關於契約紛爭之訴訟外紛爭解決機制之一般資訊。ODR 平台應允許消費者及企業經營者得以歐盟所承認之所有正式語言及電子申請方式，提出其申訴案件並檢送相關文件資料。ODR 平台應將申訴案件轉介予適任的 ADR 機構，資以處理系爭案件。ODR 平台應提供一個可免費使用的電子案件管理工具，以利 ADR 機構得利用該 ODR 平台，會同當事人進行相關紛爭處理程序。惟 ADR 機構並不負有強制使用前述案件管理工具之義務。

- (14) The definition of ‘online sales or service contract’ should cover a sales or service contract where the trader, or the trader’s intermediary, has offered goods or services through a website or by other electronic means and the consumer has ordered those goods or services on that website or by other electronic means. This should also cover cases where the consumer has accessed the website or other information society service through a mobile electronic device such as a mobile telephone.
- (15) This Regulation should not apply to disputes between consumers and traders that arise from sales or service contracts concluded offline and to disputes between traders.
- (16) This Regulation should be considered in conjunction with Directive 2013/11/EU which requires Member States to ensure that all disputes between consumers resident and traders established in the Union which arise from the sale of goods or provisions of services can be submitted to an ADR entity.
- (17) Before submitting their complaint to an ADR entity through the ODR platform, consumers should be encouraged by Member States to contact the trader by any appropriate means, with the aim of resolving the dispute amicably.
- (18) This Regulation aims to create an ODR platform at Union level. The ODR platform should take the form of an interactive website offering a single point of entry to consumers and traders seeking to resolve disputes out-of-court which have arisen from online transactions. The ODR platform should provide general information regarding the out-of-court resolution of contractual disputes between traders and consumers arising from online sales and service contracts. It should allow consumers and traders to submit complaints by filling in an electronic complaint form available in all the official languages of the institutions of the Union and to attach relevant documents. It should transmit complaints to an ADR entity competent to deal with the dispute concerned. The ODR platform

- (19) 歐盟執委會負有發展、運營及維護 ODR 平台之責任，並提供平台在功能層面上所需之各項技術設備。ODR 平台應提供電子翻譯功能，以利紛爭當事人及 ADR 機構，得藉由 ODR 平台交換資訊，並出於紛爭解決之需求而進行必要之轉譯。該等功能必須可負擔所有必要的翻譯需求，並在必要時以人工介入方式作為輔佐。歐盟執委員針對 ODR 平台，亦應就申訴之有關訊息，提供透過 ODR 聯繫窗口尋求協助之可能性。
- (20) ODR 平台應確保其與 ADR 機構間關於資料傳輸之安全性，並且符合依據歐盟議會 2004/387/EC 決定(有關公共管理、商業及公民之泛歐洲電子化政府服務之交互性資料傳遞(IDABC))所確立之交互性架構之必要基本原則。
- (21) ODR 平台應可得被接取，特別是可得透過依前揭歐盟議會 2004/387/EC 決定之附件 II 所建置的「您的歐洲入口平台」加以連結，該入口平台針對歐盟區域內的企業及一般民眾，提供多語言別的線上資訊、互動服務並可得泛歐盟地進行連結。
- (22) 歐盟層級的 ODR 平台應建立在各會員國現有 ADR 機構的基礎上，並尊重各會員國之法律傳統。ADR 機構若經由 ODR 平台轉介而收受申訴案，即應適用其自身之程序規則，包括費用相關規定。然而，本規則係擬訂定相關程序之共通性規範，資以

should offer, free of charge, an electronic case management tool which enables ADR entities to conduct the dispute resolution procedure with the parties through the ODR platform. ADR entities should not be obliged to use the case management tool.

- (19) The Commission should be responsible for the development, operation and maintenance of the ODR platform and provide all technical facilities necessary for the functioning of the platform. The ODR platform should offer an electronic translation function which enables the parties and the ADR entity to have the information which is exchanged through the ODR platform and is necessary for the resolution of the dispute translated, where appropriate. That function should be capable of dealing with all necessary translations and should be supported by human intervention, if necessary. The Commission should also provide, on the ODR platform, information for complainants about the possibility of requesting assistance from the ODR contact points.
- (20) The ODR platform should enable the secure interchange of data with ADR entities and respect the underlying principles of the European Interoperability Framework adopted pursuant to Decision 2004/387/EC of the European Parliament and of the Council of 21 April 2004 on interoperable delivery of pan-European eGovernment services to public administrations, businesses and citizens (IDABC)
- (21) The ODR platform should be made accessible, in particular, through the ‘Your Europe portal’ established in accordance with Annex II to Decision 2004/387/EC, which provides access to pan-European, multilingual online information and interactive services to businesses and citizens in the Union. The ODR platform should be given prominence on the ‘Your Europe portal’.
- (22) An ODR platform at Union level should build on existing ADR entities in the Member States and respect the legal traditions of the Member States. ADR entities to which a complaint has been transmitted through the ODR platform should therefore apply their

確保程序之有效性。前者應包括可資確保相關紛爭解決機制，除非程序別有規定或經由當事人同意外，並不要求當事人或其代表人必須親赴 ADR 機構。

- (23) 應確保所有依 2013 年 ADR 指令第 20 條第(2)項規定所揭載之 ADR 機構，均被登錄於 ODR 平台，並視為可得處理網路銷售或服務提供契約所生糾紛之線上訴訟外紛爭解決機制。
- (24) 本規則並不妨礙任何透過網路營運的現行紛爭解決機構或歐盟境內的 ODR 機制之運作。本規則亦不妨礙紛爭解決機構或 ODR 機制著手處理直接對其提出之網路糾紛案件。
- (25) ODR 應於各會員國指派至少二位 ODR 顧問，作為 ODR 聯繫窗口。ODR 聯繫窗口應協助透過 ODR 平台訴請紛爭處理之當事人，即便該平台並無義務協助遞交關於該紛爭之文件之義務。成員國應思考賦加各 ODR 聯繫窗口作為「歐洲消費者網絡聯繫中心」成員所應承擔之責任。成員國應思考善加運用 ODR 聯繫窗口因參與「歐洲消費者網絡聯繫中心」、協處企業經營者與消費者間之紛爭所獲致經驗之可能性。歐盟執委會應建立關於 ODR 聯繫窗口之聯繫網絡，以促進彼此之間的合作、與會員國之間的工作往來與服務提供，以及關於 ODR 聯繫窗口之適當培訓。
- (26) 得有效補償及接受公平審判等權利，係屬歐盟權利憲章所明訂之基本權利。ODR 不擬亦無法取代法院訴訟程序，亦不應剝奪

own procedural rules, including rules on cost. However, this Regulation intends to establish some common rules applicable to those procedures that will safeguard their effectiveness. This should include rules ensuring that such dispute resolution does not require the physical presence of the parties or their representatives before the ADR entity, unless its procedural rules provide for that possibility and the parties agree.

- (23) Ensuring that all ADR entities listed in accordance with Article 20(2) of Directive 2013/11/EU are registered with the ODR platform should allow for full coverage in online out-of-court resolution for disputes arising from online sales or service contracts.
- (24) This Regulation should not prevent the functioning of any existing dispute resolution entity operating online or of any ODR mechanism within the Union. It should not prevent dispute resolution entities or mechanisms from dealing with online disputes which have been submitted directly to them.
- (25) ODR contact points hosting at least two ODR advisors should be designated in each Member State. The ODR contact points should support the parties involved in a dispute submitted through the ODR platform without being obliged to translate documents relating to that dispute. Member States should have the possibility to confer the responsibility for the ODR contact points on their centres of the European Consumer Centres Network. Member States should make use of that possibility in order to allow ODR contact points to fully benefit from the experience of the centres of the European Consumer Centres Network in facilitating the settlement of disputes between consumers and traders. The Commission should establish a network of ODR contact points to facilitate their cooperation and work and provide, in cooperation with Member States, appropriate training for ODR contact points.
- (26) The right to an effective remedy and the right to a fair trial are fundamental rights laid down in Article 47 of the Charter of Fundamental Rights of the European Union. ODR is not intended to

消費者或企業經營者向法院尋求救濟之權利。故本規則不應妨害當事人行使其近用司法體系之相關權利。

- (27) 本規則下所進行之資料處理行為，應確保其受到嚴格之保密要求，並應符合歐盟 95 年資料保護指令(Directive 95/46/EC)，以及 2001 年個人資料保護暨自由流通規則(Regulation (EC) No 45/2001)之有關規定。相關規定適用於在本規則下由 ODR 平台相關人員所進行之個人資料處理行為，無論其係個人行為抑或團體之共同行為。
- (28) 針對 ODR 平台上所進行的個人資料處理作業，應依據 2001 年個人資料保護暨自由流通規則第 11 條及第 12 條規定，由平台中負責資料處理操作之人，透過歐盟執委會及其所公布解釋之足資使公眾獲悉之全面性隱私通知方式，以清楚簡要用語，對個人資料當事人進行告知並取得該當事人之同意，同時使其知悉對於個人資料處理作業所擁有的權利。
- (29) 本規則並不妨害國家立法針對 ADR 機制所訂之相關保密規範。
- (30) 為了使廣大消費者得以認識 ODR 平台之存在，於歐盟區域範圍內締結網路商品銷售或服務提供契約之企業經營者，應於其網站上提供關於 ODR 平台之連結。企業經營者亦應提供自身的電子郵件信箱，作為消費者連繫上所可採行的首要方式。已有顯

and cannot be designed to replace court procedures, nor should it deprive consumers or traders of their rights to seek redress before the courts. This Regulation should not, therefore, prevent parties from exercising their right of access to the judicial system.

- (27) The processing of information under this Regulation should be subject to strict guarantees of confidentiality and should comply with the rules on the protection of personal data laid down in Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data and in Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data. Those rules should apply to the processing of personal data carried out under this Regulation by the various actors of the ODR platform, whether they act alone or jointly with other such actors.
- (28) Data subjects should be informed about, and give their consent to, the processing of their personal data in the ODR platform, and should be informed about their rights with regard to that processing, by means of a comprehensive privacy notice to be made publicly available by the Commission and explaining, in clear and simple language, the processing operations performed under the responsibility of the various actors of the platform, in accordance with Articles 11 and 12 of Regulation (EC) No 45/2001 and with national legislation adopted pursuant to Articles 10 and 11 of Directive 95/46/EC.
- (29) This Regulation should be without prejudice to provisions on confidentiality in national legislation relating to ADR.
- (30) In order to ensure broad consumer awareness of the existence of the ODR platform, traders established within the Union engaging in online sales or service contracts should provide, on their websites, an electronic link to the ODR platform. Traders should

著市占率的網路商品銷售及服務提供契約，其匯聚企業經營者與消費者，並便利兩者之間交易行為之進行，從而構築成網路市集。而所謂的網路市集，係指企業經營者的產品或服務，可得為消費者獲取之網路平台。而相關網路市集亦應負有等同義務，提供關於 ODR 平台之網站連結。此一義務應不妨礙依據 2013 年 ADR 指令第 13 條規定所要求、受該條規範之企業經營者，應告知消費者關於 ADR 程序之相關資訊，無論該等企業經營者是否承諾將採取 ADR 程序解決其與消費者之間所產生之糾紛。此外，前述義務亦不妨礙依據 2011 年消費者權利指令第 6 條第(1)項第(t)款及同法第 8 條規定，針對透過遠距方式或於營業場所外所締結之消費者契約，要求企業經營者應於消費者實際與其締結契約之前，即負有使其知悉其可得尋求訴訟外之申訴及補償機制。出於相同的消費者保護意識原因，成員國應鼓勵各消費者保護協會及企業組織提供關於 ODR 平台之網站連結。

- (31) ADR機構依據「歐洲聯盟運作方式條約」第290條規定所得採取之具體行動之權限範圍，其界定標準應委由歐盟執委會為之，並視透過ODR平台以電子申訴表單所提交的申訴案件為憑。歐盟執委會應於著手相關準備工作時，進行包括專家層級在內的適當磋商。歐盟執委會於準備與草擬相關委託行為時，應確保與歐盟議會及歐盟理事會間之同步的、及時的及合適的相關文件傳輸機制。

also provide their email address so that consumers have a first point of contact. A significant proportion of online sales and service contracts are concluded using online market places, which bring together or facilitate online transactions between consumers and traders. Online marketplaces are online platforms which allow traders to make their products and services available to consumers. Such online marketplaces should therefore have the same obligation to provide an electronic link to the ODR platform. This obligation should be without prejudice to Article 13 of Directive 2013/11/EU concerning the requirement that traders inform consumers about the ADR procedures by which those traders are covered and about whether or not they commit to use ADR procedures to resolve disputes with consumers. Furthermore, that obligation should be without prejudice to point (t) of Article 6(1) and to Article 8 of Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights. Point (t) of Article 6(1) of Directive 2011/83/EU stipulates for consumer contracts concluded at a distance or off premises, that the trader is to inform the consumer about the possibility of having recourse to an out-of-court complaint and redress mechanism to which the trader is subject, and the methods for having access to it, before the consumer is bound by the contract. For the same consumer awareness reasons, Member States should encourage consumer associations and business associations to provide an electronic link to the website of the ODR platform.

- (31) In order to take into account the criteria by which the ADR entities define their respective scopes of application the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission to adapt the information which a complainant is to provide in the electronic complaint form made available on the ODR platform. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.

- (32) 為確保規則所訂權限執行上的一致性，應授權歐盟執委會處理關於 ODR 平台所扮演之功能角色、提交申訴之方式，以及與 ODR 連繫窗口網絡之合作等有關事宜。而相關權限之運作，應依循「2001 年歐盟成員國行使權力之控管機制規則」(Regulation (EU) No 182/2011)，針對成員國之具體權限操作一事，制定配套規定與基本原則。針對電子申訴表單使用行為之採認，應揆諸其技術特質而展開相關諮詢程序。並針對「ODR 聯繫窗口網絡」架構下 ODR 顧問之間的合作方式，就其相關規則之採認展開相關審查程序。
- (33) 針對本規則之具體應用，歐盟執委員在適當情形下應徵詢歐盟資料保護監察專員之意見。
- (34) 由於本規則之目標，在於建立泛歐洲的 ODR 平台，以透過共通性的規範處理網路紛爭治理問題，但僅由成員國為之將難以充分達成此目標，基此，考量其所涉規模與影響，為了於歐盟層級達成前述目標，歐盟得依據歐盟條約第 5 條所揭載之輔助原則，採取特定機制。同時在符合比例原則的前提下，如同前述規定所載，本規則得基於目標之達成而採取必要作為。
- (35) 本規則尊重歐盟基本權利憲章所承認之基本權利並遵循其揭載之相關原則，特別是其第 7 條、第 8 條、第 38 條及第 47 條規定。
- (36) 根據 2001 年「個人資料保護暨自由流通規則」第 28 條第(2)項規定，歐盟資料保護監察專員業已受到徵詢並於 2012 年 1 月 12 日表述其意見。

- (32) In order to ensure uniform conditions for the implementation of this Regulation implementing powers should be conferred on the Commission in respect of the functioning of the ODR platform, the modalities for the submission of a complaint and cooperation within the network of ODR contact points. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers. The advisory procedure should be used for the adoption of implementing acts relating to the electronic complaint form given its purely technical nature. The examination procedure should be used for the adoption of the rules concerning the modalities of cooperation between the ODR advisors of the network of ODR contact points.
- (33) In the application of this Regulation, the Commission should consult, where appropriate, the European Data Protection Supervisor.
- (34) Since the objective of this Regulation, namely to set up a European ODR platform for online disputes governed by common rules, cannot be sufficiently achieved by the Member States and can therefore, by reason of its scale and effects, be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.
- (35) This Regulation respects fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union and specifically Articles 7, 8, 38 and 47 thereof.
- (36) The European Data Protection Supervisor was consulted in accordance with Article 28(2) of Regulation (EC) No 45/2001 and delivered an opinion on 12 January 2012,

本規則已獲通過

第一章 總則

第 1 條 主要內容

本規則之目的，在於透過較高層次之消費者保護工作之實現，藉由提供一個泛歐洲 ODR 平台(以下統稱 ODR 平台)，針對網路消費者與企業經營者間所生糾紛，推動獨立、公正、透明、有效、快速及公平之訴訟外爭端解決機制，以期助益內部市場，特別是其數位板塊之適當運作。

第 2 條 適用範圍

1. 居住於歐盟領域範圍內之消費者與設立於歐盟之企業經營者所締結之網路銷售或服務提供契約，就源於前開契約之契約義務，由歐盟 2013 年 ADR 指令第 20 條第(2)項規定所揭載之 ADR 機構介入處理並運用 ODR 平台之訴訟外爭端解決機制，應有本規則之適用。
2. 前項規定所稱之訴訟外紛爭解決機制，如係由企業經營者對消費者發動時，若成員國內國立法針對身為久住居民之消費者所衍生之糾紛，允許尋求 ADR 機構介入協助而加以解決者，應有本規則之適用。
3. 成員國應告知歐盟執委會，其內國立法是否允許企業經營者就其與消費者間所生糾紛，由 ADR 機構介入協處而加以解決。主管機關關於通知依歐盟 2013 年 ADR 指令第 20 條第(2)項規定所揭載之 ADR 機構時，應將由 ADR 機構處理相關紛爭之情事，告知歐盟執委會。
4. 依第一項所為之訴訟外紛爭解決機制，如係由企業經營者對消費者發動時，不得要求會員國保證 ADR 機構提供訴訟外紛爭解決機制程序之義務。

HAVE ADOPTED THIS REGULATION:

CHAPTER I GENERAL PROVISIONS

Article 1 Subject matter

The purpose of this Regulation is, through the achievement of a high level of consumer protection, to contribute to the proper functioning of the internal market, and in particular of its digital dimension by providing a European ODR platform ('ODR platform') facilitating the independent, impartial, transparent, effective, fast and fair out-of-court resolution of disputes between consumers and traders online.

Article 2 Scope

1. This Regulation shall apply to the out-of-court resolution of disputes concerning contractual obligations stemming from online sales or service contracts between a consumer resident in the Union and a trader established in the Union through the intervention of an ADR entity listed in accordance with Article 20(2) of Directive 2013/11/EU and which involves the use of the ODR platform.
2. This Regulation shall apply to the out-of-court resolution of disputes referred to in paragraph 1, which are initiated by a trader against a consumer, in so far as the legislation of the Member State where the consumer is habitually resident allows for such disputes to be resolved through the intervention of an ADR entity.
3. Member States shall inform the Commission about whether or not their legislation allows for disputes referred to in paragraph 1, which are initiated by a trader against a consumer, to be resolved through the intervention of an ADR entity. Competent authorities shall, when they notify the list referred to in Article 20(2) of Directive 2013/11/EU, inform the Commission about which ADR entities deal with such disputes.
4. The application of this Regulation to disputes referred to in paragraph 1, which are initiated by a trader against a consumer, shall not impose any obligation on Member States to ensure that ADR entities offer procedures for the out-of- court resolution of such disputes.

第 3 條 與歐盟其他法規之適用關係

本規則應符合歐盟 2008/52/EC 指令之要求。

第 4 條 定義

1. 立於本規則之目的之下：

- (a) 消費者：係指 2013/11/EC 指令第 4 條第(1)項第(a)款所定義之消費者。
- (b) 企業經營者：係指 2013/11/EC 指令第 4 條第(1)項第(b)款所定義之企業經營者。
- (c) 商品銷售契約：係指 2013/11/EC 指令第 4 條第(1)項第(c)款所定義之商品銷售契約。
- (d) 服務提供契約：係指 2013/11/EC 指令第 4 條第(1)項第(d)款所定義之服務提供契約。
- (e) 線上商品銷售或服務提供契約：係指企業經營者或其銷售中介之人，透過網路平台或其他電子方式提供商品或服務，而消費者亦透過網路平台或其他電子方式，完成該等商品或服務之訂購之商品銷售或服務提供契約。
- (f) 網路市集：係指 2000/31/EC 指令第 2 條第(b)款所定義之服務提供者，消費者及企業經營者得於該網路市集，締結線上商品銷售或服務提供契約。
- (g) 電子方式：係指全程得以電話線、無線電、光學或其他電磁方式進行傳遞，用以處理（包括數位壓縮）或儲存資料之電子設備。
- (h) 代替性紛爭解決程序(ADR 程序)：係指本規則第 2 條所規定、針對訴訟外紛爭解決機制所設定之程序。
- (i) 代替性紛爭解決機構(ADR 機構)：係指 2013/11/EC 指令第 4 條第(1)項第(h) 款所定義之 ADR 機構。

Article 3 Relationship with other Union legal acts

This Regulation shall be without prejudice to Directive 2008/52/EC.

Article 4 Definitions

1. For the purposes of this Regulation:

- (a) ‘consumer’ means a consumer as defined in point (a) of Article 4(1) of Directive 2013/11/EU;
- (b) ‘trader’ means a trader as defined in point (b) of Article 4(1) of Directive 2013/11/EU;
- (c) ‘sales contract’ means a sales contract as defined in point (c) of Article 4(1) of Directive 2013/11/EU;
- (d) ‘service contract’ means a service contract as defined in point (d) of Article 4(1) of Directive 2013/11/EU;
- (e) ‘online sales or service contract’ means a sales or service contract where the trader, or the trader’s intermediary, has offered goods or services on a website or by other electronic means and the consumer has ordered such goods or services on that website or by other electronic means;
- (f) ‘online marketplace’ means a service provider, as defined in point (b) of Article 2 of Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (‘Directive on electronic commerce’), which allows consumers and traders to conclude online sales and service contracts on the online marketplace’s website;
- (g) ‘electronic means’ means electronic equipment for the processing (including digital compression) and storage of data which is entirely transmitted, conveyed and received by wire, by radio, by optical means or by other electromagnetic means;
- (h) ‘alternative dispute resolution procedure’ (‘ADR procedure’) means a procedure for the out-of-court resolution of disputes as referred to in Article 2 of this Regulation;
- (i) ‘alternative dispute resolution entity’ (‘ADR entity’) means an ADR entity as defined in point (h) of Article 4(1) of Directive 2013/11/EU;

- (j) 申訴當事人：係指透過 ODR 平台提出申訴案件之消費者或企業經營者。
 - (k) 對造當事人：係指透過 ODR 平台所提交申訴案件中，提交之消費者或企業經營者所針對之人。
 - (l) 主管機關：係指 2013/11/EC 指令第 4 條第(1)項第(i)款所定義之公務機關。
 - (m) 個人資料：係指足資識別或可得識別特定自然人（亦即資料當事人）之資訊。可得識別之人，指憑借識別性資訊或單一或複數以上之個人身體、生理、心理、經濟、文化或社會身分之要素，從而可得直接或間接識別之人。
2. 企業經營者或 ADR 機構之設立地點之認定，應依 2013/11/EC 指令第 4 條第(2)項及第(3)項規定為之。

第貳章 ODR 平台

第 5 條 ODR 平台之設置

1. 執委會應當發展 ODR 平台並負責該平台之營運，包括立於本規則之目的所不可或缺的語言翻譯功能、其日常維運事項、所需資金及資訊安全等。該 ODR 平台應當易於親近使用，針對 ODR 平台之推動、營運及維護，應揆諸設計之進程，確保用戶之隱私（亦即所謂之「保護隱私自設計著手」），同時該 ODR 平台應於可能的前提下，使所有的網路使用者均得近用及操作該平台（故應以所有人均可使用進行設計）。
2. ODR 平台應當作為消費者與企業經營者尋求本規則所規範之訴訟外紛爭解決機制時之單一窗口。該平台應係一個立於所有歐盟機構官方語言之上，得透過電子方式接取且完全無須費用之互動式網站。

- (j) ‘complainant party’ means the consumer who or the trader that has submitted a complaint through the ODR platform;
 - (k) ‘respondent party’ means the consumer against whom or the trader against whom a complaint has been submitted through the ODR platform;
 - (l) ‘competent authority’ means a public authority as defined in point (i) of Article 4(1) of Directive 2013/11/EU;
 - (m) ‘personal data’ means any information relating to an identified or identifiable natural person (‘data subject’); an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to that person’s physical, physiological, mental, economic, cultural or social identity.
2. The place of establishment of the trader and of the ADR entity shall be determined in accordance with Article 4(2) and (3) of Directive 2013/11/EU, respectively.

CHAPTER II ODR PLATFORM

Article 5 Establishment of the ODR platform

1. The Commission shall develop the ODR platform (and be responsible for its operation, including all the translation functions necessary for the purpose of this Regulation, its maintenance, funding and data security. The ODR platform shall be user-friendly. The development, operation and maintenance of the ODR platform shall ensure that the privacy of its users is respected from the design stage (‘privacy by design’) and that the ODR platform is accessible and usable by all, including vulnerable users (‘design for all’), as far as possible.
2. The ODR platform shall be a single point of entry for consumers and traders seeking the out-of-court resolution of disputes covered by this Regulation. It shall be an interactive website which can be accessed electronically and free of charge in all the official languages of the institutions of the Union.

3. 執委會應使 ODR 平台易於近用，並在可能之下，藉由網站對歐盟區域範圍內的消費者與企業經營者，特別是運用依據 2004/387/EC 指令所設立的「您的歐洲入口平台」網站，對前述之人提供相關資訊。
4. ODR 平台應當具備下列功能：
 - (a) 提供申訴當事人應依據第 8 條規定加以填寫之電子申訴表單；
 - (b) 通知申訴人之對造當事人；
 - (c) 確認可得協處之 ADR 機構或複數 ADR 機構，並將申訴案傳遞予依據第 9 條規定、當事人同意採用之 ADR 機構。
 - (d) 針對個案提供免費的電子管理工具，助益系爭案件當事人及 ADR 機構透過 ODR 平台，進行紛爭處理相關流程。
 - (e) 出於紛爭處理所必要，針對資料提供當事人及 ADR 機構必要的語言轉譯，並透過 ODR 平台進行資訊交換。
 - (f) 以本規則第 10 條第(c)款規定之 ADR 機構轉知訊息之方式，對外提供電子表單。
 - (g) 提供回應系統，以便紛爭當事人針對 ODR 平台所具備之功能以及負責紛爭協處之 ADR 機構，表達相關意見。
 - (h) 就下述事項使公眾週知：
 - (i) 作為訴訟外紛爭解決方式之 ADR 之一般性資訊。
 - (ii) 依 2013/11/EU 指令第 20 條第(2)項規定所臚列並依本規則負責紛爭協處之 ADR 機構之有關資訊。
 - (iii) 如何透過 ODR 平台提交申訴案之線上指引。

3. The Commission shall make the ODR platform accessible, as appropriate, through its websites which provide information to citizens and businesses in the Union and, in particular, through the ‘Your Europe portal’ established in accordance with Decision 2004/387/EC.
4. The ODR platform shall have the following functions:
 - (a) to provide an electronic complaint form which can be filled in by the complainant party in accordance with Article 8;
 - (b) to inform the respondent party about the complaint;
 - (c) to identify the competent ADR entity or entities and transmit the complaint to the ADR entity, which the parties have agreed to use, in accordance with Article 9;
 - (d) to offer an electronic case management tool free of charge, which enables the parties and the ADR entity to conduct the dispute resolution procedure online through the ODR platform;
 - (e) to provide the parties and ADR entity with the translation of information which is necessary for the resolution of the dispute and is exchanged through the ODR platform;
 - (f) to provide an electronic form by means of which ADR entities shall transmit the information referred to in point (c) of Article 10;
 - (g) to provide a feedback system which allows the parties to express their views on the functioning of the ODR platform and on the ADR entity which has handled their dispute;
 - (h) to make publicly available the following:
 - (i) general information on ADR as a means of out-of-court dispute resolution;
 - (ii) information on ADR entities listed in accordance with Article 20(2) of Directive 2013/11/EU which are competent to deal with disputes covered by this Regulation;
 - (iii) an online guide about how to submit complaints through the ODR platform;

(iv) 依據本規則第 7 條第(1)項規定，由各會員國所指派之 ODR 聯繫窗口之相關資訊，包括聯繫上之相關細節。

(v) 透過 ODR 平台提交予 ADR 機構協處之紛爭案之統計資料。

5. 執委會應確保前述第 4 項第(h)款所列相關資訊，處於正確且最新之狀態，並以清楚、易懂與簡易之方法加以提供。
6. 依 2013 年 ADR 指令第 20 條第(2)項規定所揭載、依本規則負責紛爭協處的 ADR 機構，應以電子方式於 ODR 平台辦理登記。
7. 執委會應依據本規則第 16 條第(3)項關於檢驗程序之有關規定，針對本條第 4 項所列功能之運作，採納透過實作方式所進行之評估機制。

第 6 條 ODR 平台之測試

1. 執委會應於 2015 年 1 月 9 日之前，測試 ODR 平台暨申訴案表單之技術面功能及其使用上之友善程度。相關測試應由會員國、消費者及企業經營者代表中之 ODR 專家執行並完成評估。委員會應向歐盟議會提交關於前揭測試結果之報告，並以合適方式提出可能的潛在問題，資以確認 ODR 平台功能面的有效性。
2. 依據前項規定所提交之報告中，執委會應同時敘明針對歐盟 EC/45/2001 規則中所明訂的隱私保護規範，ODR 平台所採取對應的技術面與組織面措施。

- (iv) information, including contact details, on ODR contact points designated by the Member States in accordance with Article 7(1) of this Regulation;
 - (v) statistical data on the outcome of the disputes which were transmitted to ADR entities through the ODR platform.
5. The Commission shall ensure that the information referred to in point (h) of paragraph 4 is accurate, up to date and provided in a clear, understandable and easily accessible way.
 6. ADR entities listed in accordance with Article 20(2) of Directive 2013/11/EU which are competent to deal with disputes covered by this Regulation shall be registered electronically with the ODR platform.
 7. The Commission shall adopt measures concerning the modalities for the exercise of the functions provided for in paragraph 4 of this Article through implementing acts. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 16(3) of this Regulation.

Article 6 Testing of the ODR platform

1. The Commission shall, by 9 January 2015 test the technical functionality and user-friendliness of the ODR platform and of the complaint form, including with regard to translation. The testing shall be carried out and evaluated in cooperation with experts in ODR from the Member States and consumer and trader representatives. The Commission shall submit a report to the European Parliament and the Council of the result of the testing and take the appropriate measures to address potential problems in order to ensure the effective functioning of the ODR platform.
2. In the report referred to in paragraph 1 of this Article, the Commission shall also describe the technical and organisational measures it intends to take to ensure that the ODR platform meets the privacy requirements set out in Regulation (EC) No 45/2001.

第 7 條 集結 ODR 聯繫窗口之網絡

1. 成員國應指定一個 ODR 聯繫窗口，並將其名稱及相關聯繫資訊提供予歐盟執委會。成員國得基於 ODR 聯繫窗口其於歐盟消費者網絡聯繫中心、消費者相關公協會及其他機構之角色，賦予 ODR 聯繫窗口之職責。每一 ODR 聯繫窗口均應擁有至少二位 ODR 專家顧問。

2. ODR 聯繫窗口應就透過 ODR 平台所提交之申訴案，針對其紛爭解決提供相關協助：
 - (a) 在接獲請求下，促進當事人與當責之 ADR 機構之間的溝通，其得包括下列重要事項：
 - (i) 協助申訴案之提交，包括與其有關之適當文件之整備。

 - (ii) 針對各成員國 ODR 聯繫窗口且作為 ODR 顧問所協處之商品銷售及服務提供契約，提供其所涉之消費者權利之一般性資訊予紛爭當事人及 ADR 機構。

 - (iii) 針對 ODR 平台所具備之功能，提供相關資訊。

 - (iv) 針對實際協處紛爭案之 ADR 機構所採取之程序規則，向紛爭當事人提供相關說明。

 - (v) 當紛爭無法透過 ODR 平台獲致妥適解決時，提供當事人關於其他補償方式之資訊。

 - (b) 基於各該功能面操作上所獲致的實務經驗，每二年向執委會及各成員國提交一份行動報告。

3. 若紛爭當事人與 ODR 聯繫窗口均屬同一國家之常住居民，則該等 ODR 聯繫窗口將不負責本條第 2 項所列事項之操作。

Article 7 Network of ODR contact points

1. Each Member State shall designate one ODR contact point and communicate its name and contact details to the Commission. The Member States may confer responsibility for the ODR contact points on their centres of the European Consumer Centres Network, on consumer associations or on any other body. Each ODR contact point shall host at least two ODR advisors.
2. The ODR contact points shall provide support to the resolution of disputes relating to complaints submitted through the ODR platform by fulfilling the following functions:
 - (a) if requested, facilitating communication between the parties and the competent ADR entity, which may include, in particular:
 - (i) assisting with the submission of the complaint and, where appropriate, relevant documentation;
 - (ii) providing the parties and ADR entities with general information on consumer rights in relation to sales and service contracts which apply in the Member State of the ODR contact point which hosts the ODR advisor concerned;
 - (iii) providing information on the functioning of the ODR platform;
 - (iv) providing the parties with explanations on the procedural rules applied by the ADR entities identified;
 - (v) informing the complainant party of other means of redress when a dispute cannot be resolved through the ODR platform;
 - (b) submitting, based on the practical experience gained from the performance of their functions, every two years an activity report to the Commission and to the Member States.
3. The ODR contact point shall not be obliged to perform the functions listed in paragraph 2 in the case of disputes where the parties are habitually resident in the same Member State.

4. 不論第 3 項之規定為何，在紛爭當事人與 ODR 聯繫窗口為同一國家之常住居民之情形下，各成員國仍得揆諸國情，使該等 ODR 聯繫窗口負責單一或數個本條第 2 項所列事項之運作。
5. 執委會應建立關於 ODR 聯繫窗口之聯繫網絡（以下簡稱 ODR 聯繫窗口聯繫網絡），以促進 ODR 聯繫窗口彼此之間的合作，並助益本條第 2 項所列事項之妥適運作。
6. 執委會應針對 ODR 聯繫窗口成員，每年至少召開二次會議，交流關於實務操作之最佳方式，同時討論 ODR 平台實際運作上所遭致之相關問題。
7. 執委會應針對 ODR 聯繫窗口之合作方法，就其實作方式制定相關規定。前述實作方式應符合本規則第 16 條第(3)項關於檢驗程序之有關規定。

第 8 條 申訴案之提交

1. 為利向 ODR 平台提交申訴案，申訴當事人應填具電子申訴表單，而 ODR 平台上提供的電子申訴表單，本身應符合友善界面並易於近用。
2. 申訴案當事人所填寫提交的資料，應充分完整以利判斷可承擔系爭案件的 ADR 機構。相關資料要求係詳列於本規則之附件。申訴當事人得提交其他附加文件，藉以強化其所提出之申訴。
3. 為利於評估 2013/11/EU 指令第 20 條第(2)項所臚列並依本規則負責紛爭協處之 ADR 機構，同時界定其就相關申請案件之責任範圍，執委會得依據本規則第 17 條授權採取之行為，採納本規則之附件所臚列之相關資料。

4. Notwithstanding paragraph 3, the Member States may decide, taking into account national circumstances, that the ODR contact point performs one or more functions listed in paragraph 2 in the case of disputes where the parties are habitually resident in the same Member State.
5. The Commission shall establish a network of contact points ('ODR contact points network') which shall enable cooperation between contact points and contribute to the performance of the functions listed in paragraph 2.
6. The Commission shall at least twice a year convene a meeting of members of the ODR contact points network in order to permit an exchange of best practice, and a discussion of any recurring problems encountered in the operation of the ODR platform.
7. The Commission shall adopt the rules concerning the modalities of the cooperation between the ODR contact points through implementing acts. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 16(3).

Article 8 Submission of a complaint

1. In order to submit a complaint to the ODR platform the complainant party shall fill in the electronic complaint form. The complaint form shall be user-friendly and easily accessible on the ODR platform.
2. The information to be submitted by the complainant party shall be sufficient to determine the competent ADR entity. That information is listed in the Annex to this Regulation. The complainant party may attach documents in support of the complaint.
3. In order to take into account the criteria by which the ADR entities, that are listed in accordance with Article 20(2) of Directive 2013/11/EU and that deal with disputes covered by this Regulation, define their respective scopes of application, the Commission shall be empowered to adopt delegated acts in accordance with Article 17 of this Regulation to adapt the information listed in the Annex to this Regulation.

4. 執委會應制定電子申訴表單實際操作之方式之配套子法。相關實際操作方式在採納上應當符合本規則第 16 條第(2)項所規定之諮詢程序。
5. 藉由電子表單暨其附件所獲取之資料，僅在其係正確、相關聯且未逾越資料所蒐集之目的時，方續行處理。

第 9 條 申訴案之處理及遞送

1. 向 ODR 平台所提交之申訴案，於確認符合電子申訴表單所列必要項目時，即應續行處理。
2. 若申訴案表單內容有所疏漏情形，應告知申訴當事人除補正所不足之資料外，該申訴案將不續行。
3. 基於所收受、內容已臻完備的申訴表單，ODR 平台應當以易於了解之方式，且毫無遲延地以當事人所擇定的歐盟官方語言，將申訴案及下述資訊，遞送予對造當事人：
 - (a) 當事人必須同意 ADR 機構出於申訴案而遞送相關資訊，以及於當事人無法達成合意或無法判定所應負責之 ADR 機構時，該申訴案將無不續行處理。
 - (b) 電子申訴表單所述及或 ODR 平台憑證電子申訴表單而加以確認，實際負責申訴案之 ADR 機構或複數 ADR 機構之資訊。
 - (c) 當對造當事人係企業經營者之情形下，請其於 10 個日曆天內陳述意見：
 - 不論該企業經營者是否已具體承諾，抑或是否負有相關義務須透過該等 ADR 機構解決其所消費者所生之糾紛，及

4. The Commission shall lay down the rules concerning the modalities for the electronic complaint form by means of implementing acts. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 16(2).
5. Only data which are accurate, relevant and not excessive in relation to the purposes for which they are collected shall be processed through the electronic complaint form and its attachments.

Article 9 Processing and transmission of a complaint

1. A complaint submitted to the ODR platform shall be processed if all the necessary sections of the electronic complaint form have been completed.
2. If the complaint form has not been fully completed, the complainant party shall be informed that the complaint cannot be processed further, unless the missing information is provided.
3. Upon receipt of a fully completed complaint form, the ODR platform shall, in an easily understandable way and without delay, transmit to the respondent party, in one of the official languages of the institutions of the Union chosen by that party, the complaint together with the following data:
 - (a) information that the parties have to agree on an ADR entity in order for the complaint to be transmitted to it, and that, if no agreement is reached by the parties or no competent ADR entity is identified, the complaint will not be processed further;
 - (b) information about the ADR entity or entities which are competent to deal with the complaint, if any are referred to in the electronic complaint form or are identified by the ODR platform on the basis of the information provided in that form;
 - (c) in the event that the respondent party is a trader, an invitation to state within 10 calendar days:
 - * whether the trader commits to, or is obliged to use, a specific ADR entity to resolve disputes with consumers, and

— 在企業經營者負有使用特定 ADR 機構之義務下，即不論該企業經營者是否有使用 ADR 機構或第(b)款之相關機構之意願。

(d) 申訴當事人如果消費者是被告，且企業經營者有義務需使用特定的 ADR 機構時，應於 10 日內向該 ADR 機構提交，或者如果業者沒有義務使用特定的 ADR 時，就可以依前開(b)規定中，選擇單一或多個 ADR 機構，向其提交。

(e) 被告所在地之成員國所建置的 ODR 機制中，有關名稱與聯絡方式的內容資訊，應與第 7 條(2)之(a)所規定的簡要說明般類同。

4. 基於自對造對事人所收受之本條第 3 項第(c)款及第(d)款所列資訊，ODR 平台應以易於了解之方式，並以申訴當事人所選擇之歐盟官方語言，毫無遲延地將下本述資訊提供予申訴當事人：

(a) 本條第 3 項第(a)款所規定之相關資訊。

(b) 申訴當事人為消費者之情形下，依本條第 3 款第(c)款規定由企業經營者所聲明之 ADR 機構或複數 ADR 機構，以及該 ADR 機構於 10 個日曆天內表示同意之相關資訊。

(c) 申訴當事人為企業經營者、且該企業經營者並未負有使用特定 ADR 機構之義務之情形下，依本條第 3 款第(d)款規定由消費者所聲明之 ADR 機構或複數 ADR 機構，以及該 ADR 機構於 10 個日曆天內表示同意之相關資訊。

(d) 若申訴當事人設立於特定成員國或作為該國之居民，提供該成員國中之 ODR 聯繫窗口之名稱及其聯絡方式細節，如同第 7 條第(2)項第(a)款所定事項之簡要描述。

- * unless the trader is obliged to use a specific ADR entity, whether the trader is willing to use any ADR entity or entities from those referred to in point (b);
 - (d) in the event that the respondent party is a consumer and the trader is obliged to use a specific ADR entity, an invitation to agree within 10 calendar days on that ADR entity or, in the event that the trader is not obliged to use a specific ADR entity, an invitation to select one or more ADR entities from those referred to in point (b);
 - (e) the name and contact details of the ODR contact point in the Member State where the respondent party is established or resident, as well as a brief description of the functions referred to in point (a) of Article 7(2).
4. Upon receipt from the respondent party of the information referred to in point (c) or point (d) of paragraph 3, the ODR platform shall in an easily understandable way and without delay communicate to the complainant party, in one of the official languages of the institutions of the Union chosen by that party, the following information:
- (a) the information referred to in point (a) of paragraph 3;
 - (b) in the event that the complainant party is a consumer, the information about the ADR entity or entities stated by the trader in accordance with point (c) of paragraph 3 and an invitation to agree within 10 calendar days on an ADR entity;
 - (c) in the event that the complainant party is a trader and the trader is not obliged to use a specific ADR entity, the information about the ADR entity or entities stated by the consumer in accordance with point (d) of paragraph 3 and an invitation to agree within 10 calendar days on an ADR entity;
 - (d) the name and contact details of the ODR contact point in the Member State where the complainant party is established or resident, as well as a brief description of the functions referred to in point (a) of Article 7(2).

5. 本條第 3 項第(b)款以及第 4 項第(b)款與第(c)款所規定之資訊，應包括下列針對個別 ADR 機構之特徵描述：
 - (a) ADR 機構之名稱、聯絡方式細節及網址。
 - (b) 在可資採行下，進行 ADR 程序所生之相關費用。
 - (c) 進行 ADR 程序可得使用的特定語言或多種語言。
 - (d) 進行 ADR 程序平均所需的時程。
 - (e) 遂行 ADR 程序後之結果具拘束力與否。
 - (f) ADR 機構依據 2013/11/EU 指令第 5 條第(4)項規定可得拒絕承接交派之紛爭案之相關背景資訊。
6. 於當事人依本條第 3 項及第 4 項規定同意利用特定 ADR 機構時，ODR 平台應自動且毫不遲延地將申訴案傳遞予 ADR 機構。
7. 當申訴案傳遞予 ADR 機構後，該 ADR 機構應毫無遲延地依據 2013/11/EU 指令第 5 條第(4)項規定，告知當事人其係同意抑或拒絕承接該紛爭案。若 ADR 機構同意承接紛爭案時，其應將相關程序規定一併告知當事人，並在可能之下，告知進行紛爭解決程序之所生費用。
8. 若當事人在紛爭案提交予 ADR 機構後 30 個日曆天內拒絕同意使用，或 ADR 機構拒絕承接紛爭案時，該紛爭案即不續行處理。此時應告知申訴當事人，具備其他紛爭處理方式通常知識之 ODR 諮詢顧問之可能聯繫方式。

第 10 條 紛爭之解決

依據本規則第 9 條規定同意協處紛爭之 ADR 機構，應當：

5. The information referred to in point (b) of paragraph 3 and in points (b) and (c) of paragraph 4 shall include a description of the following characteristics of each ADR entity:
 - (a) the name, contact details and website address of the ADR entity;
 - (b) the fees for the ADR procedure, if applicable;
 - (c) the language or languages in which the ADR procedure can be conducted;
 - (d) the average length of the ADR procedure;
 - (e) the binding or non-binding nature of the outcome of the ADR procedure;
 - (f) the grounds on which the ADR entity may refuse to deal with a given dispute in accordance with Article 5(4) of Directive 2013/11/EU.
6. The ODR platform shall automatically and without delay transmit the complaint to the ADR entity that the parties have agreed to use in accordance with paragraphs 3 and 4.
7. The ADR entity to which the complaint has been transmitted shall without delay inform the parties about whether it agrees or refuses to deal with the dispute in accordance with Article 5(4) of Directive 2013/11/EU. The ADR entity which has agreed to deal with the dispute shall also inform the parties of its procedural rules and, if applicable, of the costs of the dispute resolution procedure concerned.
8. Where the parties fail to agree within 30 calendar days after submission of the complaint form on an ADR entity, or the ADR entity refuses to deal with the dispute, the complaint shall not be processed further. The complainant party shall be informed of the possibility of contacting an ODR advisor for general information on other means of redress

Article 10 Resolution of the dispute

An ADR entity which has agreed to deal with a dispute in accordance with Article 9 of this Regulation shall:

- (a) 依據 2013/11/EU 指令第 8 條第(e)款規定統籌期限之內的相關 ADR 程序。
- (b) 除非程序有關規則已明確要求並且經過當事人之同意，否則不要求紛爭當事人或其代表人必須親自出席。
- (c) 應毫無遲延地將下列資訊提交予 ODR 平台：
 - (i) 接獲申訴檔案之日期。
 - (ii) 紛爭所涉之當事人。
 - (iii) 遂行 ADR 程序後作成結論之日期。
 - (iv) ADR 程序之決定
- (d) 不應要求透過 ODR 平台進行 ADR 相關程序。

第 11 條 資料庫

執委會應採取必要方式，建立及維持一電子資料庫，用以儲存依據本規則第 5 條第(4)項及第 10 條第(c)款規定，並考量第 13 條第(2)項規定下所處理之相關資訊。

第 12 條 個人資料之處理

1. 基於紛爭案以及第 11 條之電子資料庫之儲存目的，所收受包括個人資料在內之相關資訊，應確保其符合第 10 條所定目的，僅有依第 9 條規定承接紛爭案之 ADR 機構，可得近用該等資料。ODR 聯繫窗口出於本規則第 7 條第(2)項及第(4)項目的，而近用相同資料時，亦同。
2. 執委會得出於監理 ODR 平台之使用與功能運用，以及撰擬本規則第 21 條所定報告之目的，近用依本規則第 10 條規定進行處理之相關資料。ODR 平台用戶資料之處理，應出於維運及維持 ODR 平台之必要，包括監理 ADR 機構及 ODR 聯繫窗口對於 ODR 平台之使用等目的。

- (a) conclude the ADR procedure within the deadline referred to in point (e) of Article 8 of Directive 2013/11/EU;
- (b) not require the physical presence of the parties or their representatives, unless its procedural rules provide for that possibility and the parties agree;
- (c) without delay transmit the following information to the ODR platform:
 - (i) the date of receipt of the complaint file;
 - (ii) the subject-matter of the dispute;
 - (iii) the date of conclusion of the ADR procedure;
 - (iv) the result of the ADR procedure;
- (d) not be required to conduct the ADR procedure through the ODR platform.

Article 11 Database

The Commission shall take the necessary measures to establish and maintain an electronic database in which it shall store the information processed in accordance with Article 5(4) and point (c) of Article 10 taking due account of Article 13(2).

Article 12 Processing of personal data

1. Access to information, including personal data, related to a dispute and stored in the database referred to in Article 11 shall be granted, for the purposes referred to in Article 10, only to the ADR entity to which the dispute was transmitted in accordance with Article 9. Access to the same information shall be granted also to ODR contact points, in so far as it is necessary, for the purposes referred to in Article 7(2) and (4).
2. The Commission shall have access to information processed in accordance with Article 10 for the purposes of monitoring the use and functioning of the ODR platform and drawing up the reports referred to in Article 21. It shall process personal data of the users of the ODR platform in so far as it is necessary for the operation and maintenance of the ODR platform, including for the purposes of monitoring the use of the ODR platform by ADR entities and ODR contact points.

3. 與紛爭案有關的個人資料，除達成該等個人資料之蒐集目的，以及確保資料當事人為行使其當事人權利而有必要時，應依本條第 1 項規定使其處於資料庫保管之狀態，並於紛爭案作成結論並依本規則第 10 條第(c)款第(iii)目規定傳輸予 ODR 平台六個月後，可得自動刪除。前述有關保存期間之規範，除 ADR 機構所訂程序規則或任何國家立法訂有較長之保存期間外，亦等同適用於負責系爭紛爭案協處之 ADR 機構或 ODR 聯繫窗口，其所保管之法定檔案性質之個人資料。

4. 個別 ODR 諮詢顧問就其從事本規則所定行為而經手之個人資料，應視為 95/46/EC 指令第 2 條第(d)款規定所稱之資料控制者，其亦應確保相關行為，符合作為 ODR 諮詢顧問之 ODR 聯繫窗口之現時所在成員國，轉化 95/46/EC 指令而來的相關內國立法。

5. 個別 ADR 機構就其從事本規則所定行為而經手之個人資料，應視為 95/46/EC 指令第 2 條第(d)款規定所稱之資料控制者，其亦應確保相關行為，符合 ADR 機構之現時所在成員國，轉化 95/46/EC 指令而來的相關內國立法。

6. 於慮及本規則下之所負責任，以及其所牽涉之個人資料處理行為之基礎上，歐盟執委會應視為(EC) No 45/2001 規則第 2 條第(d)款所稱之資料控制者。

第 13 條 個人資料之保密與安全性

1. ODR 聯繫窗口應恪遵各成員國中關於職務上保守秘密或其他視同保密要求規範之內國立法。

3. Personal data related to a dispute shall be kept in the database referred to in paragraph 1 of this Article only for the time necessary to achieve the purposes for which they were collected and to ensure that data subjects are able to access their personal data in order to exercise their rights, and shall be automatically deleted, at the latest, six months after the date of conclusion of the dispute which has been transmitted to the ODR platform in accordance with point (iii) of point (c) of Article 10. That retention period shall also apply to personal data kept in national files by the ADR entity or the ODR contact point which dealt with the dispute concerned, except if the procedural rules applied by the ADR entity or any specific provisions of national law provide for a longer retention period.
4. Each ODR advisor shall be regarded as a controller with respect to its data processing activities under this Regulation, in accordance with point (d) of Article 2 of Directive 95/46/EC, and shall ensure that those activities comply with national legislation adopted pursuant to Directive 95/46/EC in the Member State of the ODR contact point hosting the ODR advisor.
5. Each ADR entity shall be regarded as a controller with respect to its data processing activities under this Regulation, in accordance with point (d) of Article 2 of Directive 95/46/EC, and shall ensure that those activities comply with national legislation adopted pursuant to Directive 95/46/EC in the Member State where the ADR entity is established.
6. In relation to its responsibilities under this Regulation and the processing of personal data involved therein, the Commission shall be regarded as a controller in accordance with point (d) of Article 2 of Regulation (EC) No 45/2001.

Article 13 Data confidentiality and security

1. ODR contact points shall be subject to rules of professional secrecy or other equivalent duties of confidentiality laid down in the legislation of the Member State concerned.

2. 執委會應採取適當之技術面與組織面之措施，包括(EC) No 45/2001 規則所定之適當的資料接取管制、資訊安全計畫及資安事故管理機制，資以確保本規則下相關資料處理行為之安全性，

第 14 條 消費者資訊

1. 設立於歐盟境內並締結線上商品銷售或服務提供契約之企業經營者，以及設立於歐盟境內之電子市集，應對外提供其網址，並建立與 ODR 平台之連結。前述連結對消費者而言應當易於近用。設立於歐盟境內並締結線上商品銷售或服務提供契約之企業經營者，尚應提供其電子郵件位址。
2. 設立於歐盟境內並締結線上商品銷售或服務提供契約之企業經營者，若其負有使用特定或複數 ADR 機構解決其與消費者所生紛爭之義務，應告知消費者關於 ODR 平台以及可得利用該平台解決其所生紛爭等訊息。其應於官方網站上提供與 ODR 平台之連結，此外，若該等訊息係以電子郵件方式加以提供，應於電子郵件中置入連結。在可能之下，對外提供之資訊應包括線上商品銷售或服務提供契約之一般契約條款及內容。
3. 第 1 項及第 2 項之規定，並不妨礙歐盟 2013/11/EU 指令第 13 條規定以及歐盟各成員國內國立法中，涉及消費者資訊之訴訟外紛爭解決程序規定之行使。
4. 2013/11/EU 指令第 20 條第(2)項規定所臚列之 ADR 機構之清單及其更新資訊，應於 ODR 平台加以公開。
5. 成員國應確保 ADR 機構、歐洲消費者網絡聯繫中心、2013/11/EU 指令第 18 條第(1)項規定所稱之主管機關，以及於適當情況下依 2013/11/EU 指令第 14 條第(2)項規定所指定之單位，提供與 ODR 平台之間之連結。

2. The Commission shall take the appropriate technical and organisational measures to ensure the security of information processed under this Regulation, including appropriate data access control, a security plan and a security incident management, in accordance with Article 22 of Regulation (EC) No 45/2001.

Article 14 Consumer information

1. Traders established within the Union engaging in online sales or service contracts, and online marketplaces established within the Union, shall provide on their websites an electronic link to the ODR platform. That link shall be easily accessible for consumers. Traders established within the Union engaging in online sales or service contracts shall also state their e-mail addresses.
2. Traders established within the Union engaging in online sales or service contracts, which are committed or obliged to use one or more ADR entities to resolve disputes with consumers, shall inform consumers about the existence of the ODR platform and the possibility of using the ODR platform for resolving their disputes. They shall provide an electronic link to the ODR platform on their websites and, if the offer is made by e-mail, in that e-mail. The information shall also be provided, where applicable, in the general terms and conditions applicable to online sales and service contracts.
3. Paragraphs 1 and 2 of this Article shall be without prejudice to Article 13 of Directive 2013/11/EU and the provisions on consumer information on out-of-court redress procedures contained in other Union legal acts, which shall apply in addition to this Article.
4. The list of ADR entities referred to in Article 20(4) of Directive 2013/11/EU and its updates shall be published in the ODR platform.
5. Member States shall ensure that ADR entities, the centres of the European Consumer Centres Network, the competent authorities defined in Article 18(1) of Directive 2013/11/EU, and, where appropriate, the bodies designated in accordance with Article 14(2) of Directive 2013/11/EU provide an electronic link to the ODR platform.

6. 成員國應鼓勵消費者團體及商業協會，提供與 ODR 平台之間之連結。
7. 企業經營者負有提供本條第 1 項及第 2 項所規定資訊之義務，並有本條第 3 項規定之適用時，其應於可能之下同一時間提供各該資訊。

第 15 條 主管機關之角色

各成員國之主管機關應確保設立於成員國境內之 ADR 機構，符合本規則所制定之各項義務。

第參章 終章

第 16 條 委員會程序

1. 執委會應由 (EU) No 182/2011 指令定義下之委員會加以協助。
2. 作成參考意見時，應有(EU) No 182/2011 規則第 4 條規定之適用。
3. 作成參考意見時，應有(EU) No 182/2011 規則第 5 條規定之適用。
4. 若第 2 項及第 3 項之委員會意見係透過書面程序產出時，於交付意見之時限之內，經委員會主席決定或委員會主要成員提議，該程序可不經決議而終止。

第 17 條 授權行為之運作

1. 執委員所被賦予採取授權行為之權限，應當符合本條所定相關要求。
2. 採取第 8 條第(3)項所定授權行為之權限，其行使自 2013 年 7 月 8 日起，並無期限限制。

6. Member States shall encourage consumer associations and business associations to provide an electronic link to the ODR platform.
7. When traders are obliged to provide information in accordance with paragraphs 1 and 2 and with the provisions referred to in paragraph 3, they shall, where possible, provide that information together.

Article 15 Role of the competent authorities

The competent authority of each Member State shall assess whether the ADR entities established in that Member State comply with the obligations set out in this Regulation

CHAPTER III FINAL PROVISIONS

Article 16 Committee procedure

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply.
3. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.
4. Where the opinion of the committee under paragraphs 2 and 3 is to be obtained by written procedure, that procedure shall be terminated without result when, within the time-limit for delivery of the opinion, the chair of the committee so decides or a simple majority of committee members so request.

Article 17 Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in Article 8(3) shall be conferred for an indeterminate period of time from 8 July 2013.

3. 歐洲議會或歐盟理事會得於任何時間撤銷第 8 條第(3)項之授權。作出撤銷決定時，決定中應明訂具體之落日時間點。其將於前述決定具體揭載於歐盟公報之日生效或經指定之嗣後日期。其不應影響業已生效之任何授權行為之有效性。

4. 授權行為業經採取者，執委會應同一時間知會歐洲議會及歐盟理事會。

5. 基於第 8 條第(3)項規定所採納之授權行為，於歐洲議會及歐盟理事會受到告知後二個月內未為反對表示，或於前述期間屆至前，歐洲議會及歐盟理事會已通知執委會其將不違反表示時發生效力。此一期間得因歐洲議會或歐盟理事會之請求而向後展延二個月。

第 18 條 處罰規定

各成員國應制定適用於本規則之違法行為之對應處罰規定，並採取一切必要措施，確保該等規定之實施。相關處罰規定應具備有效性、適當性並發揮勸誡作用。

第 19 條 (EC) No 2006/2004 規則之修正

於(EC) No 2006/2004 規則之附件中，增訂下列事項：

'21 (EU) No 524/2013 關於消費者糾紛之線上爭端解決規則(消費者 ODR 規則)(OJ L 165, 18.6.2013, 第一頁): 第 14 條。'

3. The delegation of power referred to in Article 8(3) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
5. A delegated act adopted pursuant to Article 8(3) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

Article 18 Penalties

Member States shall lay down the rules on penalties applicable to infringements of this Regulation and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive.

Article 19 Amendment to Regulation (EC) No 2006/2004

In the Annex to Regulation (EC) No 2006/2004 of the European Parliament and of the Council (1) the following point is added:

‘21. Regulation (EU) No 524/2013 of the European Parliament and of the Council of 21 May 2013 on online dispute resolution for consumer disputes (Regulation on consumer ODR) (OJ L 165, 18.6.2013, p. 1): Article 14.’

第 20 條 2009/22/EC 指令之修正

2009/22/EC 指令修正如下：

- (1) 第 1 條第(1)項與第(2)項以及第 6 條第(2)項第(b)款中之「附件一
所列指令」用語，更替為「附件一
所列歐盟規範」。
- (2) 附件一之標題中，「指令清單」用語更替為「歐盟規範清單」。
- (3) 於附件一中，增訂下列事項：
‘15 (EU) No 524/2013 關於消費者糾紛之線上爭端解決規則（消
費者 ODR 規則）(OJ L 165, 18.6.2013, 第一頁): 第 14 條。’

第 21 條 報告

1. 執委會應自 ODR 平台正式運作一年之後，以年度為基準，就 ODR 平台之運作向歐洲議會及歐盟理事會提交報告。
2. 執委會應於 2018 年 7 月 9 日及其後每隔三年，就本規則之實施狀況向歐洲議會及歐盟執委會提交報告，其應包括申訴表單使用上之友善程度，以及本規則附件所列資料之採納必要。該報告於必要時並得調整成為本規則之草案內容。
3. 若第一項及第二項所規定之報告係於同一年度提交，得合併成為單一報告提交。

第 22 條 生效

1. 本規則應自其揭載於歐盟官方公報之日起二十日後生效。

Article 20 Amendment to Directive 2009/22/EC

Directive 2009/22/EC of the European Parliament and of the Council is amended as follows:

- (1) in Article 1(1) and (2) and point (b) of Article 6(2), the words ‘Directives listed in Annex I’ are replaced with the words ‘Union acts listed in Annex I’;
- (2) in the heading of Annex I, the words ‘LIST OF DIRECTIVES’ are replaced by the words ‘LIST OF UNION ACTS’;
- (3) in Annex I, the following point is added:
‘15. Regulation (EU) No 524/2013 of the European Parliament and of the Council of 21 May 2013 on online dispute resolution for consumer disputes (Regulation on consumer ODR) (OJ L 165, 18.6.2013, p. 1): Article 14.’

Article 21 Reports

1. The Commission shall report to the European Parliament and the Council on the functioning of the ODR platform on a yearly basis and for the first time one year after the ODR platform has become operational.
2. By 9 July 2018 and every three years thereafter the Commission shall submit to the European Parliament and the Council a report on the application of this Regulation, including in particular on the user-friendliness of the complaint form and the possible need for adaptation of the information listed in the Annex to this Regulation. That report shall be accompanied, if necessary, by proposals for adaptations to this Regulation.
3. Where the reports referred to in paragraphs 1 and 2 are to be submitted in the same year, only one joint report shall be submitted.

Article 22 Entry into force

1. This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

2. 除下述規定外，本規則自 2016 年 1 月 9 日起實施：

- (1) 第 2 條第(3)項以及第 7 條第(1)項與第(5)項規定，自 2015 年 7 月 9 日施行。
- (2) 第 5 條第(1)項與第 7 項、第 6 條、第 7 條第(7)項、第 8 條第(3)項與第(4)項、第 11 條、第 16 條以及第 17 條規定，自 2013 年 7 月 8 日施行。

本規則拘束所有會員國。

2. This Regulation shall apply from 9 January 2016, except for the following provisions:

- (1) Article 2(3) and Article 7(1) and (5), which shall apply from 9 July 2015,
- (2) Article 5(1) and (7), Article 6, Article 7(7), Article 8(3) and (4) and Articles 11, 16 and 17, which shall apply from 8 July 2013.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

附件

提交申訴案時應檢附之資訊：

- (1) 申訴當事人係消費者抑或企業經營者。
- (2) 消費者之姓名、電子郵件及實體地址。
- (3) 企業經營者之名稱、電子郵件、網址及實體地址。

- (4) 申訴案當事人之代表人之姓名、電子郵件及實體地址(當有此一情事時)。
- (5) 申訴案當事人或其代表人所使用之語言/多種語言(當有此一情事時)。
- (6) 當事人所使用之語言(當知悉時)。
- (7) 申訴案所涉及之商品或服務之類別。
- (8) 企業經營者對於商品或服務之提供以及消費者之訂購行為，究係透過特定網站抑或其他電子方式。
- (9) 商品或服務購入之價格。
- (10) 消費者購入商品或服務之時間點。
- (11) 消費者是否已與企業經營者直接接觸。
- (12) 該爭議是否現時或先前由 ADR 機構或法院加以審理。

- (13) 申訴案之類別。
- (14) 申訴案之描述。
- (15) 申訴當事人為消費者，而 ADR 機構、企業經營者負有義務或自願承諾符合 2013/11/EU 指令第 13 條第(1)項規定(當知悉時)。

- (16) 申訴當事人為企業經營者，而該企業經營者自願承諾或負有義務使用特定 ADR 機構或複數 ADR 機構。

ANNEX

Information to be provided when submitting a complaint

- (1) Whether the complainant party is a consumer or a trader;
- (2) The name and e-mail and geographical address of the consumer;
- (3) The name and e-mail, website and geographical address of the trader;
- (4) The name and email and geographical address of the complainant party's representative, if applicable;
- (5) The language(s) of the complainant party or representative, if applicable;
- (6) The language of the respondent party, if known;
- (7) The type of good or service to which the complaint relates;
- (8) Whether the good or service was offered by the trader and ordered by the consumer on a website or by other electronic means;
- (9) The price of the good or service purchased;
- (10) The date on which the consumer purchased the good or service;
- (11) Whether the consumer has made direct contact with the trader;
- (12) Whether the dispute is being or has previously been considered by an ADR entity or by a court;
- (13) The type of complaint;
- (14) The description of the complaint;
- (15) If the complainant party is a consumer, the ADR entities the trader is obliged to or has committed to use in accordance with Article 13(1) of Directive 2013/11/EU, if known;
- (16) If the complainant party is a trader, which ADR entity or entities the trader commits to or is obliged to use.

英國 2015 年消費者權利法

第一部分

消費者商品、數位內容和服務契約

第一章 介紹

第 1 條 第一部分適用範圍

- (1) 第一部分適用於商家與消費者間提供商品、數位內容或服務之契約
- (2) 前項契約得以書面、口頭、經契約當事人行為所得之意思或以上述方式綜合可得推定為之。
- (3) 第二章至第四章之規定，於以下契約準用之：
 - (a) 第二章規定商家提供商品之契約；
 - (b) 第三章和本條第 6 項規定商家提供數位內容之契約；
 - (c) 第四章和本條第 6 項規定商家提供服務之契約。
- (4) 本章適用於包含其他章節所規定內容之混合契約。
- (5) 第二章至第四章皆可同時適用於混合契約。
- (6) 混合契約之特別規定制定於：
 - (a) 第 15 條(商品與設備)；
 - (b) 第 16 條(商品與數位內容)。
- (7) 其他同樣適用於本章所適用之契約規定，制定於第二章不公平條款。

第 2 條 定義

Consumer Rights Act 2015

PART 1

CONSUMER CONTRACTS FOR GOODS, DIGITAL CONTENT AND SERVICES

CHAPTER 1 INTRODUCTION

1 Where Part 1 applies

- (1) This Part applies where there is an agreement between a trader and a consumer for the trader to supply goods, digital content or services, if the agreement is a contract.
- (2) It applies whether the contract is written or oral or implied from the parties' conduct, or more than one of these combined.
- (3) Any of Chapters 2, 3 and 4 may apply to a contract—
 - (a) if it is a contract for the trader to supply goods, see Chapter 2;
 - (b) if it is a contract for the trader to supply digital content, see Chapter 3 (also, subsection (6));
 - (c) if it is a contract for the trader to supply a service, see Chapter 4 (also, subsection (6)).
- (4) In each case the Chapter applies even if the contract also covers something covered by another Chapter (a mixed contract).
- (5) Two or all three of those Chapters may apply to a mixed contract.
- (6) For provisions about particular mixed contracts, see—
 - (a) section 15 (goods and installation);
 - (b) section 16 (goods and digital content).
- (7) For other provision applying to contracts to which this Part applies, see Part 2 (unfair terms).

2 Key definitions

- (1) 以下名詞定義適用於本章，第 59 條亦同。
- (2) 商家：指不論係由本人或透過他人以商家之名義或代理從事貿易、企業、工藝或職業之目的之人。
- (3) 消費者：指部分或完全非為從事貿易、企業、工藝或職業之目的之個人。
- (4) 商家主張個人非部分或完全非以從事貿易、企業、工藝或職業之目的者，應負舉證責任。
- (5) 除依本條第 6 項所規定者外，若買賣契約有以下情事，契約之一方非消費者，本規定於第二章準用之：
 - (a) 二手商品或經公開拍賣之商品，且
 - (b) 該個人有機會親自參加拍賣。
- (6) 契約若為以下目的，契約之一方為消費者：
 - (a) 第 11 條第 4 項和第 5 項、第 12 條、第 28 條，第 29 條，以及
 - (b) 適用上述條文之第二章之規定。
- (7) 企業：指包含任何行政部門或地方或公共機關之活動。
- (8) 商品：指任何有形動產，及限量提供的水、天然氣和電。
- (9) 數位內容：指以數位形式生產和提供的資料。

- (1) These definitions apply in this Part (as well as the definitions in section 59).
- (2) “Trader” means a person acting for purposes relating to that person’s trade, business, craft or profession, whether acting personally or through another person acting in the trader’s name or on the trader’s behalf.
- (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) For the purposes of Chapter 2, except to the extent mentioned in subsection (6), 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.
- (6) A person is a consumer in relation to such a contract for the purposes of—
 - (a) sections 11(4) and (5), 12, 28 and 29, and
 - (b) the other provisions of Chapter 2 as they apply in relation to those sections.
- (7) “Business” includes the activities of any government department or local or public authority.
- (8) “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.
- (9) “Digital content” means data which are produced and supplied in digital form.

第二章 商品

本法包含哪些商品契約？

第3條 本章所規範的契約

- (1) 本章適用於商家提供商品與消費者之契約。
- (2) 本章僅適用於以下契約，於第一部分第5條和第8條準用之：
 - (a) 買賣契約；
 - (b) 限期占有商品契約；
 - (c) 分期付款契約；
 - (d) 商品移轉契約。
- (3) 本章不適用於以下契約：
 - (a) 商家提供消費者點數或紙幣作為貨幣的契約；
 - (b) 透過法定程序或政府執行販售商品之契約；
 - (c) 作為抵押、保證、繳款或其他證券之契約；
 - (d) 於英格蘭、威爾斯和北愛爾蘭之地區，透過書面證明締訂並以該書面作為推定對價之契約；
 - (e) 於蘇格蘭地區之無償契約。
- (4) 適用於本章之契約於本章稱之為「提供商品之契約」。
- (5) 提供商品之契約包含：
 - (a) 契約一方之所有人與其他方之契約；
 - (b) 不可分割商品之移轉契約；
 - (c) 不附加條件和附有條件之契約。

CHAPTER 2 GOODS

What goods contracts are covered?

3 Contracts covered by this Chapter

- (1) This Chapter applies to a contract for a trader to supply goods to a consumer.
- (2) It applies only if the contract is one of these (defined for the purposes of this Part in sections 5 to 8)—
 - (a) a sales contract;
 - (b) a contract for the hire of goods;
 - (c) a hire-purchase agreement;
 - (d) a contract for transfer of goods.
- (3) It does not apply—
 - (a) to a contract for a trader to supply coins or notes to a consumer for use as currency;
 - (b) to a contract for goods to be 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 gratuitous contract.
- (4) A contract to which this Chapter applies is referred to in this Part as a “contract to supply goods” .
- (5) Contracts to supply 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.

- (6) 本條第 1 項受限於該些規定於本章且僅適用於本條第 2 項所條列之契約類型之規定。
- (7) 第 1 條第 4 項所規定之混合契約可為上述任何類型混合之契約。

第 4 條 商品所有權

- (1) 本章之商品所有權係指商品之一般財產權，非僅特別財產權。
- (2) 1979 年商品銷售法之以下有關買賣契約條文，於商品所有權經移轉時準用之：

第 16 條 商品需經確定

第 17 條 財產於有意移轉時移轉

第 18 條 確定意思表示之規則

第 19 條 處置權之保留

第 20A 條 大宗之不可分割商品

第 20B 條 共有人於處理大宗商品之推定同意

第 5 條 買賣契約

- (1) 契約若有以下情事，視為買賣契約：
 - (a) 商家移轉或同意移轉商品所有權與消費者，且
 - (b) 消費者給付或同意給付價款。
- (2) 不論是否符合本條第 1 項而視為買賣契約，契約若有以下情事，亦視為買賣契約：
 - (a) 商品將經製造和生產且商家同意提供與消費者，
 - (b) 於提供時，商品將為消費者所有，且
 - (c) 消費者給付或同意給付價款。

- (6) Subsection (1) is subject to any provision of this Chapter that applies a section or part of a section to only some of the kinds of contracts listed in subsection (2).
- (7) A mixed contract (see section 1(4)) may be a contract of any of those kinds.

4 Ownership of goods

- (1) In this Chapter ownership of goods means the general property in goods, not merely a special property.
- (2) For the time when ownership of goods is transferred, see in particular the following provisions of the Sale of Goods Act 1979 (which relate to contracts of sale)—
 - section 16: goods must be ascertained
 - section 17: property passes when intended to pass
 - section 18: rules for ascertaining intention
 - section 19: reservation of right of disposal
 - section 20A: undivided shares in goods forming part of a bulk
 - section 20B: deemed consent by co-owner to dealings in bulk goods

5 Sales contracts

- (1) A contract is a sales contract if under it—
 - (a) the trader transfers or agrees to transfer ownership of goods to the consumer, and
 - (b) the consumer pays or agrees to pay the price.
- (2) A contract is a sales contract (whether or not it would be one under subsection (1)) if under the contract—
 - (a) goods are to be manufactured or produced and the trader agrees to supply them to the consumer,
 - (b) on being supplied, the goods will be owned by the consumer, and
 - (c) the consumer pays or agrees to pay the price.

- (3) 依第 3 條第 5 項，買賣契約可能附加條件，但本章之「附條件之買賣契約」係指有如下情事之買賣契約：
- (a) 商品之價格或部分價格可分期付款，且
 - (b) 於契約所約定之條件成就前，如付款或分期付款，商家仍擁有商品之所有權；

不論消費者是否占有商品，皆不影響買賣契約之認定。

第 6 條 限期占有商品契約

- (1) 依照契約之約定於限定期間內，當商家移轉或同意移轉與消費者該商品之占有，並同意消費者使用該商品，則該契約為限期占有商品契約。
- (2) 當契約認定為分期付款契約時，則非為限期占有商品契約。

第 7 條 分期付款契約

- (1) 若符合以下兩者之限制，則契約視為分期付款契約。
- (2) 第一個限制為，依契約之約定，商品經商家約定分期由消費者繳付款項，且「約定分期」應比照第 6 條第 1 項之規定。
- (3) 第二個限制為，依契約之約定，當以下契約條款經履行，商品之所有權將移轉與消費者：
 - (a) 消費者行使購買權購買商品，
 - (b) 契約任一方當事人行使契約約定之特定行為，或
 - (c) 契約約定之事件發生。
- (4) 若契約為附加條件之買賣契約，則該契約非分期付款契約。

- (3) A sales contract may be conditional (see section 3(5)), but in this Part “conditional sales contract” means 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;
- and it makes no difference whether or not the consumer possesses the goods.

6 Contracts for the hire of goods

- (1) A contract is for the hire of goods if under it the trader gives or agrees to give the consumer possession of the goods with the right to use them, subject to the terms of the contract, for a period determined in accordance with the contract.
- (2) But a contract is not for the hire of goods if it is a hire-purchase agreement.

7 Hire-purchase agreements

- (1) 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 (and “hired” is to be read in accordance with section 6 (1)).
- (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 conditional sales contract.

第 8 條 商品移轉契約

當商家移轉或同意移轉商品之所有權與消費者，且有以下情事時，則提供商品之契約為商品移轉契約：

- (a) 消費者提供或同意提供對價，而非給付價款，或
- (b) 因其他任何理由，該契約非買賣契約或分期付款契約。

商品契約有何法定權利？

第 9 條 合乎約定品質的商品

- (1) 所有提供商品之契約皆應包含要求商品合乎約定品質之條款。
- (2) 當商品符合一般理性之人所認為合乎品質之標準，商品即認屬合乎約定品質，並考量以下條件：
 - (a) 任何有關商品之描述，
 - (b) 商品之價格和其他相關考量因素，以及
 - (c) 同本條第 5 項，其他所有相關之因素。
- (3) 商品之品質包含其狀態和條件；以及以下為適當商品品質之考量因素：
 - (a) 該類商品以任何目的於通常提供時保有之樣態；
 - (b) 外表和成品細節；
 - (c) 無細小瑕疵；
 - (d) 安全；
 - (e) 耐用性。
- (4) 於本條第 1 項所規定之條款不包含任何會使商品之品質不合乎約定者，如：

8 Contracts for transfer of goods

A contract to supply goods is a contract for transfer of goods if under it the trader transfers or agrees to transfer ownership of the goods to the consumer and—

- (a) the consumer provides or agrees to provide consideration otherwise than by paying a price, or
- (b) the contract is, for any other reason, not a sales contract or a hirepurchase agreement.

What statutory rights are there under a goods contract?

9 Goods to be of satisfactory quality

- (1) Every contract to supply 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) 該品質於契約締結前特別用來引開消費者注意力，
 - (b) 於契約締結前消費者於檢查商品時，該檢查應能顯示其品質，或
 - (c) 於契約以試用品提供商品時，試用品可透過合理檢查而明顯顯示其品質。
- (5) 於本條第 2 項第 c 款規定之其他相關因素包含任何商家、製造人或其他商家或製造人之代理人所作有關商品之詳細規格之公開表述。
- (6) 上述因素特別包含廣告或商品標籤中所含之任何公開表述。
- (7) 若商家表示如下事由，則公開表述非屬本條第 2 項第 c 款之其他相關因素：
- (a) 當契約締結時，商家並無且未能合理地知悉該表述，
 - (b) 於契約締結前，該表述已經公開撤回或其內容具有相當程度地錯誤或誤導，或已經公開修正，或
 - (c) 消費者締結該商品契約之決定無法受到該公開表述之影響。
- (8) 於提供商品之契約，有關商品品質之約定條款可被視為約定習慣。
- (9) 若商家違反本條規定應納入契約之法定條款，準用第 19 條消費者權利之規定。

第 10 條 為特殊目的之商品

- (1) 若消費者於契約締結前，不論係透過明示或默示之方法，使商家知悉任何消費者締結商品契約之特殊目的者，本條第 3 項適用於該提供商品之契約。

- (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 to supply 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) In a contract to supply goods a term about the quality of the goods may be treated as included as a matter of custom.
- (9) See section 19 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 fit for particular purpose

- (1) Subsection (3) applies to a contract to supply 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) 提供商品之契約於有以下情事時，同樣適用本條第 3 項：
 - (a) 該商品先前經信用經紀人販售與商家，
 - (b) 於買賣契約或商品移轉契約之情形，其對價或部分對價係可經由分期給付者，且
 - (c) 於契約締結前，消費者不論係透過明示或默示使信用經紀人知悉任何消費者締結商品契約之特殊目的者。
- (3) 不論該類型之商品契約是否通常具有該特殊目的，契約將推定包含商品將合理地符合該特殊目的之條款。
- (4) 若有消費者不倚賴或無法合理倚賴商家或信用經紀人的技能或判斷力之情事時，本法第 3 項將不予適用。
- (5) 於提供商品之契約時，為特殊目的商品之狀態條款可被視為約定習慣。
- (6) 若商家違反本條規定應納入契約之法定條款，準用第 19 條消費者權利之規定。

第 11 條 被描述之商品

- (1) 所有含有描述之提供商品之契約皆被推定包含要求該商品將符合描述之條款。
- (2) 若商品係透過試用品和描述作為供應，單純符合試用品但不符合描述之大宗商品將不夠充分。
- (3) 商品之提供不會僅因以下情事而被否定作為供應品：
 - (a) 商品為供應而暴露，且
 - (b) 商品經消費者挑選。

- (2) Subsection (3) also applies to a contract to supply goods if—
- (a) the goods were previously sold by a credit-broker to the trader,
 - (b) in the case of a sales contract or contract for 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 creditbroker (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) In a contract to supply goods a term about the fitness of the goods for a particular purpose may be treated as included as a matter of custom.
- (6) See section 19 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 Goods to be as described

- (1) Every contract to supply 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) 任何由商家提供有關商品之資訊且於 2013 年消費契約（資訊、取消及附加費用）條例（SI 2013/3134）附件 1 和附件 2 之第（a）款（商品之主要描述）所揭示之資訊將被推定為契約之條款內容。
- (5) 除非經商家和消費者間之明示同意，否則於締結契約前或後所作之任何契約之變動皆不具效力。
- (6) 商品於公開拍賣處販售者，應依照第 2 條第 5 項和第 6 項適用本條第 4 項和第 5 項之規定。
- (7) 若商家違反本條規定應納入契約之法定條款，準用第 19 條消費者權利之規定。

第 12 條 其他包含於契約內容之預約資訊

- (1) 本條適用於所有提供商品之契約。
- (2) 依據 2013 年消費契約（資訊、取消及附加費用）條例（SI 2013/3134）第 9 條、第 10 條和第 13 條之規定，於契約發生拘束力之前，商家應提供資訊與消費者，除了依據該條例附件 1 和附件 2 之第（a）款（商品之主要描述）所揭示有關商品之資訊外，任何經商家提供與消費者之資訊皆被認定為契約之條款內容。
- (3) 除非經商家和消費者間之明示同意，否則於締結契約前或後所作之任何契約之變動皆不具效力。
- (4) 商品於公開拍賣處販售者，應依照第 2 條第 5 項和第 6 項適用本條之規定。
- (5) 若商家違反本條規定應納入契約之法定條款，準用第 19 條消費者權利之規定。

- (4) Any information that is provided by the trader about the goods and is information mentioned in paragraph (a) of Schedule 1 or 2 to the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 (SI 2013/3134) (main characteristics of goods) is to be treated as included as a term of the contract.
- (5) A change to any of that information, made before entering into the contract or later, is not effective unless expressly agreed between the consumer and the trader.
- (6) See section 2(5) and (6) for the application of subsections (4) and (5) where goods are sold at public auction.
- (7) See section 19 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.

12 Other pre-contract information included in contract

- (1) This section applies to any contract to supply goods.
- (2) Where regulation 9, 10 or 13 of the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 (SI 2013/3134) required the trader to provide information to the consumer before the contract became binding, any of that information that was provided by the trader other than information about the goods and mentioned in paragraph (a) of Schedule 1 or 2 to the Regulations (main characteristics of goods) is to be treated as included as a term of the contract.
- (3) A change to any of that information, made before entering into the contract or later, is not effective unless expressly agreed between the consumer and the trader.
- (4) See section 2(5) and (6) for the application of this section where goods are sold at public auction.
- (5) See section 19 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.

第 13 條 符合試用品之商品

- (1) 本條適用於消費者可在契約締結前透過商品之試用品檢視或檢查商品之契約。
- (2) 適用本條規定之所有契約皆被視為包含以下條款內容：
 - (a) 除了試用品和商品間之任何差異在契約締結前已被消費者知悉外，商品將符合試用品，且
 - (b) 商品將免於不合乎約定品質之瑕疵，且瑕疵亦不會在試用品經合理檢視下顯現。
- (3) 若商家違反本條規定應納入契約之法定條款，準用第 19 條消費者權利之規定。

第 14 條 符合經檢視或檢驗模型之商品

- (1) 本條適用於消費者可在契約締結前透過商品之模型檢視或檢查商品之契約。
- (2) 適用本條規定之所有契約皆被視為包含除了模型和商品間之任何差異在契約締結前已被消費者知悉外，商品將符合模型之條款內容。
- (3) 若商家違反本條規定應納入契約之法定條款，準用第 19 條消費者權利之規定。

第 15 條 組裝作為商品符合契約內容之要件

- (1) 商品若有以下情事，則不符提供商品之契約：
 - (a) 組裝商品為契約之一部分，

13 Goods to match a sample

- (1) This section applies to a contract to supply goods by reference to a sample of the goods that is seen or examined by the consumer before the contract is made.
- (2) Every contract to which this section applies is to be treated as including a term that—
 - (a) the goods will match the sample except to the extent that any differences between the sample and the goods are brought to the consumer's attention before the contract is made, 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.
- (3) See section 19 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 Goods to match a model seen or examined

- (1) This section applies to a contract to supply goods by reference to a model of the goods that is seen or examined by the consumer before entering into the contract.
- (2) Every contract 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 consumer enters into the contract.
- (3) See section 19 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.

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

- (1) Goods do not conform to a contract to supply goods if—
 - (a) installation of the goods forms part of the contract,

(b) 商品需經商家組裝或為商家之責任，且

(c) 商品經不當組裝。

(2) 若商品不符合契約內容，準用第 19 條之效力規定。

第 16 條 若數位內容不符合契約則商品不符契約

(1) 若有以下情事，不論商品是否符合提供商品之契約，商品仍不符契約：

(a) 商品包含數位內容，且

(b) 數位內容不符合提供該內容之契約，該內容依第 42 條第 1 項規範之。

(2) 若商品不符合契約內容，準用第 19 條之效力規定。

第 17 條 具有提供商品等權利之商家

(1) 除本條第 4 項所規定之契約外，所有契約皆被推定包含以下條款：

(a) 於限期占有商品契約之情形，商家應於約定限期占有之始，具有透過約定限期占有而移轉占有該商品之權利，

(b) 於其他情形，當商品之所有權經移轉時，商家必須具有販售和移轉該商品之權利。

(2) 除了限期占有商品契約或本條第 4 項之契約外，所有提供商品之契約皆被推定包含以下條款：

(a) 於契約締結前，商品免於任何未經揭露之抵押或負擔，或皆已被消費者知悉，

(b) 至商品所有權被移轉前，商品皆會持續免於任何抵押或負擔，且

- (b) the goods are installed by the trader or under the trader's responsibility, and
- (c) the goods are installed incorrectly.

(2) See section 19 for the effect of goods not conforming to the contract.

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

- (1) Goods (whether or not they conform otherwise to a contract to supply 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 supply that content (for which see section 42(1)).
- (2) See section 19 for the effect of goods not conforming to the contract.

17 Trader to have right to supply the goods etc

- (1) Every contract to supply goods, except one within subsection (4), is to be treated as including a term—
- (a) in the case of a contract for the hire of goods, that at the beginning of the period of hire the trader must have the right to transfer possession of the goods by way of hire for that period,
 - (b) in any other case, that the trader must have the right to sell or transfer the goods at the time when ownership of the goods is to be transferred.
- (2) Every contract to supply 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 entering into the contract,
 - (b) the goods will remain free from any such charge or encumbrance until ownership of them is to be transferred, and

- (c) 除非係由所有人或為其他第三人之利益而得主張抵押或負擔並妨害消費者之占有，並經揭露或已知悉者，否則消費者將完整而不被妨害地占有商品。
- (3) 所有限期占有商品契約皆被推定包含「除非係由所有人或為其他第三人之利益而得主張抵押或負擔並妨害消費者之占有，並於締結契約前經揭露或已知悉者，消費者將於限期占有之期間完整且不被妨害地占有商品」之條款。
- (4) 當契約表示或當商家和消費者於締結契約時具有商家僅藉由以下移轉方式之意思表示時，本項適用之：
 - (a) 不論商家以何種名義，即便經限定，或
 - (b) 不論第三人以何種名義，即便經限定。
- (5) 所有依本條第 4 項規定之契約皆被認定包含所有為商家知悉但不為消費者知悉之抵押或負擔皆應於契約締結前揭露於消費者之條款。
- (6) 所有依本條第 4 項規定之契約皆被認定包含以下條款，即消費者就商品之完整占有：
 - (a) 將不受商家之妨害，且
 - (b) 將不受藉由商家或經商家主張者之妨害，除非該第三人係主張已經於締結契約前揭露或受消費者知悉之抵押或負擔。
- (7) 於本條第 4 項第 b 款適用時（第三人移轉之名義），該契約被認定包含以下條款，即消費者就商品之完整占有：
 - (a) 將不受商家之妨害，且

- (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 entering into the contract.
- (4) This subsection applies to a contract if the contract shows, or the circumstances when they enter into the contract imply, that the trader and the consumer intend the trader to transfer only—
 - (a) whatever title the trader has, even if it is limited, or
 - (b) whatever title a third person has, even if it is limited.
- (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 were disclosed to the consumer before entering into the contract.
- (6) Every contract within subsection (4) is to be treated as including a term that the consumer’s quiet possession of the goods—
 - (a) will not be disturbed by the trader, and
 - (b) will not be disturbed by a person claiming through or under the trader, unless that person is claiming under a charge or encumbrance that was disclosed or known to the consumer before entering into the contract.
- (7) If subsection (4)(b) applies (transfer of title that a third person has), the contract is also to be treated as including a term that the consumer’s quiet possession of the goods—
 - (a) will not be disturbed by the third person, and

- (b) 將不受藉由第三人或經第三人主張者之妨害，除非該主張係屬已經於締結契約前揭露或受消費者知悉之抵押或負擔。
- (8) 於限期占有商品之契約時，當契約約定或被推定商家得取回商品時，本條將不影響商家取回該商品之權利。
- (9) 若商家違反本條規定應納入契約之法定條款，準用第 19 條消費者權利之規定。

第 18 條 就品質或狀態無其他額外條款之要求

- (1) 除依本條第 9 條、第 10 條、第 13 條和第 16 條之規定外，除非條款另有明示約定於契約中外，提供商品之契約將不被推定包含任何有關商品品質或為特殊目的的狀態之條款。
- (2) 除其他無論何時通過或制定之法律另有規定者外，依本條第 1 項之規定。

當商品契約之法定權利未經履行時，有何救濟方式？

第 19 條 履行有關商品條款之消費者權利

- (1) 於本條、第 22 條和第 24 條所指符合契約之商品係指：
 - (a) 符合第 9 條、第 10 條、第 11 條、第 13 條和第 14 條規定之商品，
 - (b) 非未能符合第 15 條和第 16 條契約之商品，
 - (c) 符合契約約定所要求之商品。

- (b) will not be disturbed by a person claiming through or under the third person, unless the claim is under a charge or encumbrance that was disclosed or known to the consumer before entering into the contract.
- (8) 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.
- (9) See section 19 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.

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

- (1) Except as provided by sections 9, 10, 13 and 16, a contract to supply 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?

19 Consumer's rights to enforce terms about goods

- (1) In this section and sections 22 to 24 references to goods conforming to a contract are references to—
 - (a) the goods conforming to the terms described in sections 9, 10, 11, 13 and 14,
 - (b) the goods not failing to conform to the contract under section 15 or 16, and
 - (c) the goods conforming to requirements that are stated in the contract.

- (2) 但，於適用本條、第 22 條和第 24 條時，若商品有部分物件係由消費者所提供，則未能符合本條第 1 項第 a 款至第 c 款仍不被視為未能符合契約之情形。
- (3) 若商品未能符合契約係因違反第 9 條、第 10 條、第 11 條、第 13 條和第 14 條之規定，或係因未能符合第 16 條之規定，則當該些權利可行使時，消費者權利以及與其相關之規定包含：
 - (a) 可拒絕之短期權利（第 20 條和第 22 條）；
 - (b) 可修復或替換之權利（第 23 條）；以及
 - (c) 要求降價或最終拒絕之權利（第 20 條和第 24 條）。
- (4) 若商品因違反第 15 條或因違反契約約定內容而不符契約時，消費者於可行時得主張以下，以及其他相關權利：
 - (a) 可修復或替換之權利（第 23 條）；以及
 - (b) 要求降價或最終拒絕之權利（第 20 條和第 24 條）。
- (5) 若商家違反第 12 條要求應納入契約內容之法定條款，消費者得要求因商家之違反事由所生任何成本之賠償，賠償金額最高不得超過購買商品所給付之價格或考量商品價值之對價。
- (6) 若商家違反第 17 條第 1 項所要求應納入契約內容之法定條款（提供商品等權利），消費者有權利拒絕，第 20 條之權利內容和主張要件之規定準用之。
- (7) 本條第 3 項至第 6 項準用第 25 條之規定，本條第 3 項第 a 款和第 6 項準用第 26 條之規定。

- (2) But, for the purposes of this section and sections 22 to 24, a failure to conform as mentioned in subsection (1)(a) to (c) is not a failure to conform to the contract if it has its origin in materials supplied by the consumer.
- (3) If the goods do not conform to the contract because of a breach of any of the terms described in sections 9, 10, 11, 13 and 14, or if they do not conform to the contract under section 16, the consumer's rights (and the provisions about them and when they are available) are—
 - (a) the short-term right to reject (sections 20 and 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 20 and 24).
- (4) If the goods do not conform to the contract under section 15 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 20 and 24).
- (5) If the trader is in breach of a term that section 12 requires to be treated as included in the contract, the consumer has the right to recover from the trader the amount of any costs incurred by the consumer as a result of the breach, up to the amount of the price paid or the value of other consideration given for the goods.
- (6) If the trader is in breach of the term that section 17(1) (right to supply etc) requires to be treated as included in the contract, the consumer has a right to reject (see section 20 for provisions about that right and when it is available).
- (7) Subsections (3) to (6) are subject to section 25 and subsections (3)(a) and (6) are subject to section 26.

- (8) 第 28 條規定違反有關運送商品時程條款之救濟。
- (9) 本章不得阻礙消費者因以下事由主張其他救濟：
 - (a) 違反本章規定要求應納入契約之法定條款，
 - (b) 因第 15 條和第 16 條之規定商品認定不符契約者，或
 - (c) 違反契約約定之要求。
- (10) 其他救濟於以下情形仍得成立：
 - (a) 除本條第 3 項至第 6 項規定之救濟以外，但不致重複賠償相同損害，或
 - (b) 取代該同樣之救濟，或
 - (c) 於同樣救濟未能成立時。
- (11) 當以下情形開放予消費者時，其他救濟亦包含之：
 - (a) 主張損害；
 - (b) 尋求特殊履行；
 - (c) 尋求特定履行之要求；
 - (d) 因不滿商家所提出的價格主張；
 - (e) 行使將該契約視為拒絕履行而主張違反契約明示約定之內容。
- (12) 消費者不得任意將該契約視為拒絕履行而主張違反本章規定要求應納入契約之法定條款，或主張除了依據本條第 3 項、第 4 項和第 6 項之規定，商品依據第 15 條和第 16 條而認定違反契約。
- (13) 於本部分，將契約視為結束係指將契約視為拒絕履行。

- (8) Section 28 makes provision about remedies for breach of a term about the time for delivery of goods.
- (9) This Chapter does not prevent the consumer seeking other remedies—
- (a) for a breach of a term that this Chapter requires to be treated as included in the contract,
 - (b) on the grounds that, under section 15 or 16, goods do not conform to the contract, or
 - (c) for a breach of a requirement stated in the contract.
- (10) Those other remedies may be ones—
- (a) in addition to a remedy referred to in subsections (3) to (6) (but not so as to recover twice for the same loss), or
 - (b) instead of such a remedy, or
 - (c) where no such remedy is provided for.
- (11) Those other remedies include any of the following that is open to the consumer in the circumstances—
- (a) claiming damages;
 - (b) seeking specific performance;
 - (c) seeking an order for specific implement;
 - (d) relying on the breach against a claim by the trader for the price;
 - (e) for breach of an express term, exercising a right to treat the contract as at an end.
- (12) It is not open to the consumer to treat the contract as at an end for breach of a term that this Chapter requires to be treated as included in the contract, or on the grounds that, under section 15 or 16, goods do not conform to the contract, except as provided by subsections (3), (4) and (6).
- (13) In this Part, treating a contract as at an end means treating it as repudiated.

- (14) 於本條第 3 項第 b 款、第 c 款和第 4 項之情形，自商品交付與消費者起算六個月內若商品有不符契約之情形，該商品應被認定於交付之日自始不符契約。
- (15) 本條第 14 項於以下情形不適用：
- (a) 該商品已被認定於交付之日時不符契約，或
 - (b) 該條文與商品之本質內容性質不符，或該條文無從適用於商品不符契約之情形。

第 20 條 拒絕之權利

- (1) 短期拒絕之權利應符合第 22 條之規定。
- (2) 最終拒絕之權利應符合第 24 條之規定。
- (3) 第 19 條之拒絕權並不受上述條文之限制。
- (4) 任何使消費者得拒絕商品或將契約視為拒絕履行之權利皆應符合第 20 條和第 21 條。
- (5) 當消費者向商家主張拒絕商品或視該契約為拒絕履行之意思表示時即表示消費者正執行其權利。
- (6) 其意思表示得經由消費者說明或以行為表達之，但必須使商家得以明確知悉者為限。
- (7) 自履行其權利時起：
 - (a) 商家有義務依據第 18 條之規定提供消費者退費，且
 - (b) 消費者有義務使商品可供商家匯集或若有消費者應返還該退還商品之約定者，則應按其約定返還。

- (14) For the purposes of subsections (3)(b) and (c) and (4), 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.
- (15) Subsection (14) 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.

20 Right to reject

- (1) The short-term right to reject is subject to section 22.
- (2) The final right to reject is subject to section 24.
- (3) The right to reject under section 19(6) is not limited by those sections.
- (4) Each of these rights entitles the consumer to reject the goods and treat the contract as at an end, subject to subsections (20) and (21).
- (5) The right is exercised if the consumer indicates to the trader that the consumer is rejecting the goods and treating the contract as at an end.
- (6) The indication may be something the consumer says or does, but it must be clear enough to be understood by the trader.
- (7) From the time when the right is exercised—
 - (a) the trader has a duty to give the consumer a refund, subject to subsection (18), and
 - (b) the consumer has a duty to make the goods available for collection by the trader or (if there is an agreement for the consumer to return rejected goods) to return them as agreed.

- (8) 不論消費者是否有義務返還其拒絕之商品，除了消費者因親自返還該商品自其原本直接占有該商品之地所生之支出以外，商家皆應負擔任何返還商品之合理支出。
- (9) 消費者獲得退費之原則如下。
- (10) 消費者有權獲得如依契約所支出之同等價額之退費。
- (11) 除本條第 12 項另有規定，消費者有權獲得如依契約所移轉之同等數量之退還商品。
- (12) 消費者有權獲得如依契約所移轉之不可替代之同等狀態和同等數量之退還商品。
- (13) 於限期占有商品契約，退費之權利範圍僅限於已付款或因契約被視為拒絕履行而使消費者未能於限期內所獲得之移轉商品。
- (14) 若為分期付款契約或附加條件之買賣契約，且該契約於所有價款皆付款前被視為拒絕履行者，退費之權利範圍僅限於已付款之部分。
- (15) 本條規定之退費必須為無不當遲延，且須自商家同意消費者得獲得退費之日起十四日內履行。
- (16) 除非消費者另有明示同意，若消費者依契約內容給付價款，商家必須以與消費者相同之付款方式退費。

- (8) Whether or not the consumer has a duty to return the rejected goods, the trader must bear any reasonable costs of returning them, other than any costs incurred by the consumer in returning the goods in person to the place where the consumer took physical possession of them.
- (9) The consumer's entitlement to receive a refund works as follows.
- (10) To the extent that the consumer paid money under the contract, the consumer is entitled to receive back the same amount of money.
- (11) To the extent that the consumer transferred anything else under the contract, the consumer is entitled to receive back the same amount of what the consumer transferred, unless subsection (12) applies.
- (12) To the extent that the consumer transferred under the contract something for which the same amount of the same thing cannot be substituted, the consumer is entitled to receive back in its original state whatever the consumer transferred.
- (13) If the contract is for the hire of goods, the entitlement to 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.
- (14) 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 entitlement to a refund extends only to the part of the price paid.
- (15) A refund under this section must be given without undue delay, and in any event within 14 days beginning with the day on which the trader agrees that the consumer is entitled to a refund.
- (16) If the consumer paid money under the contract, the trader must give the refund using the same means of payment as the consumer used, unless the consumer expressly agrees otherwise.

- (17) 商家不得就退費另對消費者額外徵收費用。
- (18) 若有以下情事，則不得要求退費：
- (a) 於本條第 10 項至第 12 項不適用之情形，
 - (b) 無法依本條第 12 項所規定以同等狀態之商品退還時，
 - (c) 無法依本條第 13 項所規定，消費者依據契約移轉之商品無從分割，以致無法以相同數量或部分數量返還消費者所應得者。
- (19) 除了退費外，即便無請求退費之權利或權利受有限制，消費者仍有機會主張賠償。
- (20) 若有以下情事，本條第 21 項核准英格蘭、威爾斯和北愛爾蘭於本條第 1 項至第 3 項所規範之權利之申請：
- (a) 契約為可分割之契約，
 - (b) 有關最終拒絕權，契約為限期占有商品契約、分期付款契約或商品移轉契約，以及
 - (c) 第 26 條第 3 項不適用時。
- (21) 依據契約約定內容和個案狀況，消費者享有以下權利：
- (a) 得退回與可分義務相關之商品，且該義務被視為拒絕履行，故退費之權利範圍僅限於消費者已給付或與該義務相關之移轉商品，或
 - (b) 行使與契約相關並於本條第 1 項至第 3 項所涉及之任何權利。

第21條 商品之部分拒絕

- (17) The trader must not impose any fee on the consumer in respect of the refund.
- (18) There is no entitlement to receive a refund—
- (a) if none of subsections (10) to (12) applies,
 - (b) to the extent that anything to which subsection (12) applies cannot be given back in its original state, or
 - (c) where subsection (13) applies, to the extent that anything the consumer transferred under the contract cannot be divided so as to give back only the amount, or part of the amount, to which the consumer is entitled.
- (19) It may be open to a consumer to claim damages where there is no entitlement to receive a refund, or because of the limits of the entitlement, or instead of a refund.
- (20) Subsection (21) qualifies the application in relation to England and Wales and Northern Ireland of the rights mentioned in subsections (1) to (3) where—
- (a) the contract is a severable contract,
 - (b) in relation to the final right to reject, the contract is a contract for the hire of goods, a hire-purchase agreement or a contract for transfer of goods, and
 - (c) section 26(3) does not apply.
- (21) The consumer is entitled, depending on the terms of the contract and the circumstances of the case—
- (a) to reject the goods to which a severable obligation relates and treat that obligation as at an end (so that the entitlement to a refund relates only to what the consumer paid or transferred in relation to that obligation), or
 - (b) to exercise any of the rights mentioned in subsections (1) to (3) in respect of the whole contract.

21 Partial rejection of goods

- (1) 若消費者有任何於第 20 條第 1 項至第 3 項所規定之權利，但未拒絕所有商品且視該契約為拒絕履行，則消費者得：
 - (a) 拒絕部分或所有與契約不符之商品，但
 - (b) 可能不能拒絕任何不符契約之商品。
- (2) 若消費者得於分期付款中拒絕商品，但不能拒絕所有商品，則消費者：
 - (a) 拒絕部分或所有與契約不符之分期付款之商品，但
 - (b) 可能不能拒絕任何不符契約之分期付款之商品。
- (3) 若有任何部分商品可作為商品單位，則消費者不得在未拒絕所有剩餘商品時也拒絕部分商品。
- (4) 若單位之分項會實質上損害商品之價值或單位之屬性，則該單位視為「商品單位」。
- (5) 當消費者依本條向商家主張拒絕商品之意思表示時即表示消費者拒絕該商品。
- (6) 其意思表示得經由消費者說明或以行為表達之，但必須使商家得以明確知悉者為限。
- (7) 自消費者依本條拒絕商品時起：
 - (a) 商家有義務依據本法第 10 項之規定提供消費者退費，且
 - (b) 消費者有義務使商品可供商家匯集或若有消費者應返還該退還商品之約定者，則應按其約定返還。
- (8) 不論消費者是否有義務返還其拒絕之商品，除了消費者因親自返還該商品自其原本直接占有該商品之地所生之支出以外，商家皆應負擔任何返還商品之合理支出。

- (1) If the consumer has any of the rights mentioned in section 20(1) to (3), but does not reject all of the goods and treat the contract as at an end, the consumer—
 - (a) may reject some or all of the goods that do not conform to the contract, but
 - (b) may not reject any goods that do conform to the contract.
- (2) If the consumer is entitled to reject the goods in an instalment, but does not reject all of those goods, the consumer—
 - (a) may reject some or all of the goods in the instalment that do not conform to the contract, but
 - (b) may not reject any goods in the instalment that do conform to the contract.
- (3) If any of the goods form a commercial unit, the consumer cannot reject some of those goods without also rejecting the rest of them.
- (4) 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.
- (5) The consumer rejects goods under this section by indicating to the trader that the consumer is rejecting the goods.
- (6) The indication may be something the consumer says or does, but it must be clear enough to be understood by the trader.
- (7) From the time when a consumer rejects goods under this section—
 - (a) the trader has a duty to give the consumer a refund in respect of those goods (subject to subsection (10)), and
 - (b) the consumer has a duty to make those goods available for collection by the trader or (if there is an agreement for the consumer to return rejected goods) to return them as agreed.
- (8) Whether or not the consumer has a duty to return the rejected goods, the trader must bear any reasonable costs of returning them, other than any costs incurred by the consumer in returning those goods in person to the place where the consumer took physical possession of them.

- (9) 於本條之規定中，第 20 條第 10 項至第 17 項適用於消費者獲得退費之權利，且第 20 條第 13 項和第 14 項條文中之契約被視為拒絕履行應係指商品被拒絕。
- (10) 退費之權利於以下情形不適用：
- (a) 第 20 條第 10 項至第 12 項不適用時，
 - (b) 無法依第 20 條第 12 項所規定以同等狀態之商品退還時，
 - (c) 消費者依契約之約定而移轉之商品無從分割，以致無法以相同數量或部分數量返還消費者所應得者。
- (11) 除了退費外，即便無請求退費之權利或權利受有限制，消費者仍有機會主張賠償。
- (12) 本條所指商品符合契約者與第 19 條第 1 項和第 2 項所規定者相同，且內容亦包含第 17 條規定符合條款之商品。
- (13) 第 20 條第 21 項之第 a 款適用於本條第 1 項所指之消費者視契約為拒絕履行者時，消費者視契約為拒絕履行應係指消費者視可分義務為拒絕履行。

第 22 條 短期拒絕權之期間限制

- (1) 除非商家和消費者另有約定，若消費者未能於期間限制內履行其短期拒絕權，該權利將於期間屆至後失效。
- (2) 與消費者約定於期間屆至前短期拒絕權將失效之條款對消費者無拘束力。
- (3) 除非本條第 4 項另有規定，短期拒絕權之施行期間為自以下情事發生時起算三十日內：

- (9) Section 20(10) to (17) apply to a consumer's right to receive a refund under this section (and in section 20(13) and (14) references to the contract being treated as at an end are to be read as references to goods being rejected).
- (10) That right does not apply—
- (a) if none of section 20(10) to (12) applies,
 - (b) to the extent that anything to which section 20(12) applies cannot be given back in its original state, or
 - (c) to the extent that anything the consumer transferred under the contract cannot be divided so as to give back only the amount, or part of the amount, to which the consumer is entitled.
- (11) It may be open to a consumer to claim damages where there is no right to receive a refund, or because of the limits of the right, or instead of a refund.
- (12) References in this section to goods conforming to a contract are to be read in accordance with section 19(1) and (2), but they also include the goods conforming to the terms described in section 17.
- (13) Where section 20(21)(a) applies the reference in subsection (1) to the consumer treating the contract as at an end is to be read as a reference to the consumer treating the severable obligation as at an end.

22 Time limit for short-term right to reject

- (1) A consumer who has the short-term right to reject loses it if the time limit for exercising it passes without the consumer exercising it, unless the trader and the consumer agree that it may be exercised later.
- (2) An agreement under which the short-term right to reject would be lost before the time limit passes is not binding on the consumer.
- (3) The time limit for exercising the short-term right to reject (unless subsection (4) applies) is the end of 30 days beginning with the first day after these have all happened—

- (a) 商品之所有權或於限期占有商品契約、分期付款契約或附加條件之買賣契約之占有權移轉於消費者時，
 - (b) 商品經運送時，且
 - (c) 於契約約定商家應組裝商品或另有其他作為始能供消費者使用商品，且商家已通知消費者該些作為已經履行時。
- (4) 若商品屬於合理期待情形下將於短時間內腐敗者，則該類商品之短期拒絕權之期間即為短時間腐敗之末時，但不得影響其他非屬該類商品之短期拒絕權之期間。
- (5) 在本條第 3 項第 a 款、第 b 款或第 c 款所規定之情事發生前，本條第 3 項和第 4 項不會阻礙消費者行使短期拒絕權。
- (6) 若消費者要求或同意商品之修繕或替換，則本條第 3 項和第 4 項所規定之期間將於等待期間中斷。
- (7) 若商家因消費者之要求和同意而提供之商品不符合契約之約定，則短期拒絕權之行始期間將：
- (a) 於等待期間終止時後七日屆期，或
 - (b) 因等待期間而延長原短期拒絕權之期間屆至日。
- (8) 等待期間：
- (a) 自消費者要求或同意修繕或替換商品時起算，且
 - (b) 於消費者收受商家因消費者之要求或同意而提供之商品時屆至。

- (a) ownership or (in the case of a contract for the hire of goods, a hirepurchase agreement or a conditional sales contract) possession of the goods has been transferred to the consumer,
 - (b) the goods have been delivered, and
 - (c) where the contract requires the trader to install the goods or take other action to enable the consumer to use them, the trader has notified the consumer that the action has been taken.
- (4) If any of the goods are of a kind that can reasonably be expected to perish after a shorter period, the time limit for exercising the short-term right to reject in relation to those goods is the end of that shorter period (but without affecting the time limit in relation to goods that are not of that kind).
- (5) Subsections (3) and (4) do not prevent the consumer exercising the short-term right to reject before something mentioned in subsection (3)(a), (b) or (c) has happened.
- (6) If the consumer requests or agrees to the repair or replacement of goods, the period mentioned in subsection (3) or (4) stops running for the length of the waiting period.
- (7) If goods supplied by the trader in response to that request or agreement do not conform to the contract, the time limit for exercising the short-term right to reject is then either—
- (a) 7 days after the waiting period ends, or
 - (b) if later, the original time limit for exercising that right, extended by the waiting period.
- (8) The waiting period—
- (a) begins with the day the consumer requests or agrees to the repair or replacement of the goods, and
 - (b) ends with the day on which the consumer receives goods supplied by the trader in response to the request or agreement.

第 23 條 修繕或替換之權利

- (1) 於消費者得依第 19 條之第 3 項和第 4 項主張修繕或替換之權利時，本條準用之。
- (2) 當消費者要求商家修繕或替換商品時，商家應：
 - (a) 在不對消費者造成重大不便且於合理的期間內完成，且
 - (b) 負擔任何因而產生之必要支出，包含任何所生之勞力、材料或郵資之成本。
- (3) 消費者不得於修繕或替換之救濟有以下情形時要求商家修繕或替換商品：
 - (a) 當救濟為不可能，或
 - (b) 當救濟與其他救濟相比顯不合比例時。
- (4) 若與其他救濟相比，當該救濟對商家之負擔為不合理並考量以下因素時，則該救濟為不合比例：
 - (a) 當商品符合契約約定時之價值，
 - (b) 不符契約約定之程度，以及
 - (c) 在不對消費者造成重大不便時，視其他救濟是否會被影響。
- (5) 於判定合理的期間和重大不便時應將以下因素納入考量：
 - (a) 商品之本質，以及
 - (b) 取得商品之目的。
- (6) 除非給予商家合理的修繕期間將對消費者造成重大不便外，在消費者未給予商家合理的修繕期間時，要求或同意修繕商品之消費者不得要求商家替換商品或行使短期拒絕權。

23 Right to repair or replacement

- (1) This section applies if the consumer has the right to repair or replacement (see section 19(3) and (4)).
- (2) If the consumer requires the trader to repair or replace the goods, the trader must—
 - (a) do so within a reasonable time and without 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 the short-term right to reject, without giving the trader a reasonable time to repair them (unless giving the trader that time would cause significant inconvenience to the consumer).

- (7) 除非給予商家合理的替換期間將對消費者造成重大不便外，在消費者未給予商家合理的替換期間時，要求或同意替換商品之消費者不得要求商家修繕商品或行使短期拒絕權。
- (8) 於本章中，修繕不符契約之商品係指使該商品符合契約。

第 24 條 降價或最終拒絕之權利

- (1) 降價之權利係指：
 - (a) 要求商家合理地降低消費者依據契約被要求支付之價額，或消費者依據契約被要求移轉之對價，以及
 - (b) 在減量以外，從商家處回收已支付之退費或其他已交付之對價。
- (2) 於合理情形下，減少之總量可為消費者已支付之總價或其他消費者被要求移轉之對價。
- (3) 於消費者依本條之第 1 項第 b 款可主張退費之消費者權利時，第 20 條第 10 項至第 17 項之規定準用之。
- (4) 降價之權利於以下情形不適用：
 - (a) 若在降價前，不論移轉與否，為使商家僅得依據減量保有或取得標的物，消費者依據契約約定被要求移轉之標的物不可分割，或
 - (b) 無法依據第 20 條第 12 項所規定以原有之狀態返還者。
- (5) 具有降價和最終拒絕權之消費者僅得擇一請求，且僅得於以下情形時主張：
 - (a) 於一次修繕或一次替換後，商品仍不符契約內容者；

- (7) A consumer who requires or agrees to the replacement of goods cannot require the trader to repair them, or exercise the short-term right to reject, without giving the trader a reasonable time to replace them (unless giving the trader that time would cause significant inconvenience to the consumer).
- (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—
 - (a) to 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) to receive a refund from the trader for anything already paid or otherwise transferred by the consumer above the reduced amount.
- (2) The amount of the reduction may, where appropriate, be the full amount of the price or whatever the consumer is required to transfer.
- (3) Section 20(10) to (17) applies to a consumer’s right to receive a refund under subsection (1)(b).
- (4) The right to a price reduction does not apply—
 - (a) if what the consumer is (before the reduction) required to transfer under the contract, whether or not already transferred, cannot be divided up so as to enable the trader to receive or retain only the reduced amount, or
 - (b) if anything to which section 20(12) applies cannot be given back in its original state.
- (5) 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) 因第 23 條第 3 項之規定，消費者皆不得主張修繕或替換商品時；或
 - (c) 當消費者向商家主要求修繕或替換商品時，商家因違反第 23 條第 2 項第 a 款之要求未能在合理期間且未能在不對消費者造成重大不便之情形下。
- (6) 於本條第 5 項第 a 款，若有以下情形，則已發生修繕或替換：
- (a) 消費者已要求或同意修繕或替換商品，不論係因一個或一個以上之錯誤，且
 - (b) 商家為回應要求或該協議，已運送商品與消費者，或使商品可供於消費者。
- (7) 於本條第 6 項，當商家表示修繕已完成，在消費者之前提下商家安排商品修繕即為使商品可供於消費者。
- (8) 若消費者行使最終拒絕權，任何供消費者之退費可能因自商品送達於消費者後之期間經消費者使用而減損，但仍須符合本條第 9 項和第 10 項之規定。
- (9) 若因商家未能在同意之時點匯集商品，則消費者自該時間點後之使用不得視為減損。
- (10) 除非有以下事由，若最終拒絕權係於本法第 11 項之前六個月行使，則不得視為有任何減損：
- (a) 商品包含動力交通工具，或
 - (b) 該商品係屬各部會部長頒布法規命令所限定者。
- (11) 於本條第 10 項，前六個月係指自以下事由發生第一日時起起算六個月：

- (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.
- (6) There has been a repair or replacement for the purposes of subsection (5)(a) if—
- (a) the consumer has requested or agreed to repair or replacement of the goods (whether in relation to one fault or more than one), and
 - (b) the trader has delivered goods to the consumer, or made goods available to the consumer, in response to the request or agreement.
- (7) For the purposes of subsection (6) goods that the trader arranges to repair at the consumer's premises are made available when the trader indicates that the repairs are finished.
- (8) If the consumer exercises the final right to reject, any refund to the consumer may 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, but this is subject to subsections (9) and (10).
- (9) 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.
- (10) No deduction may be made if the final right to reject is exercised in the first 6 months (see subsection (11)), unless—
- (a) the goods consist of a motor vehicle, or
 - (b) the goods are of a description specified by order made by the Secretary of State by statutory instrument.
- (11) In subsection (10) the first 6 months means 6 months beginning with the first day after these have all happened—

- (a) 商品之所有權或於限期占有商品契約、分期付款契約或附加條件買賣契約之占有移轉於消費者時，
 - (b) 商品經運送時，且
 - (c) 於契約約定商家應組裝商品或另有其他作為始能供消費者使用商品，且商家已通知消費者該些作為已經履行時。
- (12) 本條第 10 項第 a 款之動力交通工具係指：
- (a) 於大不列顛地區，如同 1988 年道路交通法第 185 條至 194 條之規定；
 - (b) 於北愛爾蘭地區，如同 1995 年道路交通法（北愛爾蘭）命令（SI 1995/2994 (NI 18)）之第一部分和第五部分。
- (13) 但於本條第 10 項第 a 款時，若經改裝或組裝為以下情形時，該交通工具並非動力交通工具：
- (a) 為供身障或行動不便之人使用，且
 - (b) 於任何時候僅得供該類型之人使用。
- (14) 本條第 10 項第 b 款所規定之命令：
- (a) 僅於各部會部長同意當命令所限定之商品於適用本條第 10 項之時對於商家所造成的實質損害尚屬合理之情形下，始得頒布。
 - (b) 可能包含過渡性和暫時性條文或保留條款。
- (15) 除非法規命令之草案已經各國會議會或議院以決議核准或審核，否則該法規命令不得依據本法第 10 項第 b 款制定。

- (a) ownership or (in the case of a contract for the hire of goods, a hirepurchase agreement or a conditional sales contract) possession of the goods has been transferred to the consumer,
 - (b) the goods have been delivered, and
 - (c) where the contract requires the trader to install the goods or take other action to enable the consumer to use them, the trader has notified the consumer that the action has been taken.
- (12) In subsection (10)(a) “motor vehicle”—
- (a) in relation to Great Britain, has the same meaning as in the Road Traffic Act 1988 (see sections 185 to 194 of that Act);
 - (b) in relation to Northern Ireland, has the same meaning as in the Road Traffic (Northern Ireland) Order 1995 (SI 1995/2994 (NI 18)) (see Parts I and V of that Order).
- (13) But a vehicle is not a motor vehicle for the purposes of subsection (10)(a) if it is constructed or adapted—
- (a) for the use of a person suffering from some physical defect or disability, and
 - (b) so that it may only be used by one such person at any one time.
- (14) An order under subsection (10)(b)—
- (a) may be made only if the Secretary of State is satisfied that it is appropriate to do so because of significant detriment caused to traders as a result of the application of subsection (10) in relation to goods of the description specified by the order;
 - (b) may contain transitional or transitory provision or savings.
- (15) No order may be made under subsection (10)(b) unless a draft of the statutory instrument containing it has been laid before, and approved by a resolution of, each House of Parliament.

其他商品契約之救濟規則

第 25 條 錯誤品質之運送

- (1) 當商家運送與消費者之商品數量低於商家原先於契約中約定提供之數量，消費者得拒絕，但若消費者接受，則消費者須以契約締結之比例給付價款。
- (2) 當商家運送與消費者之商品數量高於商家原先於契約中約定提供之數量，消費者得接受契約原先約定之數量並拒絕其餘商品，或得拒絕所有商品。
- (3) 當商家運送與消費者之商品數量高於商家原先於契約中約定提供之數量，且消費者接受所有經運送之商品，則消費者須以契約締結之比例給付價款。
- (4) 當消費者依本法有權拒絕商品時，消費者認定契約為拒絕履行之任何權利將取決於契約之條款和個案情形認定。
- (5) 消費者依本法向商家主張拒絕商品之意思表示時即表示消費者正執行其權利。
- (6) 其意思表示得經由消費者說明或以行為表達之，但必須使商家得以明確知悉者為限。
- (7) 當消費者得主張賠償時，本法第 1 項至第 3 項不會阻礙消費者主張之。
- (8) 除契約雙方當事人就貿易習慣、特別協議或交易歷程另有規定外，適用本法之規定。

第 26 條 分期付款運送

- (1) 於提供商品之契約，除非消費者與商家另有約定外，消費者並不受分期付款而接受商品運送之拘束。

Other rules about remedies under goods contracts

25 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) Where the consumer is entitled to reject goods under this section, any entitlement for the consumer to treat the contract as at an end depends on the terms of the contract and the circumstances of the case.
- (5) The consumer rejects goods under this section by indicating to the trader that the consumer is rejecting the goods.
- (6) The indication may be something the consumer says or does, but it must be clear enough to be understood by the trader.
- (7) Subsections (1) to (3) do not prevent the consumer claiming damages, where it is open to the consumer to do so.
- (8) This section is subject to any usage of trade, special agreement, or course of dealing between the parties.

26 Instalment deliveries

- (1) Under a contract to supply 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) 若契約約定商品以分期付款之方式運送，則以下條款準用之。

- (3) 若商家依一次或多次之分期給付而履行具瑕疵之運送，除請求賠償之權例外，消費者得行使以下權利：
 - (a) 就契約行使短期拒絕權或若符合第 19 條第 6 項而得主張之拒絕權，或
 - (b) 於分期給付之分期間拒絕商品。
- (4) 消費者有無適用本條第 3 項第 a 款或第 b 款取決於契約之約定條款或個案情形。
- (5) 於本條第 3 項，履行具瑕疵之運送不包含未能依據第 28 條履行運送。
- (6) 若消費者忽視或拒絕接受或支付一期或多期之運送，商家得：
 - (a) 將整份契約視為拒絕履行，或
 - (b) 若為可分割之違約，得主張損害賠償，但不得將整份契約視為拒絕履行。
- (7) 商家有無適用本條第 6 項第 a 款或第 b 款取決於契約之約定條款或個案情形。

第 27 條 於蘇格蘭地區法院之交寄或提存

- (1) 本法第 2 項於以下情形適用之：
 - (a) 消費者未以違反第 19 條第 3 項或第 6 項之規定而得主張拒絕商品為由拒絕商品，
 - (b) 消費者選擇僅將該契約之違反視為損害賠償之主張或依商品之價額對商家視該契約之違反為主張之抗辯，以及

- (2) The following provisions apply if the contract provides for the goods to be delivered by stated instalments, which are to be separately paid for.
- (3) If the trader makes defective deliveries in respect of one or more instalments, the consumer, apart from any entitlement to claim damages, may be (but is not necessarily) entitled—
 - (a) to exercise the short-term right to reject or the right to reject under section 19(6) (as applicable) in respect of the whole contract, or
 - (b) to reject the goods in an instalment.
- (4) Whether paragraph (a) or (b) of subsection (3) (or neither) applies to a consumer depends on the terms of the contract and the circumstances of the case.
- (5) In subsection (3), making defective deliveries does not include failing to make a delivery in accordance with section 28.
- (6) If the consumer neglects or refuses to take delivery of or pay for one or more instalments, the trader may—
 - (a) be entitled to treat the whole contract as at an end, or
 - (b) if it is a severable breach, have a claim for damages but not a right to treat the whole contract as at an end.
- (7) Whether paragraph (a) or (b) of subsection (6) (or neither) applies to a trader depends on the terms of the contract and the circumstances of the case.

27 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 19(3) or (6),
 - (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）商家已開啟對法院恢復價額之程序或對價額提起反訴。

（2）法院得要求消費者：

（a）將商品之價額或部分價額交寄或提存於法院，或

（b）提供價額付款之合理擔保。

其他有關商品契約之規則

第 28 條 商品之運送

（1）本條適用於所有買賣契約。

（2）除非商家與消費者另有約定，契約視為包含商家必須將商品運送與消費者之法定條款。

（3）除非另有約定時點或期間，契約視為包含商家必須將商品運送與消費者並包含以下條款：

（a）履行不得有延遲，且

（b）自締結契約之日起三十日內不論任何情事皆應履行。

（4）於本條中：

（a）另有約定之時點或期間係指經商家和消費者就商品之運送達成合意。

（b）若於契約締結時負有運送商品之義務，該時點即為合意之時點。

（5）於商家未依本條第 3 項之規定或於合意之時點或時段運送商品時，本條第 6 項和第 7 項適用之。

（6）若該情事為：

（a）商家拒絕運送商品，

- (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

28 Delivery of goods

- (1) This section applies to any sales contract.
- (2) Unless the trader and the consumer have agreed otherwise, the contract is to be treated as including a term that the trader must deliver the goods to the consumer.
- (3) Unless there is an agreed time or period, the contract is to be treated as including a term that the trader must deliver the goods—
 - (a) without undue delay, and
 - (b) in any event, not more than 30 days after the day on which the contract is entered into.
- (4) In this section—
 - (a) an “agreed” time or period means a time or period agreed by the trader and the consumer for delivery of the goods;
 - (b) if there is an obligation to deliver the goods at the time the contract is entered into, that time counts as the “agreed” time.
- (5) Subsections (6) and (7) apply if the trader does not deliver the goods in accordance with subsection (3) or at the agreed time or within the agreed period.
- (6) If the circumstances are that—
 - (a) the trader has refused to deliver the goods,

(b) 經合意之運送商品之時點或時段已實質考量所有於契約締結時之相關因素，或

(c) 消費者於契約締結前已向商家表示依據本條第 3 項之規定或於合意之時點或期間所履行之運送為重要，

則消費者得視契約為拒絕履行。

(7) 於其他情事時，消費者得特定於該情事時之合理時段並要求商家於該時段結束前運送商品。

(8) 若消費者依本條第 7 項特定時段但商品未於該時段內運送，則消費者得視該契約為拒絕履行。

(9) 若消費者依本條第 6 項和第 8 項視契約為拒絕履行，商家應未有延遲地賠償所由依據契約約定之給付。

(10) 若於本條第 6 項或第 8 項適用時但消費者未將契約視為拒絕履行者：

(a) 仍不阻礙消費者取消商品之訂單或拒絕已運送之商品，且

(b) 商家必須未有延遲地依據契約約定就消費者取消或拒絕訂單之商品負擔所有支付之賠償。

(11) 若有任何部分商品可作為商品單位，則消費者不得在未拒絕或取消所有剩餘商品時也拒絕或取消部分商品。

(12) 若單位之分項會實質上損害商品之價值或單位之屬性，則該單位視為「商品單位」。

(13) 本條不會阻礙消費者有權利得主張其他救濟。

- (b) delivery of the goods at the agreed time or within the agreed period is essential taking into account all the relevant circumstances at the time the contract was entered into, or
 - (c) the consumer told the trader before the contract was entered into that delivery in accordance with subsection (3), or at the agreed time or within the agreed period, was essential,
- then the consumer may treat the contract as at an end.
- (7) In any other circumstances, the consumer may specify a period that is appropriate in the circumstances and require the trader to deliver the goods before the end of that period.
 - (8) If the consumer specifies a period under subsection (7) but the goods are not delivered within that period, then the consumer may treat the contract as at an end.
 - (9) If the consumer treats the contract as at an end under subsection (6) or (8), the trader must without undue delay reimburse all payments made under the contract.
 - (10) If subsection (6) or (8) applies but the consumer does not treat the contract as at an end—
 - (a) that does not prevent the consumer from cancelling the order for any of the goods or rejecting goods that have been delivered, and
 - (b) the trader must without undue delay reimburse all payments made under the contract in respect of any goods for which the consumer cancels the order or which the consumer rejects.
 - (11) If any of the goods form a commercial unit, the consumer cannot reject or cancel the order for some of those goods without also rejecting or cancelling the order for the rest of them.
 - (12) 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.
 - (13) This section does not prevent the consumer seeking other remedies where it is open to the consumer to do so.

（14）於商品係於公開拍賣銷售時，第 2 條第 5 項和第 6 項於本條之規定適用之。

第 29 條 危險負擔之移轉

（1）買賣契約應視為包含以下法定條款。

（2）商品之利益及危險，自於以下交付之時起，均由商家承受負擔：

（a）交付於消費者時，或

（b）經消費者認可而占有該商品時。

（3）若商品交付與以下運送人者，本條第 2 項不適用之：

（a）運送人係經消費者委任運送商品，且

（b）該運送人非經商家指名供消費者得選擇者。

（4）於該情形時，商品之利益及危險，自於運送人運送之時起至後，均由消費者承受負擔。

（5）本條第 4 項不影響運送人就商品對消費者應負之責任。

（6）於商品係於公開拍賣銷售時，第 2 條第 5 項和第 6 項於本條之規定適用之。

第 30 條 經保證之商品

（1）於有以下情事時，本條適用之：

（a）於提供商品之契約，且

（b）就該商品具有保證時。

（2）保證係指在未有額外費用之負擔下，保證人依其經營形式保證若商品未符保證聲明或其他相關廣告所呈現之描述者：

- (14) See section 2(5) and (6) for the application of this section where goods are sold at public auction.

29 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 a carrier the trader named as an option for the consumer.
- (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.
- (6) See section 2(5) and (6) for the application of this section where goods are sold at public auction.

30 Goods under guarantee

- (1) This section applies where—
- (a) there is a contract to supply goods, and
 - (b) there is a guarantee in relation to the goods.
- (2) “Guarantee” here means an undertaking to the 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) 消費者會依給付商品之價款獲得賠償，或
- (b) 商品將經修繕、替換或以任何方式處理。
- (3) 於商品經運送時，保證將作為保證人依保證聲明或其他相關廣告所呈現之描述因而應負擔之契約責任。
- (4) 保證人應確保以下情事：
 - (a) 保證係以明白且可理解之語言陳述保證內容，且就聲明之主張於保證下為重要之部分，
 - (b) 保證聲明消費者就商品有法定權利，且該些權利不會受保證影響，以及
 - (c) 於商品係於英國的領土內提供者，保證應以英文撰寫。
- (5) 保證之內容應特別包含：
 - (a) 保證人之姓名與地址，以及
 - (b) 保證之期間領土範圍。
- (6) 經消費者之要求，保證人或其他提供屬保證標的物之商品與消費者之第三人應於合理的時間以書面或消費者可接受之形式提供保證與消費者。
- (7) 合理的時間係屬事實的問題。
- (8) 未能符合本條所規定之要求者，執行機關得於蘇格蘭地區向法院聲請禁制令，及要求該人遵守條文之特定執行命令。

- (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 and 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) 於蘇格蘭地區，法院得依申請核發禁制令或針對條文核發合理之特定執行命令。

(10) 於本條：

「法院」係指：

(a) 於英格蘭和威爾斯地區，高等法院或其郡法院，

(b) 於北愛爾蘭地區，高等法院或郡法院，以及

(c) 於蘇格蘭地區，高等民事法院或其郡長；

「執行機關」係指：

(a) 競爭和市場管理局，

(b) 大不列顛之地方度量衡機關，以及

(c) 北愛爾蘭地區之企業貿易投資部。

商家可否於商品契約中約定排除法定權利與救濟？

第 31 條 不得排除和限制之責任

(1) 提供商品之契約中若有排除或限制商家就以下條文規定之責任之條款者，對消費者不生效力：

(a) 第 9 條（合乎約定品質的商品）；

(b) 第 10 條（為特殊目的之商品）；

(c) 第 11 條（被描述之商品）；

(d) 第 12 條（其他包含於契約內容之預約資訊）；

(e) 第 13 條（符合試用品之商品）；

(f) 第 14 條（符合經檢視或檢驗模型之商品）；

(9) On an application the court may grant an injunction or (in Scotland) an order of specific implement on such terms as it thinks appropriate.

(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?

31 Liability that cannot be excluded or restricted

(1) A term of a contract to supply goods is not binding on the consumer to the extent that it would exclude or restrict the trader’s liability arising under any of these provisions—

- (a) section 9 (goods to be of satisfactory quality);
- (b) section 10 (goods to be fit for particular purpose);
- (c) section 11 (goods to be as described);
- (d) section 12 (other pre-contract information included in contract);
- (e) section 13 (goods to match a sample);
- (f) section 14 (goods to match a model seen or examined);

- (g) 第 15 條（組裝作為商品符合契約內容之要件）；
 - (h) 第 16 條（若數位內容不符合契約則商品不符契約）；
 - (i) 第 17 條（具有提供商品等權利之商家）；
 - (j) 第 28 條（商品之運送）；
 - (k) 第 29 條（危險負擔之移轉）。
- (2) 若提供商品之契約有以下條款，亦同對消費者不生效力：
- (a) 排除或限制本條第 1 項所條列之條文就責任所規定之權利或救濟，
 - (b) 使該權利、救濟或執行限於限制或重責之情形，
 - (c) 允許商家能使主張權利或救濟者限於不利益，或
 - (d) 排除或限制證據法則或程序。
- (3) 本條第 1 項所指之排除或限制責任亦指阻礙產生之責任或限制其範圍。
- (4) 對現在或未來的爭議訴諸於仲裁之書面協議並非本法所指之排除或限制任何責任。
- (5) 於本條第 1 項第 i 款和本條第 2 項所規定有關第 17 條之責任者，不適用於限期占有商品契約之條款。
- (6) 於非與第 17 條所規定要求之法定條款及第 62 條規定有關公平之法定條款不一致，若限期占有商品契約包含排除或限制該些規定要求應納入契約之法定條款者，對消費者不生效力。
- (7) 有關本條執行準用附件三規定。

- (g) section 15 (installation as part of conformity of the goods with the contract);
 - (h) section 16 (goods not conforming to contract if digital content does not conform);
 - (i) section 17 (trader to have right to supply the goods etc);
 - (j) section 28 (delivery of goods);
 - (k) section 29 (passing of risk).
- (2) That also means that a term of a contract to supply goods is not binding on the consumer to the extent that it would—
- (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)(i), and subsection (2) so far as it relates to liability under section 17, do not apply to a term of a contract for the hire of goods.
- (6) But an express term of a contract for the hire of goods is not binding on the consumer to the extent that it would exclude or restrict a term that section 17 requires to be treated as included in the contract, unless it is inconsistent with that term (and see also section 62 (requirement for terms to be fair)).
- (7) See Schedule 3 for provision about the enforcement of this section.

第 32 條 適用非歐洲共同體會員國法律之契約

(1) 若有以下情事：

- (a) 契約當事人選擇以非歐洲共同體會員國以外之國家或領土之法律為買賣契約之準據法，但
- (b) 該買賣契約與英國之關係深切，

除了本條第 2 項之規定外，不論契約當事人之選擇，本章之規定仍適用之。

(2) 例外情事包含：

- (a) 第 11 條第 4 項和第 5 項，以及第 12 條；
- (b) 第 28 條及第 29 條；
- (c) 第 31 條第 1 項第 d 款、第 j 款和第 k 款。

(3) 於以上條文適用之情形，或尚未選擇準據法，或已選定非歐洲共同體會員國之法律，應準用 2008 年契約義務法律適用規則

第三章 數位內容

何種數位內容為契約所涵蓋？

第 33 條 本章所適用之契約

- (1) 若數位內容係以消費者支付對價而提供或預計提供者，本章之規定適用於商家提供與消費者數位內容之契約。
- (2) 於商家提供數位內容與消費者之契約且有以下情形時，本章適用之：
 - (a) 消費者給付該數位內容之對價並免費經提供商品、服務或其他數位內容，以及
 - (b) 除非消費者已給付數位內容之對價，或給付商品或服務或其他數位內容之對價，否則該數位內容原則上無法提供給消費者。

32 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,

this Chapter, except the provisions in subsection (2), applies despite that choice.

(2) The exceptions are—

(a) sections 11(4) and (5) and 12;

(b) sections 28 and 29;

(c) section 31(1)(d), (j) and (k).

(3) For cases where those provisions apply, or where the law applicable has not been chosen or the law of an EEA State is chosen, see Regulation (EC) No. 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations.

CHAPTER 3 DIGITAL CONTENT

What digital content contracts are covered?

33 Contracts covered by this Chapter

(1) This Chapter applies to a contract for a trader to supply digital content to a consumer, if it is supplied or to be supplied for a price paid by the consumer.

(2) This Chapter also applies to a contract for a trader to supply digital content to a consumer, if—

(a) it is supplied free with goods or services or other digital content for which the consumer pays a price, and

(b) it is not generally available to consumers unless they have paid a price for it or for goods or services or other digital content.

- (3) 本條第 1 項和第 2 項之消費者給付價款包含消費者使用經給付價額之設備所為之付款。
- (4) 商家不僅因商家提供交付數位內容與消費者之服務而符合本部分所指之提供數位內容與消費者。
- (5) 當各部會部長同意透過命令使本章適用於其他商家提供與消費者數位內容之契約，而該契約對於消費者所造成的實質損害尚屬合理之情形下，各部會部長始得命令本章得適用於該契約。
- (6) 本條第 5 項之命令：
 - (a) 得特別修改本法案；
 - (b) 得包含過渡性和暫時性條文或保留條款。
- (7) 本章所適用之契約係指本章規定之「提供數位內容之契約」。
- (8) 本條除了本條第 4 項外，不限制第 46 條規定之適用。
- (9) 依本條第 5 項頒布命令之權限得由法規命令執行之。
- (10) 除非法規命令之草案已經各國會議會或議院以決議核准或審核，否則該命令不得依據本法第 5 項制定。

數位內容契約中有何法定權利？

第 34 條 合乎約定品質的數位內容

- (1) 所有提供數位內容之契約應包含數位內容之品質合乎約定之條款。

- (3) The references in subsections (1) and (2) to the consumer paying a price include references to the consumer using, by way of payment, any facility for which money has been paid.
- (4) A trader does not supply digital content to a consumer for the purposes of this Part merely because the trader supplies a service by which digital content reaches the consumer.
- (5) The Secretary of State may by order provide for this Chapter to apply to other contracts for a trader to supply 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.
- (6) An order under subsection (5)—
 - (a) may, in particular, amend this Act;
 - (b) may contain transitional or transitory provision or savings.
- (7) A contract to which this Chapter applies is referred to in this Part as a “contract to supply digital content” .
- (8) This section, other than subsection (4), does not limit the application of section 46.
- (9) The power to make an order under subsection (5) is exercisable by statutory instrument.
- (10) No order may be made under subsection (5) 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?

34 Digital content to be of satisfactory quality

- (1) Every contract to supply digital content is to be treated as including a term that the quality of the digital content is satisfactory.

- (2) 當數位內容符合一般理性之人所認為合乎品質之標準，商品即認屬合乎約定品質，並考量以下條件：
 - (a) 任何有關數位內容之描述，
 - (b) 數位內容於第 33 條第 1 項和第 2 項第 b 款所提之相關價格，以及
 - (c) 同本條第 5 項，其他所有相關之因素。
- (3) 數位內容之品質包含其狀態和條件；以及以下為適當數位內容品質之考量因素：
 - (a) 該類數位內容以任何目的於通常提供時保有之樣態；
 - (b) 無細小瑕疵；
 - (c) 安全；
 - (d) 耐用性。
- (4) 於本條第 1 項所規定之條款不包含任何會使數位內容之品質不合乎約定者，如：
 - (a) 該品質於契約締結前特別用來引開消費者注意力，
 - (b) 於契約締結前消費者於檢查商品時，該檢查應能顯示其品質，或
 - (c) 於契約以試用品提供數位內容時，試用品可透過合理檢查而明顯顯示其品質。
- (5) 於本條第 2 項第 c 款規定之其他相關因素包含任何商家、製造人或其他商家或製造人之代理人所作有關數位內容之詳細規格之公開表述。
- (6) 上述因素特別包含廣告或商品標籤中所含之任何公開表述。

- (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 33(1) or (2)(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 supplied;
 - (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) 若商家表示如下事由，則公開表述非屬本條第 2 項第 c 款之其他相關因素：
- (a) 當契約締結時，商家並無且未能合理地知悉該表述，
 - (b) 於契約締結前，該表述已經公開撤回或其內容具有相當程度地錯誤或誤導，或已經公開修正，或
 - (c) 消費者締結該數位內容契約之決定無法受到該公開表述之影響。
- (8) 於提供數位內容之契約，有關數位內容品質之約定條款可被視為約定習慣。
- (9) 若商家違反本條規定應納入契約之法定條款，準用第 42 條消費者權利之規定。

第 35 條 為特殊目的之數位內容

- (1) 若消費者於契約締結前，不論係透過明示或默示之方法，使商家知悉任何消費者締結數位內容契約之特殊目的者，本條第 3 項適用於該提供數位內容之契約。
- (2) 提供數位內容之契約於有以下情事時，同樣適用本條第 3 項：
- (a) 該數位內容先前經信用經紀人販售與商家，
 - (b) 其可支付之總額對價或部分對價係可經由分期給付者，且
 - (c) 於契約締結前，消費者不論係透過明示或默示使信用經紀人知悉任何消費者締結數位內容契約之特殊目的者。
- (3) 不論該類型之數位內容契約是否通常具有該特殊目的，契約將推定包含數位內容將合理地符合該特殊目的之條款。

- (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) In a contract to supply digital content a term about the quality of the digital content may be treated as included as a matter of custom.
- (9) See section 42 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.

35 Digital content to be fit for particular purpose

- (1) Subsection (3) applies to a contract to supply 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 supply 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 creditbroker (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 supplied.

- (4) 若有消費者不倚賴或無法合理倚賴商家或信用經紀人的技能或判斷力之情事時，本法第 3 項將不予適用。
- (5) 於提供數位內容之契約時，為特殊目的數位內容之狀態條款可被視為約定習慣。
- (6) 若商家違反本條規定應納入契約之法定條款，準用第 42 條消費者權利之規定。

第 36 條 被描述之商品

- (1) 所有含有描述之提供數位內容之契約皆被推定包含要求該數位內容將符合商家提供與消費者之描述之條款。
- (2) 若數位內容於契約締結前係透過試用品供消費者檢視，數位內容單純符合或優於試用品但不符合商家提供與消費者之描述者，仍屬不夠充分。
- (3) 任何由商家提供有關數位內容之資訊且於 2013 年消費契約（資訊、取消及附加費用）條例（SI 2013/3134）附件 1 之第（a）款、第（j）款和第（k）款和附件 2 之第（a）款、第（v）款或第（w）款（主要描述、功能性和適用性）所揭示之資訊將被推定為契約之條款內容。
- (4) 除非經商家和消費者間之明示同意，否則於締結契約前或後所作之任何契約之變動皆不具效力。
- (5) 若商家違反本條規定應納入契約之法定條款，準用第 42 條消費者權利之規定。

第 37 條 其他包含於契約內容之預約資訊

- (1) 本條適用於所有提供數位內容之契約。

- (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) A contract to supply digital content may be treated as making provision about the fitness of the digital content for a particular purpose as a matter of custom.
- (6) See section 42 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.

36 Digital content to be as described

- (1) Every contract to supply 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 that is provided by the trader about the digital content that is information mentioned in paragraph (a), (j) or (k) of Schedule 1 or paragraph (a), (v) or (w) of Schedule 2 (main characteristics, functionality and compatibility) to the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 (SI 2013/3134) is to be treated as included as a term of the contract.
- (4) A change to any of that information, made before entering into the contract or later, is not effective unless expressly agreed between the consumer and the trader.
- (5) See section 42 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 Other pre-contract information included in contract

- (1) This section applies to any contract to supply digital content.

- (2) 依據 2013 年消費契約（資訊、取消及附加費用）條例（SI 2013/3134）第 9 條、第 10 條和第 13 條之規定，於契約發生拘束力之前，商家應提供資訊與消費者，除了依據該條例附件 1 之第 (a) 款、第 (j) 款和第 (k) 款和附件 2 之第 (a) 款、第 (v) 款或第 (w) 款（主要描述、功能性和適用性）所揭示有關數位內容之資訊外，任何經商家提供與消費者之資訊皆被認定為契約之條款內容。
- (3) 除非經商家和消費者間之明示同意，否則於締結契約前或後所作之任何契約之變動皆不具效力。
- (4) 若商家違反本條規定應納入契約之法定條款，準用第 42 條消費者權利之規定。

第 38 條 無其他將有關品質或狀態之條款視為法定條款之要求

- (1) 除依第 34 條和第 35 條之規定或經明示約定於契約內容中，提供數位內容之契約不認定應包含有關數位內容之品質或為任何特殊目的之狀態之條款。
- (2) 除其他無論何時通過或制定之法律另有規定者外，依本條第 1 項之規定。

第 39 條 透過傳輸提供和為持續傳輸之設備

- (1) 於提供數位內容之契約，且消費者取得裝置中內容之管道需要透過商家啟動安排裝置之傳輸時，本條第 3 項適用之。
- (2) 於本章之規定，數位內容於以下情形時視為提供：
 - (a) 當內容送達裝置，或
 - (b) 當內容送達至另一經消費者選定之商家，而該商家提供數位內容送達裝置之服務，且該商家與消費者立有契約。

- (2) Where regulation 9, 10 or 13 of the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 (SI 2013/3134) required the trader to provide information to the consumer before the contract became binding, any of that information that was provided by the trader other than information about the digital content and mentioned in paragraph (a), (j) or (k) of Schedule 1 or paragraph (a), (v) or (w) of Schedule 2 to the Regulations (main characteristics, functionality and compatibility) is to be treated as included as a term of the contract.
- (3) A change to any of that information, made before entering into the contract or later, is not effective unless expressly agreed between the consumer and the trader.
- (4) See section 42 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 No other requirement to treat term about quality or fitness as included

- (1) Except as provided by sections 34 and 35, a contract to supply 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.

39 Supply by transmission and facilities for continued transmission

- (1) Subsection (2) applies where there is a contract to supply 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.
- (2) For the purposes of this Chapter, the digital content is supplied—
 - (a) when the content reaches the device, or
 - (b) if earlier, when the content reaches another trader chosen by the consumer to supply, under a contract with the consumer, a service by which digital content reaches the device.

- (3) 於有以下情形時，本條第 5 項至第 7 項適用之：
- (a) 有提供數位內容之契約，以及
 - (b) 於商家提供數位內容後，消費者有經由該商家安排之處理設備取得該內容之管道。
- (4) 處理設備係指商家或其他商家會自消費者處取得數位內容並將該數位內容傳輸與消費者，不論契約內容是否有包含其他功能。
- (5) 契約認定應包含處理設備除含有契約約定所包含之功能外，除契約另有約定其他時點外，應於合理之時點可供消費者使用之條款。
- (6) 儘管已於契約有約定，不論該設備有任何情事，以下條款於所有首次傳輸與消費者之數位內容皆有適用：
- (a) 第 34 條（品質）；
 - (b) 第 35 條（為特殊目的之狀態）；
 - (c) 第 36 條（描述）。
- (7) 違反本條第 5 項應納入契約之法定條款與違反該些條文規定應納入契約之法定條款之效力相同，第 42 條準用之。

第 40 條 受限於調整而提供之內容之品質、狀態和描述

- (1) 當商家提供與消費者數位內容受限於該商家或第三者調整其數位內容之權利時，於數位內容依據契約提供並調整時，以下規定適用之：

- (3) Subsections (5) to (7) apply where—
- (a) there is a contract to supply digital content, and
 - (b) after the trader (T) has supplied the digital content, the consumer is to have access under the contract to a processing facility under arrangements made by T.
- (4) A processing facility is a facility by which T or another trader will receive digital content from the consumer and transmit digital content to the consumer (whether or not other features are to be included under the contract).
- (5) The contract is to be treated as including a term that the processing facility (with any feature that the facility is to include under the contract) must be available to the consumer for a reasonable time, unless a time is specified in the contract.
- (6) The following provisions apply to all digital content transmitted to the consumer on each occasion under the facility, while it is provided under the contract, as they apply to the digital content first supplied—
- (a) section 34 (quality);
 - (b) section 35 (fitness for a particular purpose);
 - (c) section 36 (description).
- (7) Breach of a term treated as included under subsection (5) has the same effect as breach of a term treated as included under those sections (see section 42).

40 Quality, fitness and description of content supplied subject to modifications

- (1) Where under a contract a trader supplies 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 supplied under the contract—

- (a) 第 34 條（品質）；
 - (b) 第 35 條（為特殊目的之狀態）；
 - (c) 第 36 條（描述）。
- (2) 只要符合以下情形，本條第 1 項不阻礙商家改進數位內容之原功能或新增新功能：
- (a) 數位內容持續符合商家提供與消費者之描述，且
 - (b) 數位內容持續符合商家依第 36 條第 3 項所規定提供之資訊，並符合該條第 4 項所約定就資訊之任何變動。
- (3) 任何主張數位內容不符合本條第 1 項所列出之條文者，將被視為數位內容係於依據契約提供之時點所產出，而非於經調整之時點所產出。

第 41 條 商家提供數位內容之權利

- (1) 所有提供數位內容之契約皆被認定包含以下條款：
- (a) 有關任何依據契約所提供且為消費者支付對價之數位內容，商家有權利提供該內容與消費者。
 - (b) 有關任何商家同意依據契約提供且消費者支付對價之數位內容，商家將有權利於應提供時提供與消費者。
- (2) 若商家違反本條規定應納入契約之法定條款，準用第 42 條消費者權利之規定。

- (a) section 34 (quality);
 - (b) section 35 (fitness for a particular purpose);
 - (c) section 36 (description).
- (2) Subsection (1)(c) does not prevent the trader from improving the features of, or adding new features to, the digital content, as long as—
- (a) the digital content continues to match the description of it given by the trader to the consumer, and
 - (b) the digital content continues to conform to the information provided by the trader as mentioned in subsection (3) of section 36, subject to any change to that information that has been agreed in accordance with subsection (4) of that section.
- (3) A claim on the grounds that digital content does not conform to a term described in any of the sections listed in subsection (1) as applied by that subsection is to be treated as arising at the time when the digital content was supplied under the contract and not the time when it is modified.

41 Trader’s right to supply digital content

- (1) Every contract to supply digital content is to be treated as including a term—
- (a) in relation to any digital content which is supplied under the contract and which the consumer has paid for, that the trader has the right to supply that content to the consumer;
 - (b) in relation to any digital content which the trader agrees to supply under the contract and which the consumer has paid for, that the trader will have the right to supply it to the consumer at the time when it is to be supplied.
- (2) See section 42 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.

當數位內容契約之法定權利為經履行時有何救濟？

第 42 條 執行有關數位內容條款之消費者權利

- (1) 本條及第 43 條所稱之符合契約之數位內容係指符合第 34 條、第 35 條和第 36 條所稱之符合條款之數位內容。
- (2) 若數位內容不符契約，消費者之權利和其他可行的權利包含以下：
 - (a) 修繕或替換之權利（第 43 條）；
 - (b) 降價之權利（第 44 條）。
- (3) 於提供之商品包含數位內容時，第 16 條適用之。
- (4) 當商家違反第 37 條要求應納入契約之法定條款時，消費者有權利向商家請求回復因該違反使消費者產生之任何成本，該金額最多不可超過給付數位內容之對價或第 33 條第 3 項所規定經消費者使用並給付對價之任何設備之額度。
- (5) 若商家違反依第 41 條第 1 項規定應納入契約之法定條款（提供內容之權利），消費者有權要求退費，第 45 條有關該權利和何時得行使之規定適用之。
- (6) 除了本得主張之救濟或額外之救濟外，本章不阻礙消費者尋求因違反本條第 2 項、第 4 項和第 5 項所規定之條款之救濟，但不致重複賠償相同損害。
- (7) 該些救濟包含任何以下消費者得主張之救濟：
 - (a) 主張賠償；

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

42 Consumer's rights to enforce terms about digital content

- (1) In this section and section 43 references to digital content conforming to a contract are references to the digital content conforming to the terms described in sections 34, 35 and 36.
- (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 43);
 - (b) the right to a price reduction (see section 44).
- (3) Section 16 also applies if an item including the digital content is supplied.
- (4) If the trader is in breach of a term that section 37 requires to be treated as included in the contract, the consumer has the right to recover from the trader the amount of any costs incurred by the consumer as a result of the breach, up to the amount of the price paid for the digital content or for any facility within section 33(3) used by the consumer.
- (5) If the trader is in breach of the term that section 41(1) (right to supply the content) requires to be treated as included in the contract, the consumer has the right to a refund (see section 45 for provisions about that right and when it is available).
- (6) This Chapter does not prevent the consumer seeking other remedies for a breach of a term to which any of subsections (2), (4) or (5) applies, instead of or in addition to a remedy referred to there (but not so as to recover twice for the same loss).
- (7) Those other remedies include any of the following that is open to the consumer in the circumstances—
 - (a) claiming damages;

- (b) 尋求因支付價款之對價失敗而請求回復價款；
 - (c) 尋求特定履行；
 - (d) 尋求特定履行之命令；
 - (e) 就商家因價款所提出主張違反之抗辯。
- (8) 於本條第 2 項和第 4 項適用時，消費者不得因條款之違反而隨意將契約視為拒絕履行。
- (9) 於本條第 2 項，數位內容於自提供時起六個月之任何時點內未能符合契約者應被視為於提供之時即不符合契約。
- (10) 於有以下情形時，本條第 9 項不適用：
- (a) 數位內容於提供時被認定不符合契約，或
 - (b) 該條之適用與數位內容之本質不相符或於數位內容未能符合契約時無從適用。

第 43 條 修繕或替換之權利

- (1) 本條於消費者有修繕或替換權時適用。
- (2) 當消費者要求商家修繕或替換數位內容時，商家應：
- (a) 在不對消費者造成重大不便且於合理的期間內完成，且
 - (b) 負擔任何因而產生之必要支出，包含任何所生之勞力、材料或郵資之成本。
- (3) 消費者不得於修繕或替換之救濟有以下情形時要求商家修繕或替換數位內容：
- (a) 當救濟為不可能，或
 - (b) 當救濟與其他救濟相比顯不合比例時。

- (b) seeking to recover money paid where the consideration for payment of the money has failed;
 - (c) seeking specific performance;
 - (d) seeking an order for specific implement;
 - (e) relying on the breach against a claim by the trader for the price.
- (8) It is not open to the consumer to treat the contract as at an end for breach of a term to which any of subsections (2), (4) or (5) applies.
- (9) 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 supplied must be taken not to have conformed to the contract when it was supplied.
- (10) Subsection (9) does not apply if—
- (a) it is established that the digital content did conform to the contract when it was supplied, or
 - (b) its application is incompatible with the nature of the digital content or with how it fails to conform to the contract.

43 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 and without 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) 若與其他救濟相比，當該救濟對商家之負擔為不合理並考量以下因素時，則該救濟為不合比例：
 - (a) 當數位內容符合契約約定時之價值，
 - (b) 不符契約約定之程度，以及
 - (c) 在不對消費者造成重大不便時，視其他救濟是否會被影響。
- (5) 於判定合理的期間和重大不便時應將以下因素納入考量：
 - (a) 數位內容之本質，以及
 - (b) 取得或獲得數位內容之目的。
- (6) 除非給予商家合理的修繕期間將對消費者造成重大不便外，在消費者未給予商家合理的修繕期間時，要求或同意修繕數位內容之消費者不得要求商家替換數位內容。
- (7) 除非給予商家合理的替換期間將對消費者造成重大不便外，在消費者未給予商家合理的替換期間時，要求或同意替換數位內容之消費者不得要求商家修繕數位內容。
- (8) 於本章中，修繕不符契約之數位內容係指使該數位內容符合契約。

第 44 條 降價之權利

- (1) 降價之權利係只要求商家對消費者依合理之額度降低價格，包含減少額度之外接收任何已支付金額之退費之權利。
- (2) 降價之額度於合理時得為價格之總額。

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- (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 (unless giving the trader that time would cause significant inconvenience to the consumer).
- (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 (unless giving the trader that time would cause significant inconvenience to the consumer).
- (8) In this Chapter, “repair” in relation to digital content that does not conform to a contract, means making it conform.

44 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 (including the right to receive a refund for anything already paid above the reduced amount).
- (2) The amount of the reduction may, where appropriate, be the full amount of the price.

- (3) 具降價權利之消費者僅於以下情形時使得行使：
- (a) 依第 43 條第 3 項第 a 款消費者不得要求修繕或替換數位內容時，或
 - (b) 消費者已向商家要求修繕或替換數位內容，但商家因未能於合理之時間內修繕或替換而違反第 43 條第 2 項第 a 款之要求，且對消費者造成重大不便。
- (4) 本條規定之退費必須為無不當遲延，且須自商家同意消費者得獲得退費之日起十四日內履行。
- (5) 除非消費者另有明示同意，若消費者依契約內容為數位內容給付價款，商家必須以與消費者相同之付款方式退費。
- (6) 商家不得就退費另對消費者額外徵收費用。

第 45 條 退費權

- (1) 退費權使消費者得自商家取得所有經消費者為數位內容給付之退費，本條第 2 項適用之。
- (2) 若使消費者有退費權之契約之違反僅影響部分依據契約提供之數位內容，則該退費權不包含不受該契約之違反影響之數位內容之價格。
- (3) 退費必須為無不當遲延，且須自商家同意消費者得獲得退費之日起十四日內履行。
- (4) 除非消費者另有明示同意，若消費者依契約內容為數位內容給付價款，商家必須以與消費者相同之付款方式退費。
- (5) 商家不得就退費另對消費者額外徵收費用。

- (3) A consumer who has that right may only exercise it in one of these situations—
 - (a) because of section 43(3)(a) 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 43(2)(a) to do so within a reasonable time and without significant inconvenience to the consumer.
- (4) A refund under this section must be given without undue delay, and in any event within 14 days beginning with the day on which the trader agrees that the consumer is entitled to a refund.
- (5) The trader must give the refund using the same means of payment as the consumer used to pay for the digital content, unless the consumer expressly agrees otherwise.
- (6) The trader must not impose any fee on the consumer in respect of the refund.

45 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 affects only some of the digital content supplied 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.
- (3) A refund must be given without undue delay, and in any event within 14 days beginning with the day on which the trader agrees that the consumer is entitled to a refund.
- (4) The trader must give the refund using the same means of payment as the consumer used to pay for the digital content, unless the consumer expressly agrees otherwise.
- (5) The trader must not impose any fee on the consumer in respect of the refund.

對裝置或對其他數位內容之損害賠償

第 46 條 對裝置或對其他數位內容之救濟

- (1) 於以下情形時，本條適用：
 - (a) 商家依契約內容提供數位內容與消費者，
 - (b) 該數位內容對裝置或對其他數位內容造成損害，
 - (c) 該受損害之裝置或數位內容屬於消費者之所有，且
 - (d) 若商家有盡合理之照護和技能則該類損害並不會發生。
- (2) 若消費者依據本法要求商家提供救濟，商家應就以下擇一行使：
 - (a) 根據本條第 3 項修繕損害，或
 - (b) 以合理之支付就該損害賠償消費者。
- (3) 依本項修繕損害者，商家應：
 - (a) 在不對消費者造成重大不便且於合理的期間內完成，且
 - (b) 負擔任何因而產生之必要支出，包含任何所生之勞力、材料或郵資之成本。
- (4) 於判定合理的期間和重大不便時應將以下因素納入考量：
 - (a) 受損害之裝置或數位內容之本質，以及
 - (b) 消費者使用該裝置或數位內容之目的。
- (5) 本條規定之賠償必須為無不當遲延，且須自商家同意消費者得獲得給付之日起十四日內履行。

Compensation for damage to device or to other digital content

46 Remedy for damage to device or to other digital content

- (1) This section applies if—
 - (a) a trader supplies digital content to a 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) If the consumer requires the trader to provide a remedy under this section, the trader must either—
 - (a) repair the damage in accordance with subsection (3), or
 - (b) compensate the consumer for the damage with an appropriate payment.
- (3) To repair the damage in accordance with this subsection, the trader must—
 - (a) repair the damage within a reasonable time and without significant inconvenience to the consumer, and
 - (b) bear any necessary costs incurred in repairing the damage (including in particular the cost of any labour, materials or postage).
- (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 device or digital content that is damaged, and
 - (b) the purpose for which it is used by the consumer.
- (5) A compensation payment under this section must be made without undue delay, and in any event within 14 days beginning with the day on which the trader agrees that the consumer is entitled to the payment.

- (6) 商家不得就賠償另對消費者額外徵收費用。
- (7) 依本條得主張救濟之消費者可於民事訴訟程序行使其權利。
- (8) 若為簡易契約之主張，1980 年時效法和 1989 年北愛爾蘭時效命令適用於本條之請求權。
- (9) 若該責任適用於 1973 年訴訟時效法之第 6 條，則該法亦適用於本條之救濟之主張。

商家可否於數位內容契約中排除法定權利和救濟？

第 47 條 不得排除或限制之責任

- (1) 提供數位內容之契約中若有排除或限制商家就以下條文規定之責任之條款者，對消費者不生效力：
 - (a) 第34條（合乎約定品質的數位內容），
 - (b) 第35條（為特殊目的之數位內容），
 - (c) 第36條（被描述之商品），
 - (d) 第37條（其他包含於契約內容之預約資訊），或
 - (e) 第41條（商家提供數位內容之權利）。
- (2) 若提供數位內容之契約有以下條款，對消費者亦不生效力：
 - (a) 排除或限制本條第 1 項所條列之條文就責任所規定之權利或救濟，
 - (b) 使該權利、救濟或執行限於限制或重責之情形，
 - (c) 允許商家能使主張權利或救濟者限於不利益，或
 - (d) 排除或限制證據法則或程序。

- (6) The trader must not impose any fee on the consumer in respect of the payment.
- (7) A consumer with a right to a remedy under this section may bring a claim in civil proceedings to enforce that right.
- (8) The Limitation Act 1980 and the Limitation (Northern Ireland) Order 1989 (SI 1989/1339 (NI 11)) apply to a claim under this section as if it were an action founded on simple contract.
- (9) The Prescription and Limitation (Scotland) Act 1973 applies to a right to a remedy under this section as if it were an obligation to which section 6 of that Act applies.

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

47 Liability that cannot be excluded or restricted

- (1) A term of a contract to supply digital content is not binding on the consumer to the extent that it would exclude or restrict the trader's liability arising under any of these provisions—
 - (a) section 34 (digital content to be of satisfactory quality),
 - (b) section 35 (digital content to be fit for particular purpose),
 - (c) section 36 (digital content to be as described),
 - (d) section 37 (other pre-contract information included in contract), or
 - (e) section 41 (trader's right to supply digital content).
- (2) That also means that a term of a contract to supply digital content is not binding on the consumer to the extent that it would—
 - (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) 本條第 1 項所指之排除或限制責任亦指阻礙產生之責任或限制其範圍。
- (4) 對現在或未來的爭議訴諸於仲裁之書面協議並非本法所指之排除或限制任何責任。
- (5) 有關本法之執行，附件三之條文適用之。
- (6) 本條中就第 46 條規定限制商家於契約之能力以排除或限制其責任，第 62 條之規定適用之。

第四章 服務

何種服務為契約所包含？

第 48 條 本章所稱服務契約

- (1) 本章適用於企業經營者提供服務與消費者之契約。
- (2) 本章不適用於勞務或學徒訓練契約。
- (3) 於蘇格蘭地區，本章不適用於無償契約。
- (4) 本章所適用之契約於第一部份係指提供服務之契約。
- (5) 各部會部長可透過法制方法制訂命令，規定本章條文不適用於該命令所特定之契約。
- (6) 本條第 5 項之範圍，包含可制訂本章規定於特定情況不適用之命令。
- (7) 本條第 5 項所稱命令包含過渡或保留條款。

- (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.
- (6) For provision limiting the ability of a trader under a contract within section 46 to exclude or restrict the trader's liability under that section, see section 62.

CHAPTER 4 SERVICES

What services contracts are covered?

48 Contracts covered by this Chapter

- (1) This Chapter applies to a contract for a trader to supply a service to a consumer.
- (2) That does not include a contract of employment or apprenticeship.
- (3) In relation to Scotland, this Chapter does not apply to a gratuitous contract.
- (4) A contract to which this Chapter applies is referred to in this Part as a “contract to supply a service”.
- (5) 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.
- (6) The power in subsection (5) includes power to provide that a provision of this Chapter does not apply in relation to a service of a description specified in the order in the circumstances so specified.
- (7) An order under subsection (5) may contain transitional or transitory provision or savings.

（8）本條第 5 項除有法規授權制訂，應獲得下議院同意。

服務契約有何法定權利？

第 49 條 履行服務應盡相當之注意和技能

- （1）企業應盡相當之注意和技能履行服務契約，此為服務契約應記載事項。
- （2）第 54 條有關企業經營者違反契約條款時消費者之權利，應視為服務契約必要記載事項。

第 50 條 企業經營者或服務應提供資訊

- （1）以下資訊內容企業經營者藉由或以本人，口頭或書面告知消費者關於企業經營者或契約，應視為服務契約必要記載事項—
 - （a）消費者契約成立時，應考量事項，或
 - （b）消費者契約成立後，有關該服務決定應考量事項。
- （2）本條第 1 項之第(a)款或第(b)款所載消費者應考量事項包含—
 - （a）企業經營者在相同情況下曾口頭或書面約定事項；
 - （b）企業經營者和消費者（於契約成立前後）明示同意變更事項。
- （3）本條第 1 款事項與 2013 年歐盟消費者契約規則第 9 條、第 10 條、第 13 條規定（有關資訊、解除和額外收費）應一致，應為服務契約應記載事項。

- (8) No order may be made under subsection (5) 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 services contract?

49 Service to be performed with reasonable care and skill

- (1) Every contract to supply 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 54 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.

50 Information about the trader or service to be binding

- (1) Every contract to supply a service is to be treated as including as a term of the contract anything that is said or written to the consumer, by or on behalf of the trader, about the trader or the service, if—
- (a) it is taken into account by the consumer when deciding to enter into the contract, or
 - (b) it is taken into account by the consumer when making any decision about the service after entering into the contract.
- (2) Anything taken into account by the consumer as mentioned in subsection (1)(a) or (b) is subject to—
- (a) anything that qualified it and was said or written to the consumer by the trader on the same occasion, and
 - (b) any change to it that has been expressly agreed between the consumer and the trader (before entering into the contract or later).
- (3) Without prejudice to subsection (1), any information provided by the trader in accordance with regulation 9, 10 or 13 of the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 (SI 2013/3134) is to be treated as included as a term of the contract.

- (4) 本條第 3 款事項於契約成立前或成立後之變動，除經企業經營者和消費者明示同意，尚不生效。
- (5) 第 54 條有關企業經營者違反契約條款時消費者之權利，應視為服務契約必要記載事項。

第 51 條 作為給付服務之合理費用

- (1) 本條適用於提供服務之契約，如一
 - (a) 消費者尚未為服務給付款項或其他對價
 - (b) 契約未明文訂價或其他對價且未明文如何訂價
 - (c) 依第 50 條處理之情況，亦未包含契約之訂價或其他對價。
- (2) 於上述情形，應視為消費者僅負擔合理服務費用義務。
- (3) 合理費用屬於事實認定。

第 52 條 服務合理履約期間

- (1) 本條適用於提供服務之契約，如一
 - (a) 契約並未明示服務應於何時履行或未說明如何約定履行時間，且
 - (b) 依第 50 條處理之情況，亦未包含契約約定履約之期間。
- (2) 在契約未明訂定履約期間情況下於上述情形，應視為企業經營者於合理期間內具履約義務。
- (3) 合理履行期間屬於事實認定。
- (4) 第 54 條有關企業經營者違反契約條款時消費者之權利，應視為服務契約必要記載事項。

- (4) A change to any of the information mentioned in subsection (3), made before entering into the contract or later, is not effective unless expressly agreed between the consumer and the trader.
- (5) See section 54 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.

51 Reasonable price to be paid for a service

- (1) This section applies to a contract to supply 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 50 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.

52 Service to be performed within a reasonable time

- (1) This section applies to a contract to supply 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 50 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 54 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.

第 53 條 契約條款與其他相關法律之關係

- (1) 本章規定不影響其他法律關係下所賦予企業經營者應履行之更高義務。
- (2) 本章受法規所拘束，此法規基於服務而生之定義或權利、義務、責任等限制而拘束。

若服務契約之法定權利未實現有何救濟？

第 54 條 消費者行使服務契約條款之權利

- (1) 除有不一致，消費者於第 55 條和第 56 條之權利，不影響其契約權利。
- (2) 在本條和第 55 條，符合契約之服務係指
 - (a) 根據第 49 條之規定所履行之服務；
 - (b) 根據第 50 條之規定應被視為包含於契約中，且與履行服務相關並且符合者。
- (3) 如服務不符合契約約定，消費者（以及相關契約條款）得請求—
 - (a) 再次履約之權利（第 55 條）；
 - (b) 減少價金之權利（第 56 條）。
- (4) 如企業經營者違反服務契約基於第 50 條與服務不相關之規定者，消費者得請求減少價金（第 56 條）。
- (5) 若企業經營者違反服務契約基於第 52 條之規定（服務合理履約期間），消費者得請求減少價金（第 56 條）。

53 Relation to other law on contract terms

- (1) Nothing in this Chapter affects any enactment or rule of law that imposes a stricter duty on the trader.
- (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?

54 Consumer's rights to enforce terms about services

- (1) The consumer's rights under this section and sections 55 and 56 do not affect any rights that the contract provides for, if those are not inconsistent.
- (2) In this section and section 55 a reference to a service conforming to a contract is a reference to—
 - (a) the service being performed in accordance with section 49, or
 - (b) the service conforming to a term that section 50 requires to be treated as included in the contract and that relates to the performance of 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 55);
 - (b) the right to a price reduction (see section 56).
- (4) If the trader is in breach of a term that section 50 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 56 for provisions about that right and when it is available).
- (5) If the trader is in breach of what the contract requires under section 52 (performance within a reasonable time), the consumer has the right to a price reduction (see section 56 for provisions about that right and when it is available).

(6) 本條至第 56 條規定不影響消費者因企業經營者違反本條第 3 項和第 5 項而尋求其他救濟方式（然同一損害不重複賠償）。

(7) 其他救濟方式包含下列可供消費者之情況－

- (a) 請求損害賠償；
- (b) 請求因債務不履行所生之補償金；
- (c) 請求特定履行；
- (d) 請求執行特定要求；
- (e) 請求企業經營者依據契約抗辯之違反；
- (f) 請求將契約視為拒絕履行之權利。

第 55 條 請求再次履約之權利

(1) 請求再次履約之權利，係指請求企業經營者再次履行服務，致完成與服務契約約定之相同服務之必要程度。

(2) 若消費者請求再次履約，企業經營者應配合下列事項－

- (a) 於合理期間內提供服務且不造成消費者重大不便；且
- (b) 負擔必要費用（特別包含勞力、材料或郵資之成本）。

(3) 若完成與服務契約約定之相同服務已無可能，消費者不得請求再次履約。

(4) 合理期間或重大不便之判斷考量下列情況：

- (a) 服務性質；以及
- (b) 履行服務之目的。

- (6) This section and sections 55 and 56 do not prevent the consumer seeking other remedies for a breach of a term to which any of subsections (3) to (5) applies, instead of or in addition to a remedy referred to there (but not so as to recover twice for the same loss).
- (7) Those other remedies include any of the following that is open to the consumer in the circumstances—
 - (a) claiming damages;
 - (b) seeking to recover money paid where the consideration for payment of the money has failed;
 - (c) seeking specific performance;
 - (d) seeking an order for specific implement;
 - (e) relying on the breach against a claim by the trader under the contract;
 - (f) exercising a right to treat the contract as at an end.

55 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 and without 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.

第 56 條 請求減少價金之權利

- (1) 請求減少價金之權利，係指消費者請求企業經營者以合理價額減少其價金（包含消費者在減少價額以外之已付費用之退款）。
- (2) 減少價額於合理情況下得為全部價金金額。
- (3) 消費者有權請求再行履約者，僅能在下列情況下請求減少價金——
 - (a) 基於第 55 條第 3 項情況，消費者無法請求再行履約；或
 - (b) 消費者已請求再行履約，但企業經營者違反第 55 條第 2 項第 a 款應於合理期間內提供服務且不造成消費者重大不便之規定。
- (4) 本條之退款不得有不當遲延，且應於企業經營者同意當日起算 14 天內完成。
- (5) 除消費者明示同意外，企業經營者應以與消費者給付之相同方式退款與消費者。
- (6) 企業經營者不得收取退款手續費。

企業經營者可否以契約約定排除服務契約的 法定權利和救濟？

第 57 條 不能排除或限制之責任

- (1) 服務契約條款排除企業經營者基於第 49 條之責任（服務應盡相當之注意和技能提供）者，對消費者不生效力。

56 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 (including the right to receive a refund for anything already paid above the reduced amount).
- (2) The amount of the reduction may, where appropriate, be the full amount of the price.
- (3) 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) because of section 55(3) the consumer cannot require repeat performance; or
 - (b) the consumer has required repeat performance, but the trader is in breach of the requirement of section 55(2)(a) to do it within a reasonable time and without significant inconvenience to the consumer.
- (4) A refund under this section must be given without undue delay, and in any event within 14 days beginning with the day on which the trader agrees that the consumer is entitled to a refund.
- (5) The trader must give the refund using the same means of payment as the consumer used to pay for the service, unless the consumer expressly agrees otherwise.
- (6) The trader must not impose any fee on the consumer in respect of the refund.

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

57 Liability that cannot be excluded or restricted

- (1) A term of a contract to supply services is not binding on the consumer to the extent that it would exclude the trader's liability arising under section 49 (service to be performed with reasonable care and skill).

- (2) 基於第 50 條第 2 項規定，服務契約條款排除企業經營者基於第 50 條之責任（企業經營者或服務應提供資訊）者，對消費者不生效力。
- (3) 服務契約條款限制企業經營者基於第 49 條、第 50 條、第 51 條、第 52 條（合理價格和合理期間）之責任者，且若有阻礙消費者於合理情況下獲得退費或對價之補償者，對消費者不生效力（若不會阻礙消費者，第二部分有關不公平之條款準用之）。
- (4) 服務契約條款有以下情況者，對消費者亦不生效力—
 - (a) 排除或限制基於第 49 條至第 52 條有關責任之權利或救濟，
 - (b) 使權利或救濟或其履行附有限制或增加責任的條件，
 - (c) 允許企業經營者對消費者行使權利或救濟處於不利益地位，
 - (d) 排除或限制證據法則或程序法則。
- (5) 本條第 1 項至第 3 項有關責任之排除或限制亦包含避免產生或限制義務或責任。
- (6) 對現在或未來的爭議訴諸於仲裁之書面協議並非本條所指之排除或限制任何責任。
- (7) 有關本條之執行準用附件三規定。

- (2) Subject to section 50(2), a term of a contract to supply services is not binding on the consumer to the extent that it would exclude the trader's liability arising under section 50 (information about trader or service to be binding).
- (3) A term of a contract to supply services is not binding on the consumer to the extent that it would restrict the trader's liability arising under any of sections 49 and 50 and, where they apply, sections 51 and 52 (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. (If it would not prevent the consumer from doing so, Part 2 (unfair terms) may apply.)
- (4) That also means that a term of a contract to supply services is not binding on the consumer to the extent that it would —
 - (a) exclude or restrict a right or remedy in respect of a liability under any of sections 49 to 52,
 - (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 references in subsections (1) to (3) to excluding or restricting a liability also include 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.

第五章 通則和補充條款

第 58 條 法院權力

- (1) 任何符合第 19 條第 3 項或第 4 項、第 42 條第 2 項和第 54 條第 3 項之救濟程序，除法院擁有之其他權利外，得依本條規定行使其權力。
- (2) 在消費者適用上，法院得命令企業經營者特別履行，或在蘇格蘭地區特別執行第 23 條、第 43 條或第 55 條所課與企業經營者之任何義務。
- (3) 下列情況下有本條第 4 項之適用—
 - (a) 消費者主張執行相關救濟規定的權利，但
 - (b) 法院認定執行其他權利具有效力之規定為合適。
- (4) 若消費者已執行該權利，法院得繼續程序。
- (5) 若消費者已主張最終拒絕權，法院得考量扣除商品送達後消費者已使用部分，命令減少對消費者之償還。
- (6) 扣除已使用部分限於第 24 條第 9 款和第 10 款之情況。
- (7) 法院得依本條命令其認為公平之無條件或附條件之損害賠償金、給付價金和其他。
- (8) 相關救濟規定係指下列條文—
 - (a) 適用第 2 章第 23 條和第 24 條；

CHAPTER 5 GENERAL AND SUPPLEMENTARY PROVISIONS

58 Powers of the court

- (1) In any proceedings in which a remedy is sought by virtue of section 19(3) or (4), 42(2) or 54(3), 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, 43 or 55.
- (3) Subsection (4) applies if—
 - (a) the consumer claims to exercise a right under the relevant remedies provisions, but
 - (b) the court decides that those provisions have the effect that exercise of another right 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(9) and (10).
- (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.
- (8) The “relevant remedies provisions” are—
 - (a) where Chapter 2 applies, sections 23 and 24;

(b) 適用第 3 章第 43 條和第 44 條；

(c) 適用第 4 章第 55 條和第 56 條；

第 59 條 名詞定義

(1) 下列名詞定義適用於本部分（第一部分）（以及第 2 條重要名詞定義）

「附條件之買賣契約」準用第 5 條第 3 項；

「消費者權利指令」係指歐盟 2011 年消費者權利指令以及 1999 年歐盟指令，其取代 1996 年指令和 2008 年指令；

「信用經紀人」係指從事商業信用經紀之自然人；

「信用經紀」係指—

(a) 介紹欲獲得信用以實現商業活動之個人而涉及信用服務規定之行為；

(b) 介紹欲獲得限期占有商品以實現商業活動之個人而涉及限期占有商品契約之物品提供之行為；或

(c) 介紹欲獲得信用或限期占有商品以實現商業活動之個人予其他從事信用貸款經紀之自然人之行為；

「寄送」；係指免費從一自然人移轉占有於另一自然人；

「法規」包含；

(a) 1978 年解釋法含義中附屬法規；

- (b) where Chapter 3 applies, sections 43 and 44;
- (c) where Chapter 4 applies, sections 55 and 56.

59 Interpretation

(1) These definitions apply in this Part (as well as the key definitions in section 2)—

“conditional sales contract” has the meaning given in section 5(3);

“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;

“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) 威爾斯國民議會措施或法律內容或依照其制訂之法律文件，
- (c) 蘇格蘭國會法內容或依照其制訂之法律文件，以及
- (d) 北愛爾蘭法律內容或依照其制訂之法律文件；

「生產者」涉及商品或數位內容時，係指—

- (a) 製造商，
- (b) 歐洲共同體進口商，或
- (c) 聲稱為生產者之自然人，將其姓名、商標或其他特殊簽章於商品或使用該簽章於數位內容上。

(2) 本部分有關視契約為拒絕履行準用第 19 條第 13 項規定。

第 60 條 其他修法

附件一（本部分附隨之修正條文）已生效施行。

第二部分 不公平條款 本部分包含哪些契約和通知？

第 61 條 本部分所涉契約和通知

- (1) 本部分適用企業經營者和消費者間契約。
- (2) 本部分不適用於僱傭或實習契約。
- (3) 本部分所指契約為「消費者契約」。
- (4) 本部分通知於下列情況適用—
 - (a) 有關企業經營者和消費者間之權利或義務，或
 - (b) 聲稱排除或限制企業經營者對消費者責任，

- (b) an enactment contained in, or in an instrument made under, a Measure or Act of the National Assembly for Wales,
- (c) an enactment contained in, or in an instrument made under, an Act of the Scottish Parliament, and
- (d) 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.
- (2) References in this Part to treating a contract as at an end are to be read in accordance with section 19(13).

60 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?

61 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) 不適用於僱用人和受僱人間之權利、義務或責任之通知。
- (6) 本條第四項之通知不論對消費者明示與否，只要可合理推定消費者可看見或聽見。
- (7) 本部分所指通知為對消費者所為之「消費者通知」。
- (8) 本條通知包含公告，不以書面為必要，其他任何形式之通訊或有其他聲稱之通訊均屬之。

契約條款和通知有哪些有關公平的通則規定？

第 62 條 公平契約條款和通知之要件

- (1) 消費者契約中的不公平條款對消費者不生效力。
- (2) 不公平消費者通知對消費者不生效力。
- (3) 消費者仍得選擇信賴契約條款或通知。
- (4) 不公平條款係指違反善意原則要件，導致當事人契約權利和義務顯失平衡而有害消費者。
- (5) 公平條款取決於一
 - (a) 考量契約標的之性質，以及
 - (b) 考量契約條款訂定當時所有情況或契約訂定時所依據之其他條款或其他相關契約。
- (6) 不公平通知係指違反善意原則要件，導致當事人契約權利和義務顯失平衡而有害消費者。

- (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 seen or heard 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.

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

62 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 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—
 - (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 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) 公平通知取決於—

- (a) 考量通知標的之性質，以及
- (b) 考量權利或義務產生當時所有情況和其他其所依據之相關條款。

(8) 本條不影響下列條文之適用—

- (a) 第 31 條（責任排除：商品契約），以及
- (b) 第 47 條（責任排除：數位內容契約），以及
- (c) 第 57 條（責任排除：服務契約），或
- (d) 第 65 條（過失責任排除）。

第 63 條 得或應被視為不公平之契約條款

- (1) 附件二中第一部分包含指示性的消費者契約條款列示名單，基於本部分意旨，得視為不公平條款。
- (2) 附件二中第一部分受限於第二部分；除有第 64 條或第 73 條之情事，但列於該附件第二部分之條款可依據第 62 條評估其公平性。
- (3) 各部會部長得依法定法律文件授權命令，增訂附件二，或修正或刪除附件二第一或第二部分條目。
- (4) 依第 3 項之命令包含過渡或臨時條款或保留條款。
- (5) 除法定法律文件草案由下議院表決同意，不得依第 3 項發布命令。
- (6) 若消費者契約條款課予消費者有關遠距供給者或中介者依據遠距市場指令相關義務申訴之舉證責任，應視為不公平契約條款。

- (7) Whether a notice is fair is to be determined—
- (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 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 (exclusion of negligence liability).

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）本條第 6 項名詞定義—

「遠距市場指令」係指 2002 年有關消費者金融服務遠距市場指令，其修正 90/619/EEC 指令、Directives 97/7/EC 指令和 98/27/EC 指令

「遠距供給者」係指—

（a）2004 年金融服務（遠距市場）規則之遠距供給者，或

（b）自發性金融服務提供者定義與前述規則第 15 條定義相同。

「法規」包含 1978 年解釋法含義中附屬法規；

「仲介者」定義與 2004 年金融服務（遠距市場）規則相同。

「規則」係指依 2000 金融服務和市場法中之金融行為主管機關、金融監理主管機關或該法第 326 條第 2 項所指定之專門機構制訂之規則。

第 64 條 公平性評估之例外

（1）若消費者契約條款有以下情形將不得依第 62 條評估其公平性：—

（a）該條款特定契約的主要標的，或

（b）該評估涉及比較商品、數位內容或服務可支付價金之適當性。

(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 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.

64 Exclusion from assessment of fairness

(1) A term of a consumer contract may not be assessed for fairness under section 62 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 supplied under it.

- (2) 僅於該條款透明且顯著時，第 1 項始排除第 62 條之評估。
- (3) 契約條款以明白的、可理解和清晰的（適用於書面條款）文字表達，屬本部分所稱之透明。
- (4) 契約條款對一般消費者而言可吸引其注意，屬本部分所稱顯著條款。
- (5) 第 4 項所稱一般消費者係指可合理地知悉、能留心和細心的消費者。
- (6) 本條規定不適用附件 2 中第一部分所條列之契約條款。

第 65 條 過失責任的限制或排除之禁止

- (1) 企業經營者不得以消費者契約條款或消費者通知排除或限制因其過失而致消費者死亡或個人傷害之責任。
- (2) 消費者契約條款或消費者通知欲排除或限制企業經營者過失責任者，不得以消費者同意或知悉該契約條款或通知而視為自願承擔風險。
- (3) 本條所稱個人傷害包含疾病、任何身體或心理損害之情況。
- (4) 本條所稱過失係指違反—
 - (a) 契約條款明示或暗示於履約時應盡相當之注意義務或合理技能義務，
 - (b) 普通法應盡相當之注意或合理技能義務，
 - (c) 依 1957 年占有人責任法或 1957 年北愛爾蘭占有人責任法賦予之相當注意義務或，

- (2) Subsection (1) excludes a term from an assessment under section 62 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) This section does not apply to a term of a contract listed in Part 1 of Schedule 2.

65 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 duty of care imposed by the Occupiers' Liability Act 1957 or the Occupiers' Liability Act (Northern Ireland) 1957, or

- (d) 依 1960 年蘇格蘭占有人責任法第 2 條第 1 項賦予相當之注意義務。
- (5) 下列情況與第 4 項之適用無關—
 - (a) 無論該責任或義務之違反係無意或有意的，或
 - (b) 無論該責任係直接產生或係連帶產生。
- (6) 本條受第 66 條規範（限制本條適用範圍）。

第 66 條 第 65 條之範圍

- (1) 第 65 條於下列情況不適用—
 - (a) 涉及保險契約，包含人壽年金，或
 - (b) 涉及土地利益創造或移轉者。
- (2) 第 65 條不影響自然人考量收取和解金之拋棄或賠款之效力，或
- (3) 第 65 條—
 - (a) 不適用於 2011 年蘇格蘭損害賠償法第 4 條第 2 項第 a 款有關排除或限制損害賠償金責任（損害賠償金給付相對人之例外），或
 - (b) 不影響 2011 年蘇格蘭損害賠償法第 5 條（拋棄損害賠償金責任：損害賠償間皮瘤之例外規定）之行使。
- (4) 下列情況下，第 65 條不適用原場地占有人對具娛樂目地而使用場地之自然人所應負之責任—
 - (a) 因場所危險狀況致自然人因而遭受損失或損害，和

- (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 66 (which makes provision about the scope of this section).

66 Scope of section 65

- (1) Section 65 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 65 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 65 does not—
 - (a) apply to liability which is excluded or discharged as mentioned in section 4(2)(a) (exception to liability to pay damages to relatives) of the Damages (Scotland) Act 2011, or
 - (b) affect the operation of section 5 (discharge of liability to pay damages: exception for mesothelioma) of that Act.
- (4) Section 65 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) 允許自然人以場地占有人之契約、商業、技術或專業目的外之使用。

第 67 條 不公平條款對契約其他部分之效力

消費者契約條款依本部分規定對消費者不生效力，其他可履行的契約條款仍屬有效。

第 68 條 透明要件

- (1) 企業經營者應確保消費者契約書面條款或消費者書面通知係透明，
- (2) 消費者通知以明白的、可理解文字和清晰的方式表達，即符合前項所稱透明要件。

第 69 條 契約條款不同解釋

- (1) 消費者契約條款或消費者通知如有疑義時，應為最有利消費者之解釋。
- (2) 前項不適用於附件三第 3 段有關假處分和禁制令程序適用和條款解釋之情況。

如何執行通常條款

第 70 條 不公平契約條款之執行

- (1) 附件三授權競爭法和市場主管機關以及其他本部分相關執行法單位執行。
- (2) 有關前項執法單位於附件三之調查權準用附件五規定。

補充條款

第 71 條 法院斟酌條款公平性之義務

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

67 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.

68 Requirement for transparency

- (1) A trader must ensure that a written term of a consumer contract, or a consumer notice in writing, is transparent.
- (2) A consumer notice is transparent for the purposes of subsection (1) if it is expressed in plain and intelligible language and it is legible.

69 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 or interdict under paragraph 3 of Schedule 3.

How are the general rules enforced?

70 Enforcement of the law on unfair contract terms

- (1) Schedule 3 confers functions on the Competition and Markets Authority and other regulators in relation to the enforcement of this Part.
- (2) For provision about the investigatory powers that are available to those regulators for the purposes of that Schedule, see Schedule 5.

Supplementary provisions

71 Duty of court to consider fairness of term

- (1) 本條第 2 項有關消費者契約條款之規定適用於法院程序開始前。
- (2) 法院應考量消費者契約條款之公平性，即使當事人均未提出或意圖提出。
- (3) 除法院考量法律和事實重要事項足認應評估條款公平性外，本條第 2 項不適用之。

第 72 條 副約規定之適用

- (1) 當副約減少主約一方的權利或救濟，或增加主約的責任負擔時，本條適用之。
- (2) 主約條款適用本部分相關規定。
- (3) 下列事項於本條適用無涉—
 - (a) 主約與副約當事人是否同一，或
 - (b) 副約是否為消費者契約。
- (4) 本條不適用於副約為因主約而生之和解。

第 73 條 強制條款和通知規定之不適用

- (1) 下列情況，本部分規定不適用消費者契約條款和消費者通知—
 - (a) 強制規定或監管法規，或
 - (b) 英國或歐盟為締約國之國際公約原則或法規。
- (2) 在第 1 項中所稱強制規定或監管法規包含沒有其他當事人協議之基礎上一法律規定所適用之法律規則。

- (1) Subsection (2) applies to proceedings before a court which relate to a term of a consumer contract.
- (2) The court must consider whether the term 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.

72 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.

73 Disapplication of rules to mandatory terms and notices

- (1) This Part does not apply to a term of a contract, or to a notice, to the extent that it 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.

第 74 條 適用非歐洲共同體會員國

- (1) 下列契約適用非歐盟會員國成員—
- (a) 當事人選擇歐洲共同體以外領土或國家之法律作為消費者契約所適用之準據法，但
 - (b) 消費者契約和英國具緊密關連性，
- 因此本部分規定仍適用於該消費者契約。
- (2) 對於未經選擇準據法或準據法為歐洲共同體之法律者，準用 2008 年契約義務法律適用規則。

第 75 條 其他修法

附件四（本部分附隨之修正條文）已生效施行。

第 76 條 第二部分名詞定義

- (1) 本部分—
- 「消費者契約」指第 61 條第 3 項定義。
 - 「消費者通知」指第 61 條第 7 項定義。
 - 「透明」限於解釋範圍第 64 條第 3 項和第 68 條第 2 項定義。
- (2) 下列名詞定義與第一部分相同—
- 「企業經營者」（準用第 2 條第 2 項）；
 - 「消費者」（準用第 2 條第 3 項）；
 - 「商品」（準用第 2 條第 8 項）；
 - 「數位內容」（準用第 2 條第 9 項）；
- (3) 第 2 條第 4 項（企業經營者主張個人非消費者，應證明之）於本部分之適用準用其於第一部分之適用。

74 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 consumer contract, but

(b) the consumer contract has a close connection with the United Kingdom,

this Part applies despite that choice.

(2) For cases where the law applicable has not been chosen or the law of an EEA State is chosen, see Regulation (EC) No. 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations.

75 Changes to other legislation

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

76 Interpretation of Part 2

(1) In this Part—

“consumer contract” has the meaning given by section 61(3);

“consumer notice” has the meaning given by section 61(7);

“transparent” is to be construed in accordance with sections 64(3) and 68(2).

(2) The following have the same meanings in this Part as they have in Part 1—

“trader” (see section 2(2));

“consumer” (see section 2(3));

“goods” (see section 2(8));

“digital content” (see section 2(9)).

(3) Section 2(4) (trader who claims an individual is not a consumer must prove it) applies in relation to this Part as it applies in relation to Part 1.

第三部分 其他和通則

第一章 執行

第 77 條 調查權等

附件五（有關調查權等）已生效。

附件六（調查權：附隨之修正）已生效。

第 78 條 關於未包裝麵包之度量衡法規修正

(1) 在「2006 年包裝商品度量衡法」附件五（麵包）與本條第 2 項和第 3 項修正相同。

(2) 第九條內容—

「第 9 條第 1 項第 b 款第 ii 目」（記錄義務）不適用於未包裝或開放包裝之麵包。」

(3) 於第 13 條後新增第 14 條

「過渡條款」

14 (1) 第 9 條第 1 項第 b 款第 ii 目」（記錄義務）不適用持有強制豁免通知之包裝者。

(2) 豁免通知指當 2015 年消費者權利法第 78 條生效前，基於第 9 條核發之通知。」

(4) 本法對於「2006 年包裝商品度量衡法」之修正，無法修正或取代「1985 年度量衡法」相關規定，包含本條第 2 項和第 3 項所新增之內容。

PART 3 MISCELLANEOUS AND GENERAL

CHAPTER 1 ENFORCEMENT ETC.

77 Investigatory powers etc

- (1) Schedule 5 (investigatory powers etc) has effect.
- (2) Schedule 6 (investigatory powers: consequential amendments) has effect.

78 Amendment of weights and measures legislation regarding unwrapped bread

- (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 78 of the Consumer Rights Act 2015 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).

- (5) 「2011 年（北愛爾蘭）包裝商品度量衡法」附件五（適用於麵包）根據本條第 6 項和第 7 項修正。
- (6) 第九條內容—
「9 第 9 條第 1 項第 b 款第 ii 目」（記錄義務）不適用於未包裝或開放包裝之麵包。」
- (7) 於第 13 條後新增第 14 條
「過渡條款」
14 (1) 第 9 條第 1 項第 b 款第 ii 目」（記錄義務）不適用持有強制豁免通知之包裝者。

(2) 豁免通知指當 2015 年消費者權利法第 78 條生效前，基於第 9 條核發之通知。」
- (8) 本法對於「2011 年（北愛爾蘭）包裝商品度量衡法」之修正，無法修正或取代「1981（北愛爾蘭）年度量衡法」相關規定，包含本條第 6 項和第 7 項所新增之內容。

第 79 條 2002 年企業法：加強消費者機制和其他執行方法

- (1) 附件七包含 2002 年企業法第八部分修正（有關消費者法規執行）。
- (2) 相關修正只適用在本條開始生效後發生或可能發生之行為。

- (5) In the Weights and Measures (Packaged Goods) Regulations (Northern Ireland) 2011 (SR 2011/331), Schedule 5 (application to bread) is amended in accordance with subsections (6) and (7).
- (6) 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 packets.”
- (7) 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 78 of the Consumer Rights Act 2015 came into force.”
- (8) The use of this Act to make amendments to the Weights and Measures (Packaged Goods) Regulations (Northern Ireland) 2011 has no effect on the availability of any power in the Weights and Measures (Northern Ireland) Order 1981 (SI 1981/231 (NI 10)) to amend or revoke those Regulations, including the provision substituted by subsection (6) and that inserted by subsection (7).

79 Enterprise Act 2002: enhanced consumer measures and other enforcement

- (1) Schedule 7 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.

第 80 條 抵觸保險費服務相關規定

- (1) 2003 年通訊法第 120 條第 3 項（第 120 條下之限制應與第 122 條已授權規範之命令和規定相一致）於第（a）條之前新增—

「(za) 已授權規範之條文」

- (2) 2003 年通訊法第 121 條第 5 項（已授權之法律，其與執行相關者）於新增第（a）條之後—

「(aa) 條文適用於有一個以上抵觸法律或指令，自然人能

(i) 對全部抵觸之自然人課以單一處罰（不超過最高處罰）；或

(ii) 對全部抵觸之自然人課以分別處罰（每筆處罰不超過最高處罰）；

並考量針對該些抵觸課以單一處罰或分別處罰是否為合理或成比例。」

- (3) 2003 年通訊法第 123 條（在第 120 條限制下由 OFCOM 執行）依以下修正。

- (4) 在第 1 項下新增—

「(1A) 第 (1B) 項適用於有關超過一個以上之抵觸第 94 條之通知

(a) 基於第 121 條授權之規範，

(b) 與該法方向相同，或

(c) 基於第 122 條發布之行政命令。

80 Contravention of code regulating premium rate services

- (1) In section 120(3) of the Communications Act 2003 (conditions under section 120 must require compliance with directions given in accordance with an approved code or with an order under section 122) before paragraph (a) insert—

“(za) the provisions of an approved code;”.

- (2) In section 121(5) of that Act (provision about enforcement that may be made by approved code) after paragraph (a) insert—

“(aa) provision that applies where there is or has been more than one contravention of the code or directions given in accordance with it by a person and which enables—

- (i) a single penalty (which does not exceed that maximum penalty) to be imposed on the person in respect of all of those contraventions, or
- (ii) separate penalties (each of which does not exceed that maximum penalty) to be imposed on the person in respect of each of those contraventions,

according to whether the person imposing the penalty determines that a single penalty or separate penalties are appropriate and proportionate to those contraventions;”.

- (3) Section 123 of that Act (enforcement by OFCOM of conditions under section 120) is amended as follows.

- (4) After subsection (1) insert—

“(1A) Subsection (1B) applies where a notification under section 94 as applied by this section relates to more than one contravention of—

- (a) a code approved under section 121,
- (b) directions given in accordance with such a code, or
- (c) an order under section 122.

（1B）本條適用第 96 條第 3 項，由 OFCOM 執行以下一

- （a）對全部抵觸之自然人課以單一處罰；或
- （b）對全部抵觸之自然人課以分別處罰

根據 OFCOM 決定單一處罰或分開處罰是適當且合乎比例與否。

（5）第 2 項（最高懲罰金數量）對於處罰指每筆處罰。

第二章 競爭

第 81 條 競爭法中之私法行為

附件八（有關競爭法中之私法行為）已生效。

第 82 條 競爭上訴法院法官之指派

（1）在 2002 年企業法第 12 條第 2 項（競爭上訴法院之組成）於第

（a）條後新增一

「（aa）由英格蘭和威爾斯高等法院首席法官提名法官；

（ab）由高等民事法院首席法官提名法官；

（ac）由北愛爾蘭高等法院首席法官提名法官；」

（2）2002 年企業法第 14 條（競爭上訴法院為特殊程序和其判決之組成）一

(1B) Section 96(3) as applied by this section enables OFCOM to impose—

- (a) a single penalty in respect of all of those contraventions, or
 - (b) separate penalties in respect of each of those contraventions,
- according to whether OFCOM determine that a single penalty or separate penalties are appropriate and proportionate to those contraventions.”

(5) In subsection (2) (maximum amount of penalty) for “the penalty” substitute “each penalty”.

CHAPTER 2 COMPETITION

81 Private actions in competition law

Schedule 8 (private actions in competition law) has effect.

82 Appointment of judges to the Competition Appeal Tribunal

(1) In section 12(2) of the Enterprise Act 2002 (constitution of the Competition Appeal Tribunal) after paragraph (a) insert—

- “(aa) such judges as are nominated from time to time by the Lord Chief Justice of England and Wales from the High Court of England and Wales;
- (ab) such judges as are nominated from time to time by the Lord President of the Court of Session from the judges of the Court of Session;
- (ac) such judges as are nominated from time to time by the Lord Chief Justice of Northern Ireland from the High Court in Northern Ireland;”.

(2) In section 14 of that Act (constitution of the Competition Appeal Tribunal for particular proceedings and its decisions)—

- (a) 在第 2 項首席法官後加入「在第 12 條第 2 項第 (aa) 款至第 (ab) 款之法官」，以及
 - (b) 在第 3 項，「第 12 條第 2 項第 (aa) 款至第 (ab) 款之法官」取代「兩者之一」。
- (3) 附件四（法律程序）對於 2002 年企業法之適用，在第 18 條第 3 項第 b 款（法院成員無法繼續）中在「當自然人無法」之後新增「在第 12 條第 2 項第 (aa) 款至第 (ab) 款之法官」或。

第三章 房屋仲介手續費公開義務

第 83 條 房屋仲介手續費公開義務

- (1) 房屋仲介應與本條一致公布仲介相關手續費明細。
- (2) 房屋仲介應於以下處所揭露手續費清單—
 - (a) 於仲介面對面與使用或處理之人使用服務之場地，並與服務手續費用相關，以及
 - (b) 於該清單可能被上述之人所見之場地。
- (3) 房屋仲介若有網站，應將費用清單公布於網站。
- (4) 依據第 2 款或第 3 款經揭露或公布之費用清單應包含—
 - (a) 足以使付費者知悉手續費所包含之服務或費用和要求支付目的之描述，以及

- (a) in subsection (2) after “the President” insert “, a judge within any of paragraphs (aa) to (ac) of section 12(2)”, and
 - (b) in subsection (3) for “either” substitute “the judges within paragraphs (aa) to (ac) of section 12(2),”.
- (3) In Schedule 4 (Tribunal procedure) to that Act, in paragraph 18(3)(b) (consequences of member of Tribunal being unable to continue) after “if that person is not” insert “a judge within any of paragraphs (aa) to (ac) of section 12(2) or”.

CHAPTER 3 DUTY OF LETTING AGENTS TO PUBLICISE FEES ETC

83 Duty of letting agents to publicise fees etc

- (1) A letting agent must, in accordance with this section, publicise details of the agent’s relevant fees.
- (2) The agent must display a list of the fees—
 - (a) at each of the agent’s premises at which the agent deals face-to-face with persons using or proposing to use services to which the fees relate, and
 - (b) at a place in each of those premises at which the list is likely to be seen by such persons.
- (3) The agent must publish a list of the fees on the agent’s website (if it has a website).
- (4) A list of fees displayed or published in accordance with subsection (2) or (3) must include—
 - (a) a description of each fee that is sufficient to enable a person who is liable to pay it to understand the service or cost that is covered by the fee or the purpose for which it is imposed (as the case may be),

- (b) 在承租人有義務支付手續費之情況下，關於該手續費與居住房屋或每位房屋承租關係下之承租人之說明，以及
 - (c) 包含可能稅負之手續費總額或無法被事先合理地估算時總額如何計算之描述。
- (5) 於英格蘭地區，第 6 條和第 7 條適用於房屋仲介從事房屋仲介或與住宅相關之財產管理。
- (6) 若仲介代表其所提供服務之對象持有價金，第 2 款和第 3 款課予仲介之責任包含以手續費清單之方式揭露和公布該仲介是否為「顧客金錢保護機制」會員之聲明。
- (7) 若仲介為處理與工作相關之紛爭而被要求成為補償機制會員，第 2 款和第 3 款課予仲介之責任包含以有手續費清單之方式揭露和公布以下聲明—
- (a) 仲介是補償機制成員之說明，以及
 - (b) 該機制名稱。
- (8) 適當國家主管機關得依法特定—
- (a) 仲介所應公開收取相關手續費明細之方法或第 6 款和第 7 款中稱之聲明；
 - (b) 應公開之明細。
- (9) 本條指—
- 「顧客金錢保護機制」指當本機制適用而全部或部分金錢無法再被給付給另一個自然人時，房屋仲介代表自然人持有金錢以作為補償之機制；

- (b) in the case of a fee which tenants are liable to pay, an indication of whether the fee relates to each dwelling-house or each tenant under a tenancy of the dwelling-house, and
 - (c) the amount of each fee inclusive of any applicable tax or, where the amount of a fee cannot reasonably be determined in advance, a description of how that fee is calculated.
- (5) Subsections (6) and (7) apply to a letting agent engaging in letting agency or property management work in relation to dwelling-houses in England.
- (6) If the agent holds money on behalf of persons to whom the agent provides services as part of that work, the duty imposed on the agent by subsection (2) or (3) includes a duty to display or publish, with the list of fees, a statement of whether the agent is a member of a client money protection scheme.
- (7) If the agent is required to be a member of a redress scheme for dealing with complaints in connection with that work, the duty imposed on the agent by subsection (2) or (3) includes a duty to display or publish, with the list of fees, a statement—
- (a) that indicates that the agent is a member of a redress scheme, and
 - (b) that gives the name of the scheme.
- (8) The appropriate national authority may by regulations specify—
- (a) other ways in which a letting agent must publicise details of the relevant fees charged by the agent or (where applicable) a statement within subsection (6) or (7);
 - (b) the details that must be given of fees publicised in that way.
- (9) In this section—
- “client money protection scheme” means a scheme which enables a person on whose behalf a letting agent holds money to be compensated if all or part of that money is not repaid to that person in circumstances where the scheme applies;

「補償機制」指依照 2013 年企業和法制改革法第 83 條或第 84 條授權制訂之補償機制。

第 84 條 房屋仲介其他義務

- (1) 在本章「房屋仲介」指從事仲介房屋工作之自然人（不論該自然人是否從事其他工作）。
- (2) 當仲介工作涉及其僱傭契約下之雇用內容，自然人非屬在本章所稱之「房屋仲介」。
- (3) 以下情況，自然人非屬在本章所稱之「房屋仲介」—
 - (a) 適當國家主管機關以法律明文規定者；
 - (b) 該自然人涉及適當國家主管機關以法律明文規定者。

第 85 條 其他手續費

- (1) 本章所稱和房屋仲介相關之「相關手續費」指，無論如何呈現之由房東或承租人給付與仲介之手續費、收費或懲罰金—
 - (a) 與仲介所執行之房屋仲介工作相關；
 - (b) 與仲介所執行之財產管理工作相關；或
 - (c) 其他相關工作—
 - (i) 住宅之確定租賃關係或，或
 - (ii) 在確定的租賃關係下，將或已預定之住宅。
- (2) 以下情況不適用第 1 款—
 - (a) 在租賃關係下可給付給房東之租金，

“redress scheme” means a redress scheme for which provision is made by order under section 83 or 84 of the Enterprise and Regulatory Reform Act 2013.

84 Letting agents to which the duty applies

- (1) In this Chapter “letting agent” means a person who engages in letting agency work (whether or not that person engages in other work).
- (2) A person is not a letting agent for the purposes of this Chapter if the person engages in letting agency work in the course of that person’s employment under a contract of employment.
- (3) A person is not a letting agent for the purposes of this Chapter if—
 - (a) the person is of a description specified in regulations made by the appropriate national authority;
 - (b) the person engages in work of a description specified in regulations made by the appropriate national authority.

85 Fees to which the duty applies

- (1) In this Chapter “relevant fees”, in relation to a letting agent, means the fees, charges or penalties (however expressed) payable to the agent by a landlord or tenant—
 - (a) in respect of letting agency work carried on by the agent,
 - (b) in respect of property management work carried on by the agent, or
 - (c) otherwise in connection with—
 - (i) an assured tenancy of a dwelling-house, or
 - (ii) a dwelling-house that is, has been or is proposed to be let under an assured tenancy.
- (2) Subsection (1) does not apply to—
 - (a) the rent payable to a landlord under a tenancy,

- (b) 房屋仲介在代表任一自然人之租賃關係下，從房東收取之手續費、費用或懲罰金；
- (c) 2004 年房屋法押租金
- (d) 由適當國家主管機關以法律明文規定之手續費、費用或懲罰金。

第 86 條 房屋仲介工作和財產管理工作

- (1) 本章所稱「房屋仲介工作」，指自然人於業務中回覆從以下情況收取之指示—
 - (a) 自然人（預期房東）尋求另一位在確定租賃關係下希冀租房屋之自然人，和已經找到這個人並給予租賃，或
 - (b) 自然人（預期承租人）尋求另一位在確定租賃關係下希冀出租房屋之自然人，和已經找到這個人並獲得租賃。
- (2) 「房屋仲介工作」不包含第 1 款以外之自然人涉及下列情況—
 - (a) 刊登廣告或散佈資訊；
 - (b) 提供預期房東或承租人能根據所刊登廣告或散佈資訊，直接聯繫預期房東或承租人之方式；
 - (c) 提供預期房東或承租人能直接聯繫彼此之方式。
- (3) 「房屋仲介工作」也不包含地方主管機關職掌之工作。

- (b) any fees, charges or penalties which the letting agent receives from a landlord under a tenancy on behalf of another person,
- (c) a tenancy deposit within the meaning of section 212(8) of the Housing Act 2004, or
- (d) any fees, charges or penalties of a description specified in regulations made by the appropriate national authority.

86 Letting agency work and property management work

- (1) In this Chapter “letting agency work” means things done by a person in the course of a business in response to instructions received from—
 - (a) a person (“a prospective landlord”) seeking to find another person wishing to rent a dwelling-house under an assured tenancy and, having found such a person, to grant such a tenancy, or
 - (b) a person (“a prospective tenant”) seeking to find a dwelling-house to rent under an assured tenancy and, having found such a dwellinghouse, to obtain such a tenancy of it.
- (2) But “letting agency work” does not include any of the following things when done by a person who does nothing else within subsection (1)—
 - (a) publishing advertisements or disseminating information;
 - (b) providing a means by which a prospective landlord or a prospective tenant can, in response to an advertisement or dissemination of information, make direct contact with a prospective tenant or a prospective landlord;
 - (c) providing a means by which a prospective landlord and a prospective tenant can communicate directly with each other.
- (3) “Letting agency work” also does not include things done by a local authority.

- (4) 本章所稱與房屋仲介相關之「財產管理工作」，指自然人於業務中回覆從以下情況收取之指示—
- (a) 自然人希冀仲介提供服務，修繕或處理其他代表該自然人之管理事宜；
 - (b) 包含在確定租賃關係下之住宅土地。

第 87 條 履行義務

- (1) 在英格蘭和威爾斯地方主管機關對於度量衡有義務依本章內容執行。
- (2) 當房屋仲介違反第 83 條第 3 款義務（於仲介網站公開手續費清單之義務），義務違反地所在之英格蘭和威爾斯地方度量衡主管機關。
- (3) 當房屋仲介違反其義務或本章禁止規定時，英格蘭和威爾斯地方度量衡主管機關依比例平衡執行，得對於相關違法行為處以金錢處罰。
- (4) 英格蘭和威爾斯地方度量衡主管機關得基於本條對在英格蘭和威爾斯以外（以及在該區其他相關違反義務情事）違反者處罰。
- (5) 但英格蘭和威爾斯地方度量衡主管機關得基於本條對在英格蘭和威爾斯以外違反者處罰，當其取得該主管機關同意。
- (6) 同一違反事項只能對同一房屋仲介處罰一次。

- (4) In this Chapter “property management work” , in relation to a letting agent, means things done by the agent in the course of a business in response to instructions received from another person where—
- (a) that person wishes the agent to arrange services, repairs, maintenance, improvements or insurance in respect of, or to deal with any other aspect of the management of, premises on the person’s behalf, and
 - (b) the premises consist of a dwelling-house let under an assured tenancy.

87 Enforcement of the duty

- (1) It is the duty of every local weights and measures authority in England and Wales to enforce the provisions of this Chapter in its area.
- (2) If a letting agent breaches the duty in section 83(3) (duty to publish list of fees etc on agent’s website), that breach is taken to have occurred in each area of a local weights and measures authority in England and Wales in which a dwelling-house to which the fees relate is located.
- (3) Where a local weights and measures authority in England and Wales is satisfied on the balance of probabilities that a letting agent has breached a duty imposed by or under section 83, the authority may impose a financial penalty on the agent in respect of that breach.
- (4) A local weights and measures authority in England and Wales may impose a penalty under this section in respect of a breach which occurs in England and Wales but outside that authority’s area (as well as in respect of a breach which occurs within that area).
- (5) But a local weights and measures authority in England and Wales may impose a penalty in respect of a breach which occurs outside its area and in the area of a local weights and measures authority in Wales only if it has obtained the consent of that authority.
- (6) Only one penalty under this section may be imposed on the same letting agent in respect of the same breach.

- (7) 本條金錢處罰總額—
 - (a) 得由施以處罰之主管機關定之，但
 - (b) 不應超過 5000 英鎊。
- (8) 附件 9（對於金錢處罰之上訴程序）已生效。
- (9) 英格蘭地方度量衡主管機關應遵守各部會部長公布之指引—
 - (a) 遵守第 83 條規定課予房屋仲介之義務；
 - (b) 依照本條或附件九行使職權。
- (10) 威爾斯地方度量衡主管機關應遵守威爾斯政府公布之指引—
 - (a) 遵守第 83 條規定課予房屋仲介之義務；
 - (b) 依照本條或附件九行使職權。
- (11) 各部會部長得依法律文件規定制訂—
 - (a) 於適用英格蘭地方度量衡主管機關時，依照本條或附件 9 修正之條文。
 - (b) 附件 5 所為之附隨之修正，其適用於地方主管機關。
- (12) 威爾斯政府得依法律文件規定制訂—
 - (a) 於適用威爾斯地方度量衡主管機關時，依照本條或附件 9 修正之條文。
 - (b) 附件 5 所為之附隨之修正，其適用於地方主管機關。

- (7) The amount of a financial penalty imposed under this section—
 - (a) may be such as the authority imposing it determines, but
 - (b) must not exceed £5,000.
- (8) Schedule 9 (procedure for and appeals against financial penalties) has effect.
- (9) A local weights and measures authority in England must have regard to any guidance issued by the Secretary of State about—
 - (a) compliance by letting agents with duties imposed by or under section 83;
 - (b) the exercise of its functions under this section or Schedule 9.
- (10) A local weights and measures authority in Wales must have regard to any guidance issued by the Welsh Ministers about—
 - (a) compliance by letting agents with duties imposed by or under section 83;
 - (b) the exercise of its functions under this section or Schedule 9.
- (11) The Secretary of State may by regulations made by statutory instrument—
 - (a) amend any of the provisions of this section or Schedule 9 in their application in relation to local weights and measures authorities in England;
 - (b) make consequential amendments to Schedule 5 in its application in relation to such authorities.
- (12) The Welsh Ministers may by regulations made by statutory instrument—
 - (a) amend any of the provisions of this section or Schedule 9 in their application in relation to local weights and measures authorities in Wales;
 - (b) make consequential amendments to Schedule 5 in its application in relation to such authorities.

第 88 條 補充條款

（1）本章名詞定義—

「適當國家主管機關」指—

- （a）英格蘭各部會部長和；
- （b）威爾斯地區的威爾斯政府

「確定租賃關係」指符合 1988 年住宅法中所稱確定租賃關係意旨者，除下列情況外—

- （a）房東指
 - （i）已登記提供社會住宅者之私人，
 - （ii）已登記之社會房東，或
 - （iii）充分互相住宅關係，或
- （b）租賃關係屬長期出租

「住宅」得為一間房間之全部或一部。

「充分互相住宅關係」同 1985 年房屋聯盟法第一部分之定義（參照該法第 1 條和第 2 條）；

「房東」包含於租賃契約下聲稱為房東之人或因租賃關係終止而於契約中停止作為房東之人；

「長期出租」係指—

- （a）1993 年住宅及都市發展法案第一部分第一章之長期出租，或
- （b）於該法案第 7 條第 7 款之之共享所有出租之情形，係指於該條中所指出租人占有比為百分之百，則為前款所稱之出租。

88 Supplementary provisions

(1) In this Chapter—

“the appropriate national authority” means—

- (a) in relation to England, the Secretary of State, and
- (b) in relation to Wales, the Welsh Ministers;

“assured tenancy” means a tenancy which is an assured tenancy for the purposes of the Housing Act 1988 except where—

(a) the landlord is—

- (i) a private registered provider of social housing,
- (ii) a registered social landlord, or
- (iii) a fully mutual housing association, or

(b) the tenancy is a long lease;

“dwelling-house” may be a house or part of a house;

“fully mutual housing association” has the same meaning as in Part 1 of the Housing Associations Act 1985 (see section 1(1) and (2) of that Act);

“landlord” includes a person who proposes to be a landlord under a tenancy and a person who has ceased to be a landlord under a tenancy because the tenancy has come to an end;

“long lease” means a lease which—

- (a) is a long lease for the purposes of Chapter 1 of Part 1 of the Leasehold Reform, Housing and Urban Development Act 1993, or
- (b) in the case of a shared ownership lease (within the meaning given by section 7(7) of that Act), would be a lease within paragraph (a) of this definition if the tenant’s total share (within the meaning given by that section) were 100%;

「已登記提供社會住宅者」指根據 1996 年房屋法第一部分第一章經登記為社會房東者。

「承租人」包含於租賃契約下聲稱為承租人或因租賃關係終止而於契約中停止作為承租之人。

- (2) 本章「地方主管機關」指—
- (a) 國家議會 a county council
 - (b) 國家自治市鎮政務委員會
 - (c) 地區議會
 - (d) 倫敦自治市議會
 - (e) 倫敦市議會職務範圍和地方授權機構，或
 - (f) 錫利群島議會
- (3) 本章可供預定租賃關係和即將結束之租賃關係。
- (4) 本章可供給或有義務給付房屋仲介費用，包含其主張有房屋仲介關係存在而須要給付，不論事實上是否存在之租賃關係。
- (5) 本章規定依照法律文件制訂。
- (6) 各部會部長依第 87 條第 11 款制訂條文之法律文件（無論單獨或與其他規定合併），除文件草案先前已公布且由下議院決議通過，將不制訂。
- (7) 威爾斯政府依第 87 條第 12 款制訂條文之法律文件（無論單獨或與其他規定合併），除文件草案先前已公布且由威爾斯國民議會決議通過，將不制訂。

“registered social landlord” means a body registered as a social landlord under Chapter 1 of Part 1 of the Housing Act 1996;

“tenant” includes a person who proposes to be a tenant under a tenancy and a person who has ceased to be a tenant under a tenancy because the tenancy has come to an end.

- (2) In this Chapter “local authority” means—
- (a) a county council,
 - (b) a county borough council,
 - (c) a district council,
 - (d) a London borough council,
 - (e) the Common Council of the City of London in its capacity as local authority, or
 - (f) the Council of the Isles of Scilly.
- (3) References in this Chapter to a tenancy include a proposed tenancy and a tenancy that has come to an end.
- (4) References in this Chapter to anything which is payable, or which a person is liable to pay, to a letting agent include anything that the letting agent claims a person is liable to pay, regardless of whether the person is in fact liable to pay it.
- (5) Regulations under this Chapter are to be made by statutory instrument.
- (6) A statutory instrument containing (whether alone or with other provision) regulations made by the Secretary of State under section 87(11) 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.
- (7) A statutory instrument containing (whether alone or with other provision) regulations made by the Welsh Ministers under section 87(12) is not to be made unless a draft of the instrument has been laid before, and approved by a resolution of, the National Assembly for Wales.

- (8) 各部部長依本條第 6 款適用之法律文件，應受下議院年度決議拘束。
- (9) 威爾斯政府依本條第 7 款適用之法律文件，應受威爾斯國民議會年度決議拘束。
- (10) 本章規定—
 - (a) 得為不同目的制訂不同條款；
 - (b) 得以制訂通則或為個案制訂相關條款之方法為之。
- (11) 本章規定得包含臨時、補充、繼續性、過渡或保留條款。

第四章 學生申訴機制

第 89 條 符合學生申訴機制目的而設立之機構

- (1) 2004 年高等教育法修正如下。
- (2) 第 11 條（符合學生申訴機制目的而設立之機構）第 d 款後新增兩款—
 - (e) 指提供依 1998 年高等教育法第 22 條目的設計或依本條規定設計之高等教育課程之機構（指本條其他款以外之機構）；
 - (f) 指有權依 1992 年高等教育法第 76 條第 1 項授予高等教育文憑之機構（指本條其他款以外之機構）；

- (8) A statutory instrument containing regulations made by the Secretary of State under this Chapter other than one to which subsection (6) applies is subject to annulment in pursuance of a resolution of either House of Parliament.
- (9) A statutory instrument containing regulations made by the Welsh Ministers under this Chapter other than one to which subsection (7) applies is subject to annulment in pursuance of a resolution of the National Assembly for Wales.
- (10) Regulations under this Chapter—
 - (a) may make different provision for different purposes;
 - (b) may make provision generally or in relation to specific cases.
- (11) Regulations under this Chapter may include incidental, supplementary, consequential, transitional, transitory or saving provision.

CHAPTER 4

STUDENT COMPLAINTS SCHEME

89 Qualifying institutions for the purposes of the student complaints scheme

- (1) The Higher Education Act 2004 is amended as follows.
- (2) In section 11 (qualifying institutions for the purposes of the student complaints scheme) after paragraph (d) insert—
 - “(e) an institution (other than one within another paragraph of this section) which provides higher education courses which are designated for the purposes of section 22 of the 1998 Act by or under regulations under that section;
 - (f) an institution (other than one within another paragraph of this section) whose entitlement to grant awards is conferred by an order under section 76(1) of the 1992 Act.”

(3) 第 12 條（學生行為符合申訴機制目的）

(a) 第 1 項中第 2 項取代為第 2 項和第 3 項，以及

(b) 第 2 項後新增「(3) 機制維運代表得決定第 1 項關於符合機構之行為或過失在第 11 條第 (e) 款和第 (f) 款與申訴一致，只有在自然人從事或貨已從事特定課程或特定描述課程。」

第五章 二手票券

第 90 條 票券資訊提供義務

(1) 本章適用於二手票券賣方，其將英國之娛樂、運動或文化活動票券，透過二手票券機構再售出之行為。

(2) 出賣人和場所負責人應確保購票之買受人獲得本條第 3 項規定之票面資訊。

(3) 票面資訊包含—

(a) 該票為指定席或站票時，得辨識活動場所中指定席或站票之必要資訊，

(b) 票券使用限制，以及

(c) 票券票面價值。

(4) 第 3 項第 a 款所稱使買受人得辨識活動場所中指定席或站票必要資訊，在適用範圍內包含—

- (3) In section 12 (qualifying complaints for the purposes of the student complaints scheme)—
- (a) in subsection (1) for “subsection (2)” substitute “subsections (2) and (3)”, and
 - (b) after subsection (2) insert— “(3) The designated operator may determine that a complaint within subsection (1) about an act or omission of a qualifying institution within paragraph (e) or (f) of section 11 is a qualifying complaint only if it is made by a person who is undertaking or has undertaken a particular course or a course of a particular description.”

CHAPTER 5

SECONDARY TICKETING

90 Duty to provide information about tickets

- (1) This section applies where a person (“the seller”) re-sells a ticket for a recreational, sporting or cultural event in the United Kingdom through a secondary ticketing facility.
- (2) The seller and each operator of the facility must ensure that the person who buys the ticket (“the buyer”) is given the information specified in subsection (3), where this is applicable to the ticket.
- (3) That information is—
 - (a) where the ticket is for a particular seat or standing area at the venue for the event, the information necessary to enable the buyer to identify that seat or standing area,
 - (b) information about any restriction which limits use of the ticket to persons of a particular description, and
 - (c) the face value of the ticket.
- (4) The reference in subsection (3)(a) to information necessary to enable the buyer to identify a seat or standing area at a venue includes, so far as applicable—

- (a) 指定席或站票所在之場所區域名稱（如站立區域名稱），
 - (b) 使買受人得辨識指定席或站票所在之場所部分區域之必要資訊（如站票所在之座位區塊），
 - (c) 座位所在排列之數字、字母或其他之特殊記號，以及
 - (d) 座位所在之數字、字母或其他之特殊記號。
- (5) 第 3 項第 c 款所稱票券票面價值，指票面上所述之價格總額。
- (6) 出賣人和場所負責人應確保購票之買受人獲得本條第 7 項之特定資訊，出賣人指—
- (a) 二手票券機構負責人，
 - (b) 母公司或子公司與二手票券機構負責人相關業務之自然人，
 - (c) 受僱於二手票券機構負責人之自然人，
 - (d) 表現如同本項第 c 款之所指之自然人，或
 - (e) 活動規劃人員或表現如同活動規劃人員。
- (7) 資訊指票券出賣人為本條第 6 項特定領域之人之聲明。
- (8) 本條所要求應提供予買受人之資訊—
- (a) 應以清楚且可理解之方式提供，且
 - (b) 在買受人受出賣人票券契約拘束之前提供。

- (a) the name of the area in the venue in which the seat or standing area is located (for example the name of the stand in which it is located),
 - (b) information necessary to enable the buyer to identify the part of the area in the venue in which the seat or standing area is located (for example the block of seats in which the seat is located),
 - (c) the number, letter or other distinguishing mark of the row in which the seat is located, and
 - (d) the number, letter or other distinguishing mark of the seat.
- (5) The reference in subsection (3)(c) to the face value of the ticket is to the amount stated on the ticket as its price.
- (6) The seller and each operator of the facility must ensure that the buyer is given the information specified in subsection (7), where the seller is—
- (a) an operator of the secondary ticketing facility,
 - (b) a person who is a parent undertaking or a subsidiary undertaking in relation to an operator of the secondary ticketing facility,
 - (c) a person who is employed or engaged by an operator of the secondary ticketing facility,
 - (d) a person who is acting on behalf of a person within paragraph (c), or
 - (e) an organiser of the event or a person acting on behalf of an organiser of the event.
- (7) That information is a statement that the seller of the ticket is a person within subsection (6) which specifies the ground on which the seller falls within that subsection.
- (8) Information required by this section to be given to the buyer must be given—
- (a) in a clear and comprehensible manner, and
 - (b) before the buyer is bound by the contract for the sale of the ticket.

- (9) 本條適用透過二手票券機構再販售或基於再販售目的提供，且於本條生效後該票券第一次提供即為透過二手票券機構再販售始適用之。

第 91 條 取消或黑名單之禁止

- (1) 本條適用自然人透過二手票券機構再販售或基於再販售目的提供在英國舉辦之娛樂、運動或文化活動票券。
- (2) 活動規劃人員除有下列情況外，不得僅因出賣人再販售或基於再販售票券而提供為由，而取消票券—
- (a) 販售票券原契約（條款—
- (i) 記載若買受人於契約中再販售則取消，
- (ii) 記載若買受人基於再販售而提供則取消，或
- (iii) 記載前述第 (i) 目和第 (ii) 目所提之情況，以及
- (b) 基於第二部分（不公平契約條款）目的非屬不公平條款。
- (3) 活動規劃人員除有下列情況外，不得僅因出賣人再販售或基於再販售票券而提供為由，而將出賣人列為黑名單—
- (a) 販售票券原契約條款—
- (i) 記載若買受人於契約中再販售則列黑名單，
- (ii) 記載若買受人基於再販售而提供則列黑名單，或
- (iii) 記載前述第 (i) 目和第 (ii) 目所提之情況，以及
- (b) 基於第二部分（不公平契約條款）目的非屬不公平條款。
- (4) 在第 2 項和第 3 項所稱原契約指活動規劃人和活動規劃人以外之買受人所訂定之販售契約。

- (9) This section applies in relation to the re-sale of a ticket through a secondary ticketing facility only if the ticket is first offered for re-sale through the facility after the coming into force of this section.

91 Prohibition on cancellation or blacklisting

- (1) This section applies where a person (“the seller”) re-sells, or offers for re-sale, a ticket for a recreational, sporting or cultural event in the United Kingdom through a secondary ticketing facility.
- (2) An organiser of the event must not cancel the ticket merely because the seller has re-sold the ticket or offered it for re-sale unless—
- (a) a term of the original contract for the sale of the ticket—
 - (i) provided for its cancellation if it was re-sold by the buyer under that contract,
 - (ii) provided for its cancellation if it was offered for re-sale by that buyer, or
 - (iii) provided as mentioned in sub-paragraph (i) and (ii), and
 - (b) that term was not unfair for the purposes of Part 2 (unfair terms).
- (3) An organiser of the event must not blacklist the seller merely because the seller has re-sold the ticket or offered it for re-sale unless—
- (a) a term of the original contract for the sale of the ticket—
 - (i) provided for the blacklisting of the buyer under that contract if it was re-sold by that buyer,
 - (ii) provided for the blacklisting of that buyer if it was offered for re-sale by that buyer, or
 - (iii) provided as mentioned in sub-paragraph (i) and (ii), and
 - (b) that term was not unfair for the purposes of Part 2 (unfair terms).
- (4) In subsections (2) and (3) “the original contract” means the contract for the sale of the ticket by an organiser of the event to a person other than an organiser of the event.

- (5) 基於本條目的，若活動規劃人採取措施將導致票券持有人於時間內無權參與活動，則活動規劃人員將取消票券。
- (6) 基於本條目的，若活動規劃人採取下列措施，則活動規劃人員將買受人列入黑名單—
 - (a) 為避免取得在英國舉辦之娛樂、運動或文化活動，或
 - (b) 為限制取得前述票券之機會。
- (7) 第二部分（不公平契約條款）得適用第二部分以外之契約條款，允許在前述第 2 款和第 3 款以外之情況下，允許取消娛樂、運動或文化活動，或將此類票券出賣人列入黑名單。
- (8) 在第二部分生效施行前，本部分將作為 1999 年不公平消費者契約條款法之參考。
- (9) 本條適用於生效前或生效後之再販售或基於再販售目的而提供之相關票券；但禁止條款僅適用於生效後發生之情況。

第 92 條 刑事犯罪行為之通報義務

- (1) 本條適用下列情況—
 - (a) 二手票券機構負責人知悉自然人已利用或將利用該機構，以從事或即將從事犯罪行為，以及
 - (b) 犯罪行為與再販售於英國舉辦之娛樂、運動或文化活動相關。
- (2) 二手票券機構負責人應於知悉有第 1 項情況時，立刻向下列人員揭露第 3 項特定事項—

- (5) For the purposes of this section an organiser of an event cancels a ticket if the organiser takes steps which result in the holder for the time being of the ticket no longer being entitled to attend that event.
- (6) For the purposes of this section an organiser of an event blacklists a person if the organiser takes steps—
 - (a) to prevent the person from acquiring a ticket for a recreational, sporting or cultural event in the United Kingdom, or
 - (b) to restrict the person’s opportunity to acquire such a ticket.
- (7) Part 2 (unfair terms) may apply to a term of a contract which, apart from that Part, would permit the cancellation of a ticket for a recreational, sporting or cultural event in the United Kingdom, or the blacklisting of the seller of such a ticket, in circumstances other than those mentioned in subsection (2) or (3).
- (8) Before the coming into force of Part 2, references to that Part in this section are to be read as references to the Unfair Terms in Consumer Contracts Regulations 1999 (SI 1999/2083).
- (9) This section applies in relation to a ticket that is re-sold or offered for re-sale before or after the coming into force of this section; but the prohibition in this section applies only to things done after its coming into force.

92 Duty to report criminal activity

- (1) This section applies where—
 - (a) an operator of a secondary ticketing facility knows that a person has used or is using the facility in such a way that an offence has been or is being committed, and
 - (b) the offence relates to the re-sale of a ticket for a recreational, sporting or cultural event in the United Kingdom.
- (2) The operator must, as soon as the operator becomes aware that a person has used or is using the facility as mentioned in subsection (1), disclose the matters specified in subsection (3) to—

- (a) 適當人員，和
 - (b) 活動規劃人員（指本條第 5 項人員）。
- (3) 特定情事指—
- (a) 若二手票券機構負責人知悉如何辨識本條第 1 項所犯罪行為，以及
 - (b) 二手票券機構負責人知悉本條第 1 項已進行或將進行之犯罪行為之事實。
- (4) 下列人員符合本條所稱適當人員—
- (a) 在英格蘭和威爾斯執行職務之警官，
 - (b) 在蘇格蘭執行職務之警官，
 - (c) 2000 年北愛爾蘭警察法下所定義之警官。
- (5) 本條不要求二手販售票券機構負責人向活動規劃人員揭露，若該機構負責人可合理相信揭露將阻礙犯罪行為之調查。
- (6) 本條所稱犯罪行為可參考英國相關法律之定義。
- (7) 本條僅適用於二手販售票券機構負責人於本條生效施行後知悉之犯罪行為。

第 93 條 有關本章履行

- (1) 大不列顛國協境內地方度量衡主管機關得於其轄區內執行本章規定。
- (2) 企業貿易和投資部得於北愛爾蘭境內執行本章規定。
- (3) 本條第 1 項和第 2 項之機構屬本章之執行主管機關。

- (a) an appropriate person, and
 - (b) an organiser of the event (subject to subsection (5)).
- (3) Those matters are—
- (a) the identity of the person mentioned in subsection (1), if this is known to the operator, and
 - (b) the fact that the operator knows that an offence has been or is being committed as mentioned in that subsection.
- (4) The following are appropriate persons for the purposes of this section—
- (a) a constable of a police force in England and Wales,
 - (b) a constable of the police service of Scotland, and
 - (c) a police officer within the meaning of the Police (Northern Ireland) Act 2000.
- (5) This section does not require an operator to make a disclosure to an organizer of an event if the operator has reasonable grounds for believing that to do so will prejudice the investigation of any offence.
- (6) References in this section to an offence are to an offence under the law of any part of the United Kingdom.
- (7) This section applies only in relation to an offence of which an operator becomes aware after the coming into force of this section.

93 Enforcement of this Chapter

- (1) A local weights and measures authority in Great Britain may enforce the provisions of this Chapter in its area.
- (2) The Department of Enterprise, Trade and Investment may enforce the provisions of this Chapter in Northern Ireland.
- (3) Each of the bodies referred to in subsections (1) and (2) is an “enforcement authority” for the purposes of this Chapter.

- (4) 當自然人違反其義務或本章禁止規定時，執行主管機關依比例平衡執行，得對於相關違法行為處以金錢處罰。
- (5) 但違反第 90 條義務或第 91 條時，若執行主管機關經權衡其合理性，得於下列情況下不對違反之自然人課予金錢處罰—
 - (a) 出於下列情況而違反者—
 - (i) 錯誤，
 - (ii) 信賴第三人提供給 P 之資訊，
 - (iii) 第三人行為或不履行，
 - (iv) 意外，或
 - (v) 其他於 P 可控制範圍外之原因，以及
 - (b) P 已善盡所有合理預防措施且善盡注意義務以避免違反。
- (6) 英格蘭和威爾斯地方度量衡主管機關，對於發生於英格蘭和威爾斯之相關違反但在地方度量衡主管機關轄區以外，得依本條處罰（以及發生於轄區內之相關違反）。
- (7) 蘇格蘭地方度量衡主管機關，對於發生於蘇格蘭之相關違反但在地方度量衡主管機關轄區以外，得依本條處罰（以及發生於轄區內之相關違反）。
- (8) 同一違反事項僅得對同一人處罰一次。
- (9) 本條金錢處罰總額—
 - (a) 得由施以處罰之主管機關定之，但
 - (b) 不應超過 5000 英鎊。

- (4) Where an enforcement authority is satisfied on the balance of probabilities that a person has breached a duty or prohibition imposed by this Chapter, the authority may impose a financial penalty on the person in respect of that breach.
- (5) But in the case of a breach of a duty in section 90 or a prohibition in section 91 an enforcement authority may not impose a financial penalty on a person (“P”) if the authority is satisfied on the balance of probabilities that—
 - (a) the breach was due to—
 - (i) a mistake,
 - (ii) reliance on information supplied to P by another person,
 - (iii) the act or default of another person,
 - (iv) an accident, or
 - (v) another cause beyond P’s control, and
 - (b) P took all reasonable precautions and exercised all due diligence to avoid the breach.
- (6) A local weights and measures authority in England and Wales may impose a penalty under this section in respect of a breach which occurs in England and Wales but outside that authority’s area (as well as in respect of a breach which occurs within that area).
- (7) A local weights and measures authority in Scotland may impose a penalty under this section in respect of a breach which occurs in Scotland but outside that authority’s area (as well as in respect of a breach which occurs within that area).
- (8) Only one penalty under this section may be imposed on the same person in respect of the same breach.
- (9) The amount of a financial penalty imposed under this section—
 - (a) may be such as the enforcement authority imposing it determines, but
 - (b) must not exceed £5,000.

(10) 附件 10（對於金錢處罰之上訴程序）已生效。

(11) 本條參考本章條文之範圍不及於第 94 條。

第 94 條 二手票券檢視措施義務

(1) 各部會部長應—

(a) 檢視，或為檢視而規劃）二手票券販售機構再販售在英國舉辦之娛樂、運動或文化活動票券之消費者保護機制，

(b) 準備檢視結果報告或為報告預先準備，以及

(c) 公告報告。

(2) 報告應自本條生效起算 12 個月內公布。

(3) 各部會部長應將此報告提供予國會。

(4) 本條所稱「消費者保護機制」包含各部部长認為與消費者權利或利益保護相關之法律、法治國原則、慣例和指引。

第 95 條 本章名詞定義

(1) 本章名詞定義—

「執行主管機關」指第 93 條第 3 項之定義；

二手票卷販售機構「負責人」指下列自然人，但限於本條第 2 款規定—

(a) 對營運之機構具有控制權，以及

(b) 從該機構收取營收。

(10) Schedule 10 (procedure for and appeals against financial penalties) has effect.

(11) References in this section to this Chapter do not include section 94.

94 Duty to review measures relating to secondary ticketing

(1) The Secretary of State must—

(a) review, or arrange for a review of, consumer protection measures applying to the re-sale of tickets for recreational, sporting or cultural events in the United Kingdom through secondary ticketing facilities,

(b) prepare a report on the outcome of the review or arrange for such a report to be prepared, and

(c) publish that report.

(2) The report must be published before the end of the period of 12 months beginning with the day on which this section comes into force.

(3) The Secretary of State must lay the report before Parliament.

(4) In this section “consumer protection measures” includes such legislation, rules of law, codes of practice and guidance as the Secretary of State considers relate to the rights of consumers or the protection of their interests.

95 Interpretation of this Chapter

(1) In this Chapter—

“enforcement authority” has the meaning given by section 93(3);

“operator”, in relation to a secondary ticketing facility, means a person who—

(a) exercises control over the operation of the facility, and

(b) receives revenue from the facility,

but this is subject to regulations under subsection (2);

活動「規劃人員」指下列自然人—

- (a) 負責規劃或籌備活動，或
- (b) 從活動收取部分或全部營收。

「母公司」指 2006 年公司法第 1162 條定義之公司；

「二手票券販售機構」指機構透過網路再販售娛樂、運動和文化活動票券；

「子公司」指 2006 年公司法第 1162 條定義之公司；

「企業」（或「公司」）指 2006 年公司法第 1161 條第 1 項定義之公司；

- (2) 各部會部長得依授權訂定明確說明二手票券販售機構負責人是否將受本章規範之法律。

- (3) 本條第 2 項所稱之法律—
 - (a) 依法律文件制訂；
 - (b) 得為不同目的制訂不同條款；
 - (c) 得包含臨時、補充、繼續性、過渡或保留條款。

- (4) 法律文件包含本條第 2 項之法律內容者，除該法律文件草案先
前已公布且由下議院決議通過，否則將不制訂。

第六章 通則

第 96 條 續約權利

“organiser” , in relation to an event, means a person who—

- (a) is responsible for organising or managing the event, or
- (b) receives some or all of the revenue from the event;

“parent undertaking” has the meaning given by section 1162 of the Companies Act 2006;

“secondary ticketing facility” means an internet-based facility for the resale of tickets for recreational, sporting or cultural events;

“subsidiary undertaking” has the meaning given by section 1162 of the Companies Act 2006;

“undertaking” has the meaning given by section 1161(1) of the Companies Act 2006.

- (2) The Secretary of State may by regulations provide that a person of a description specified in the regulations is or is not to be treated for the purposes of this Chapter as an operator in relation to a secondary ticketing facility.
- (3) Regulations under subsection (2)—
 - (a) are to be made by statutory instrument;
 - (b) may make different provision for different purposes;
 - (c) may include incidental, supplementary, consequential, transitional, transitory or saving provision.
- (4) A statutory instrument containing regulations under subsection (2) 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.

CHAPTER 6 GENERAL

96 Power to make consequential provision

- (1) 各部會部長得依法律文件授權之行政命令訂定本法後續條文。
- (2) 本條第 1 款之權力包含—
 - (a) 修正、取代、撤銷或其他法規或依法規訂定之文件（包含本法同一會期所通過之法規）而修定條文。
 - (b) 訂定臨時、過渡或保留條款。
- (3) 法律文件（無論單獨或與其他規定合併）包含本條所稱授權行政命令修正、取代、撤銷或其他主要立法條文修正者，除文件草案先前已公布且由下議院決議通過外，將不制訂。
- (4) 法律文件包含本條所稱授權行政命令不修正、取代、撤銷或其他內閣立法條文修正，應依照下議院決議而失效。
- (5) 本條名詞定義—

「法規」指蘇格蘭國會法、威爾斯和愛爾蘭國民議會措施或法律；

「內閣立法」指—

 - (a) 國會法，
 - (b) 蘇格蘭國會法，
 - (c) 威爾斯國民議會措施或法律，以及
 - (d) 北愛爾蘭法律。

- (1) The Secretary of State may by order made by statutory instrument make provision in consequence of this Act.
- (2) The power conferred by subsection (1) includes power—
 - (a) to amend, repeal, revoke or otherwise modify any provision made by an enactment or an instrument made under an enactment (including an enactment passed or instrument made in the same Session as this Act);
 - (b) to make transitional, transitory or saving provision.
- (3) A statutory instrument containing (whether alone or with other provision) an order under this section which amends, repeals, revokes or otherwise modifies 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, revoke or otherwise modify 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.

第 97 條 締結過渡、臨時和保留條款

- (1) 各部會部長得依法律文件授權之行政命令訂定臨時、過渡或保留條款，以配合本法本部分第三章或第四章中與威爾斯相關之其他即將生效條文。
- (2) 威爾斯政府得依法律文件授權之行政命令訂定臨時、過渡或保留條款，以配合本法本部分第三章或第四章中與威爾斯相關之其他即將生效條文。

第 98 條 財務條款

由國會支付金錢包含—

- (a) 在本法下英國內閣閣員或政府部門支出，和
- (b) 可歸因於本法金錢以外之可支付總額之支出。

第 99 條 適用範圍

- (1) 本法對相關條文之修正、取代或撤銷條款和該條文有相同適用範圍。
- (2) 第 27 條僅適用於蘇格蘭。
- (3) 本部分第三章僅適用於英格蘭和威爾斯。
- (4) 根據本條規定，本法適用於英格蘭和威爾斯，蘇格蘭和北愛爾蘭。

第 100 條 開始

- (1) 本條第 2 項規定於本法通過之日起生效。
- (2) 本項規定為—
 - (a) 第 48 條第 5 項到第 8 項。

97 Power to make transitional, transitory and saving provision

- (1) The Secretary of State may by order made by statutory instrument make transitional, transitory or saving provision in connection with the coming into force of any provision of this Act other than the coming into force of Chapter 3 or 4 of this Part in relation to Wales.
- (2) The Welsh Ministers may by order made by statutory instrument make transitional, transitory or saving provision in connection with the coming into force of Chapter 3 or 4 of this Part in relation to Wales.

98 Financial provision

There is to be paid out of money provided by Parliament—

- (a) any expenses incurred by a Minister of the Crown or a government department under this Act, and
- (b) any increase attributable to this Act in the sums payable under any other Act out of money so provided.

99 Extent

- (1) The amendment, repeal or revocation of any provision by this Act has the same extent as the provision concerned.
- (2) Section 27 extends only to Scotland.
- (3) Chapter 3 of this Part extends only to England and Wales.
- (4) Subject to that, this Act extends to England and Wales, Scotland and Northern Ireland.

100 Commencement

- (1) The provisions of this Act listed in subsection (2) come into force on the day on which this Act is passed.
- (2) Those provisions are—
 - (a) section 48(5) to (8),

- (b) 本部分第三章就其授予之權力制訂法律，
 - (c) 第 88 條第 5 項到第 11 項。
 - (d) 本章，以及
 - (e) 附件 5 第 12 條。
- (3) 本部分第三章和第四章下列部分生效施行—
- (a) 有關英格蘭，各部部長得依法律文件授權之行政命令指定；
 - (b) 有關威爾斯，威爾斯閣員得依法律文件授權之行政命令指定。
- (4) 本部分第五章於本法通過日起兩個月內生效。
- (5) 本法其他條文，各部會部長得依法律文件授權之行政命令指定其生效日。
- (6) 本條授權之行政命令得依不同目的而指定不同日期。

第 101 條 本法簡稱

本法可簡稱為「2015 年消費者權利法」。

- (b) Chapter 3 of this Part in so far as it confer powers to make regulations,
 - (c) section 88(5) to (11),
 - (d) this Chapter, and
 - (e) paragraph 12 of Schedule 5.
- (3) Chapters 3 and 4 of this Part come into force—
- (a) in relation to England, on such day as the Secretary of State may appoint by order made by statutory instrument;
 - (b) in relation to Wales, on such day as the Welsh Ministers may appoint by order made by statutory instrument.
- (4) Chapter 5 of this Part comes into force at the end of the period of two months beginning with the day on which this Act is passed.
- (5) 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.
- (6) An order under this section may appoint different days for different purposes.

101 Short title

This Act may be cited as the Consumer Rights Act 2015.

附件一

第 60 條

第一部分附隨之修正

1973 年商品供給（適用條款）法

- 1 1973 年商品供給（適用條款）法修正如下。
- 2 限期占有商品契約，除第 15 條第 1 項以外，其他皆取代「相關限期占有商品契約」。
- 3（1）第 10 條（有關品質或適當性之默示保證）修正如下。
 - （2）刪除第 2D 項到第 2F 項。
 - （3）刪除第 8 項。
- 4（1）第 11 條 A（非消費者而違反法定限制之救濟之修改）修正如下。
 - （2）在第 1 項中，刪除「然後，若受託付貨物之自然人非屬消費者」。
 - （3）在第 3 項中，第 b 款取代為一
 「(b) 契約指相關限期占有商品契約」
 - （4）刪除第 4 項。
- 5 第 12A 條（違反蘇格蘭限期占有商品契約之救濟）刪除第 2 項和第 3 項。
- 6 刪除第 14 項（有關限制買賣契約之特殊規定）。
- 7（1）第 15 條（補充條款）修正如下。

SCHEDULES SCHEDULE 1

Section 60

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 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 provisions as to conditional sale agreements).
- 7 (1) Section 15 (supplementary) is amended as follows.

(2) 在第 1 項中—

(a) 在限期占有商品契約之定義後新增—

「以及限期占有商品契約，若其不屬於 2015 年消費者權利法第一部分第二章契約適用範圍」，以及

(b) 刪除生產者定義。

(3) 刪除第 3 項。

1979 年商品買賣法

8 1979 年商品買賣法修正如下。

9 第 1 條（適用本法之契約），在第 4 項後新增—

「(5) 本法之此類條文或款項不適用於 2015 年消費者權利法第一部分第二章之契約

(6) 於適用該條所示之情形。」

10 第 11 條（條件視為保證），在第 4 項後新增—

「(4A) 第 4 項不適用於 2015 年消費者權利法第一部分第二章之契約（但準用本法第 19 條至第 22 條契約）。」

11 第 12 條（關於當事人等之默示條款），在第 6 項後新增—

「(7) 本條不適用於 2015 年消費者權利法第一部分第二章之契約（但準用本法第 17 條契約）。」

(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 2015 applies;”, and

(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 2015 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 2015 applies (but see the provision made about such contracts in sections 19 to 22 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 2015 applies (but see the provision made about such contracts in section 17 of that Act).”

12 第 13 條（描述買賣），在第 4 項後新增—

「(5) 本條不適用於 2015 年消費者權利法第一部分第二章之契約（但準用本法第 11 條契約）。」

13 (1) 第 14 條（有關品質或適當性之默示條款）修正如下。

(2) 刪除第 2D 項到第 2F 項。

(3) 在第 8 項後新增—

「(9) 本條不適用於 2015 年消費者權利法第一部分第二章之契約（但準用本法第 9 條、第 10 條和第 18 條契約）。」

14 第 15 條（樣品買賣），在第 4 項後新增—

「(5) 本條不適用於 2015 年消費者權利法第一部分第二章之契約（但準用本法第 13 和第 18 條契約）。」

15 在第 15A 條（非消費者而違反法定限制之救濟之修改），在第 1 項中刪除「然後，若買受人不以消費者身分處理」。

16 (1) 在第 15B 條（蘇格蘭違反契約之救濟）修正如下。

(2) 在第 1 項後新增—

「(1A) 第 1 項不適用於 2015 年消費者權利法第一部分第二章之契約（但準用本法第 19 條至第 20 條契約）。」

(3) 刪除第 2 項。

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 2015 applies (but see the provision made about such contracts in section 11 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 2015 applies (but see the provision made about such contracts in sections 9, 10 and 18 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 2015 applies (but see the provision made about such contracts in sections 13 and 18 of that Act).”

15 In section 15A (modification of remedies for breach of condition in nonconsumer cases), in subsection (1) omit “then, if the buyer does not deal as consumer,” .

16 (1) Section 15B (remedies for breach of contract as respects Scotland) is amended as follows.

(2) 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 2015 applies (but see the provision made about such contracts in sections 19 to 22 of that Act).”

(3) Omit subsection (2).

17 (1) 第 20 條（風險移轉）第 4 項取代為一

「(4) 本條不適用於 2015 年消費者權利法第一部分第二章之契約（但準用本法第 29 條契約）。」

(2) 經 2002 年商品買賣和供給法取代之風險移轉之註解不受本附件法律撤銷之影響。

18 第 29 條（運送規則），在第 3 項後新增一

「(3A) 第 3 項不適用於 2015 年消費者權利法第一部分第二章之契約（但準用本法第 28 條契約）。」

19 (1) 第 30 條（錯誤數量之運送）修正如下。

(2) 第 2A 項刪除「不以消費者身分處理」。

(3) 在第 5 項後新增一

「(6) 本條不適用於 2015 年消費者權利法第一部分第二章之契約（但準用本法第 25 條契約）。」

20 第 31 條（分期運送），在第 2 項後新增一

「(3) 本條不適用於 2015 年消費者權利法第一部分第二章之契約（但準用本法第 26 條契約）。」

21 第 32 條（運送至運送人），在第 4 項後新增一

「(3) 第 1 項不適用於 2015 年消費者權利法第一部分第二章之契約（但準用本法第 29 條契約）。」

22 (1) 第 33 條（遠距運送商品之風險）修正如下。

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 2015 applies (but see the provision made about such contracts in section 29 of that Act).”

(2) The marginal note “Passing of risk” substituted by the Sale and Supply of Goods to Consumers Regulations 2002 (SI 2002/3045) 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 2015 applies (but see the provision made about such contracts in section 28 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 2015 applies (but see the provision made about such contracts in section 25 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 2015 applies (but see the provision made about such contracts in section 26 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 2015 applies (but see the provision made about such contracts in section 29 of that Act).”

22 (1) Section 33 (risk where goods are delivered at distant place) is amended as follows.

(2) 於開頭新增第 1 項。

(3) 最後處新增—

「(2) 本條不適用於 2015 年消費者權利法第一部分第二章之契約（但準用本法第 29 條契約）。」

23 (1) 第 34 條（買受人檢查商品之權利）修正如下。

(2) 一開始新增第 1 項。

(3) 最後處新增—

「(2) 本條不影響 2015 年消費者權利法第 22 條（短期拒絕權之時間限制）實行。」

24 (1) 第 35 條（接受）修正如下。

(2) 刪除第 3 項。

(3) 於第 8 項後新增—

「(9) 本條不適用於 2015 年消費者權利法第一部分第二章之契約（但準用本法第 29 條契約）。」

25 (1) 在第 35A 條（部分拒絕權），第 4 項後新增—

「(5) 本條不適用於 2015 年消費者權利法第一部分第二章之契約（但準用本法第 21 條契約）。」

26 (1) 第 36 條（買受人不受返還拒絕商品拘束）修正如下。

(2) 於開頭新增第 1 項。

(3) 最後處新增—

(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 2015 applies (but see the provision made about such contracts in section 29 of that Act).”

23 (1) Section 34 (buyer’s right of examining the goods) is amended as follows.

(2) At the beginning insert “(1)” .

(3) At the end insert—

“(2) Nothing in this section affects the operation of section 22 (time limit for short-term right to reject) of the Consumer Rights Act 2015.”

24 (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 2015 applies (but see the provision made about such contracts in section 21 of that Act).”

25 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 2015 applies (but see the provision made about such contracts in section 21 of that Act).”

26 (1) Section 36 (buyer not bound to return rejected goods) is amended as follows.

(2) At the beginning insert “(1)” .

(3) At the end insert—

「(2)本條不適用於 2015 年消費者權利法第一部分第二章之契約（但準用本法第 20 條契約）。」

27 刪除第 5A 部分（買受人其他消費者權利）。

28 第 51 條（非運送之損害賠償條），第 3 項新增—

「(4)本條不適用於 2015 年消費者權利法第一部分第二章之契約（但準用本法第 19 條契約）。」

29 第 52 條（特定履行），在第 4 項後新增—

「(5)本條不適用於 2015 年消費者權利法第一部分第二章之契約（但準用本法第 19 條契約）。」

30 第 53 條（違反保證之救濟），在第 4 項後新增—

「(4A)本條不適用於 2015 年消費者權利法第一部分第二章之契約（但準用本法第 19 條契約）。」

31 第 53 A 條（蘇格蘭相關損害賠償措施），在第 2 項後新增—

「(2A)本條不適用於 2015 年消費者權利法第一部分第二章之契約（但準用本法第 19 條契約）。」

32 (1) 第 54 條（利益）修正如下。

(2) 一開始新增第 1 項。

(3) 最後新增—

「(2)本條不適用於 2015 年消費者權利法第一部分第二章之契約（但準用本法第 19 條契約）。」

“(2) This section does not apply to a contract to which Chapter 2 of Part 1 of the Consumer Rights Act 2015 applies (but see the provision made about such contracts in section 20 of that Act).”

27 Omit Part 5A (additional rights of buyer in consumer cases).

28 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 2015 applies (but see the provision made about such contracts in section 19 of that Act).”

29 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 2015 applies (but see the provision made about such contracts in section 19 of that Act).”

30 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 2015 applies (but see the provision made about such contracts in section 19 of that Act).”

31 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 2015 applies (but see the provision made about such contracts in section 19 of that Act).”

32 (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 2015 applies (but see the provision made about such contracts in section 19 of that Act).”

33 第 55 條（默示條款之排除），在第 1 項後之增—

「(1A) 第 1 項不適用於 2015 年消費者權利法第一部分第二章之契約（但準用本法第 31 條契約）。」

34 (1) 第 58 條（蘇格蘭相關法院給付）修正如下。

(2) 於開頭新增第 1 項。

(3) 最後處新增—

「(2) 本條不適用於 2015 年消費者權利法第一部分第二章之契約（但準用本法第 27 條契約）。」

35 (1) 第 61 條（解釋）修正如下。

(2) 第 1 項刪除以下定義—

(a) 消費者契約；

(b) 製造商；

(c) 修復。

(3) 刪除第 (5A) 項。

36 第 62 條第 2 項（法治國原則保留條款等），對於本法構成包含 2015 年消費者權利法規定。

1982 年商品和服務供給法

37 1982 年商品和服務供給法修正如下。

38 以下修正—

(a) 商品移轉契約取代為相關商品移轉契約；

(b) 商品租用契約取代為相關分期付款契約；

- 33 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 2015 applies (but see the provision made about such contracts in section 31 of that Act).”
- 34 (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 2015 applies (but see the provision made about such contracts in section 27 of that Act).”
- 35 (1) Section 61 (interpretation) is amended as follows.
- (2) In subsection (1) omit the following definitions—
- (a) “consumer contract” ;
- (b) “producer” ;
- (c) “repair” .
- (3) Omit subsection (5A).
- 36 In section 62(2) (savings for rules of law etc), for “this Act” substitute “legislation including this Act and the Consumer Rights Act 2015” .

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

- 37 The Supply of Goods and Services Act 1982 is amended as follows.
- 38 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）服務提供契約取代為相關服務提供契約；

- 39 第 1 條（契約相關：英格蘭和威爾斯和北愛爾蘭有關商品財產移轉）第 1 項後段新增「，且不適用 2015 年消費者權利法第一部分第二章之契約。」
- 40 第 4 條（有關商品移轉契約品質或適當性契約之默示條款）刪除第 2B 項到第 2D 項。
- 41 第 5A 條（對於非消費者違反法規限制之救濟程序之修改）之第 1 款刪除「於是，若移轉人不以消費者身分處理，」。
- 42 第 6 條（重要契約：英格蘭和威爾斯和北愛爾蘭相關分期付款契約規定）第 1 項最後處新增「，且不適用 2015 年消費者權利法第一部分第二章之契約。」
- 43 第 9 條（有關分期付款契約品質或適當性契約之默示條款）刪除第 2B 項到第 2D 項。
- 44 第 10A 條（對於非消費者違反法規限制之救濟程序之修改），在第 1 項刪除「然後，若受託付貨物之人非屬消費者」。
- 45 第 11A 條（契約相關：英格蘭有關商品財產移轉）第 1 項後段新增「，且不適用 2015 年消費者權利法第一部分第二章之契約。」
- 46 第 11D 條（有關商品財產移轉品質或適當性契約之默示條款）刪除第 3A 項到第 3C 項和第 10 項。
- 47 第 11F 條（違反契約之救濟）刪除第 2 項和第 3 項。

- (c) for “contract for the supply of a service” substitute “relevant contract for the supply of a service” .
- 39 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 2015 applies.”
- 40 In section 4 (implied terms about quality or fitness in contracts for transfer of goods) omit subsections (2B) to (2D).
- 41 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,” .
- 42 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 2015 applies.”
- 43 In section 9 (implied terms about quality or fitness in contracts for hire of goods) omit subsections (2B) to (2D).
- 44 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,” .
- 45 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 2015 applies.”
- 46 In section 11D (implied terms about quality or fitness in contracts for transfer of property in goods) omit subsections (3A) to (3C) and (10).
- 47 In section 11F (remedies for breach of contract) omit subsections (2) and (3).

- 48 第 11G 條（有關蘇格蘭分期付款相關規定），在第 1 項後段加入「，且不適用 2015 年消費者權利法第一部分第二章之契約。」
- 49 第 11J 條（有關分期付款契約品質或適當性契約之默示條款）刪除第 3A 項到第 3C 項和第 10 項。
- 50 刪除 1B（其他被移轉人消費者之額外權利）。
- 51 第 12 條（重要契約：英格蘭和威爾斯和北愛爾蘭相關服務提供契約），在第 1 項後段新增「，且不適用 2015 年消費者權利法第一部分第四章之契約。」
- 52（1）第 18 條（解釋：通則）修正如下。
- （2）第 1 項刪除「生產者」和「修復」之定義。
- （3）刪除第 4 項。

2002 年商品買賣和供給法

- 53 2002 年商品買賣和供給法廢止。

2008 年法規執行與處罰法

- 54 2008 年法規執行與處罰法附件三（特別為第一部分意旨制訂法規）在適當處新增—

「2015 年消費者權利法第一部分」

後續取代和施行

- 55 本附件附隨之修正—

- 48 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 2015 applies.”
- 49 In section 11J (implied terms about quality or fitness in contracts for hire of goods) omit subsections (3A) to (3C) and (10).
- 50 Omit Part 1B (additional rights of transferee in consumer cases).
- 51 In section 12 (the contracts concerned: supply of services, as respects England and Wales and Northern Ireland), in subsection (1) at the end insert “, other than a contract to which Chapter 4 of Part 1 of the Consumer Rights Act 2015 applies.”
- 52 (1) Section 18 (interpretation: general) is amended as follows.
- (2) In subsection (1) omit the definitions of “producer” and “repair”.
- (3) Omit subsection (4).

Sale and Supply of Goods to Consumers Regulations 2002 (SI 2002/3045)

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

Regulatory Enforcement and Sanctions Act 2008 (c. 13)

- 54 In Schedule 3 to the Regulatory Enforcement and Sanctions Act 2008 (enactments specified for the purposes of Part 1), at the appropriate place insert—
- “Consumer Rights Act 2015, Part 1”.

Consequential repeal and revocation

- 55 In consequence of the amendments made by this Schedule—

- (a) 刪除 1994 年商品買賣和供給法附件二第 5 條第 9 項，以及
- (b) 刪除 2008 年法規執行與處罰法附件二第 97 條。

附件二

第 63 條

可能被視為不公平之契約條款

第一部分 條款清單

1. 於可歸責於企業經營者之行為或過失，導致消費者死亡或個人傷害事件中，該契約條款具有排除或限制企業經營者責任之意旨或效果者。

此不包含根據第 65 條無效果之條款（過失責任之排除）。

2. 於可全部或部分歸責於企業經營者或第三方之企業經營者不完全給付或給付不能，包含消費者可用來抗辯企業經營者之主張可供抵消對企業經營者之債之選擇，該契約條款有不適當地排除或限制消費者之權利之意旨或效果者。
3. 於企業經營者就服務之提供應僅得取決於企業經營者就契約履行之意願之條件協議，契約條款有使該協議對消費者具拘束力之意旨或效果者。
4. 當消費者決定不完成或履行該契約，但企業經營者屬取消契約之一方，卻未提供消費者獲得相當於賠償之總額，該契約條款有允許企業經營者保有消費者給付之數額之意旨或效果者。

- (a) omit paragraph 5(9) of Schedule 2 to the Sale and Supply of Goods Act 1994, and
- (b) omit paragraph 97 of Schedule 2 to the Consumer Protection from Unfair Trading Regulations 2008 (SI 2008/1277).

SCHEDULE 2

Section 63

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 65 (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, including the 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. 當消費者決定不完成或履行該契約，消費者須對未提供之服務給付與企業經營者不合比例的高額賠償，該契約條款有此要求之意旨或效果者。
6. 該契約條款具有要求未能依據契約完成義務之消費者給付不合比例的高額賠償之意旨或效果者。
7. 該契約條款具有授予企業經營者可任意取消契約但消費者卻無相同之待遇，或允許企業經營者得作為取消契約之一方但可保有未提供服務之相對價款之意旨或效果者。
8. 該契約條款使企業經營者除有重大之事由可在未經合理之通知時終止不定期契約之意旨或效果者。

此條準用第 21 條（財務服務）和第 24 條（證券和外幣等之銷售）。

9. 當對消費者所設定表達不願延長契約之定期屬不合理且過早時，消費者未有其他表示，該契約條款有自動延長定期契約之意旨或效果者。
10. 於消費者未能有機會於條款被納入契約前了解時，該契約條款有使消費者受不可回復之拘束力之意旨或效果者。
11. 該契約條款具有使企業經營者可以在未有契約明定的合理理由下單方面變更契約條款之意旨或效果者。

本條準用第 22 條（財務服務）、第 23 條（不定期契約）和第 24 條（證券或外幣等之銷售）。

- 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) and 24 (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 express a desire not to extend the contract 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), 23 (contracts which last indefinitely) and 24 (sale of securities, foreign currency etc).

12. 該契約條款具有允許企業經營者得於消費者受契約拘束後決定契約標的之本質之意旨或效果者。

本條準用第 23 條（不定期契約）。

13. 該契約條款使企業經營者得在未有合理理由下單方面變更應提供之商品、數位內容或服務之本質之意旨或效果者。
14. 當消費者受契約之拘束且尚未有確定價額之方法或價額經合意，該契約條款具有使企業經營者得於消費者受契約拘束後自由決定應給付之價額之意旨或效果者。

本條準用第 23 條（不定期契約）、第 24 條（證券或外幣等之銷售）和第 25 條（價額索引條款）。

15. 當契約完成時合意之最終價額過高，而該契約條款允許企業經營者得在未經給予消費者取消契約之權利時提高商品、數位內容或服務之價額之意旨或效果者。

本條準用第 24 條（證券或外幣等之銷售）和第 25 條（價額索引條款）。

16. 該契約條款具有賦予企業經營者得認定提供之商品、數位內容或服務是否符合契約或賦予企業經營者解釋契約條款之唯一權利之意旨或效果者。
17. 該契約條款具有限制企業經營者遵循企業經營者之代理之承諾或使企業經營者之承諾限於特定形式之遵循之意旨或效果者。
18. 該契約條款於企業經營者未能履行其義務而要求消費者應履行所有消費者義務之意旨或效果者。

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 23 (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 giving the trader the discretion to decide the price payable under the contract after the consumer has become bound by it, where no price or method of determining the price is agreed when the consumer becomes bound.

This is subject to paragraphs 23 (contracts which last indefinitely), 24 (sale of securities, foreign currency etc) and 25 (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 24 (sale of securities, foreign currency etc) and 25 (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.

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. 該契約條款於可能減損對消費者之保證且未經消費者同意而允許企業經營者得移轉其契約權利或義務之意旨或效果者。
20. 該契約條款具有排除或阻礙消費者實施法律行為或行使其他任何法律救濟之意旨或效果者，尤其是透過以下方式—
 - (a) 要求消費者僅得將法律未規定之爭議訴諸仲裁，
 - (b) 不當地限制可供使用消費者之證據，或
 - (c) 根據所適用之法律，對消費者課予應屬契約對造之舉證責任。

第二部分

第一部分 範圍

金融服務

21. 第 8 條（未經合理通知之取消）不包含於金融服務之提供者應立即告知消費者契約取消時，該提供者得在有合理理由時未經通知單方面終止不定期契約之權利之條款。
22. 第 11 條（欠缺有效理由之契約變更）若有以下情事，不包含金融服務提供者於具有有效理由時未經通知有變更由消費者給付之利率比或其他金融服務費用額度之權利之條款—
 - (a) 提供者應盡可能提早告知消費者該變更，且
 - (b) 消費者得自由立即取消該契約。

- 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

SCOPE OF PART 1

Financial services

- 21 Paragraph 8 (cancellation without reasonable notice) does not include a term by which a supplier of financial services reserves the right to terminate unilaterally a contract of indeterminate duration without notice where there is a valid reason, if the supplier is required to inform the consumer of the cancellation immediately.
- 22 Paragraph 11 (variation of contract without valid reason) does not include a term by which a supplier of financial services reserves the right to alter the rate of interest payable by or due to the consumer, or the amount of other charges for financial services without notice where there is a valid reason, if—
- (a) the supplier is required to inform the consumer of the alteration at the earliest opportunity, and
 - (b) the consumer is free to dissolve the contract immediately.

不定期契約

23. 第 11 條（欠缺有效理由之契約變更）、第 12 條（於消費者受拘束後商品等之本質之確認），和第 14 條（於消費者受拘束後價額之確認）於下列情事，不包含企業經營者具有單方面變更不定期契約條件之權利之條款—

（a）企業經營者應以合理之通知告知消費者，且

（b）消費者得自由取消契約。

證券和外幣等之銷售

24. 第 8 條（無合理通知之取消）、第 11 條（欠缺有效理由之契約變更）、第 14 條（於消費者受拘束後價額之確認）和第 15 條（價額之提升）於以下情形不適用—

（a）可轉讓證券、金融商品和其他價額會隨著企業經營者無法控制之證券交易行情或指數或金融市場比率之變動而影響價額之商品或服務之交易，且

（b）以外幣計算之外幣、旅行支票或國際匯票之買賣或銷售契約。

價額指數條款

25. 第 14 條（於消費者受拘束後價額之確認）和第 15 條（價額之提升）於價額變動係經明示表達之方法者，不包含物價指數條款（於合法時）。

Contracts which last indefinitely

23 Paragraphs 11 (variation of contract without valid reason), 12 (determination of characteristics of goods etc after consumer bound) and 14 (determination of price 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 inform the consumer with reasonable notice, and
- (b) the consumer is free to dissolve the contract.

Sale of securities, foreign currency etc

24 Paragraphs 8 (cancellation without reasonable notice), 11 (variation of contract without valid reason), 14 (determination of price after consumer bound) and 15 (increase in price) do not apply to—

- (a) transactions in transferable securities, financial instruments and other products or services where the price is linked to fluctuations in a stock exchange quotation or index or a financial market rate that the trader does not control, and
- (b) contracts for the purchase or sale of foreign currency, traveller's cheques or international money orders denominated in foreign currency.

Price index clauses

25 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.

附件三

第 70 條

有關不公平契約條款和通知之法律執行

附件適用

1. 本附件適用於—
 - (a) 消費者契約條款，
 - (b) 旨在用於消費者契約條款。
 - (c) 第三人建議用於消費者契約，或
 - (d) 消費者通知。

申訴考量

2. (1) 主管機關得考量關於本附件適用之條款或通知) 申訴(相關申訴)。
- (2) 當 CMA 以外之主管機關企圖考量相關申訴，主管機關應通知 CMA 其意圖且隨時受理該申訴。
- (3) 當主管機關考量相關申訴，但決議不適用與申訴相關之第 3 條，主管機關應向申訴人為該決議提供理由。

禁止令或禁制令之申請

3. (1) 主管機關若認為有下列情事，得申請禁止令(於蘇格蘭)或禁制令—
 - (a) 自然人使用或意圖或建議使用適用本附件之條款或通知者，以及
 - (b) 一個或多個符合第 2、3 或 5 項之條款或通知者。

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) 當條款或通知意圖排除或限制下列責任者，屬本項範疇—。
 - (a) 第 31 條（責任排除：商品契約），
 - (b) 第 47 條（責任排除：數位內容契約），
 - (c) 第 57 條（責任排除：服務契約），或
 - (d) 第 65 條第 1 項（因過失而至死亡或個人傷害之商業責任排除）。
- (3) 當契約條款或通知為不公平者，屬本項適用範圍。
- (4) 第 1 條第（1）項第（b）款或第（c）款條款（但非屬第 1 條第（1）項第（a）款）視為第 62 條第（4）項和第（5）項（公平性評估），如同契約條款。
- (5) 當條款或通知違反第 68 條（透明要求），屬本項範圍。
- (6) 主管機關對本條下相關之條款或通知，無論是否收到相關申訴，得申請禁令或禁制令—

申請通知

- 4. (1) 適用第 3 條前，CMA 以外之主管機關應先通知 CMA。
- (2) 主管機關僅得於下列情況適用本條—
 - (a) 主管機關通知 CMA 後起算 14 天內，或
 - (b) 14 天結束前，CMA 同意主管機關適用。

申請決定

- 5. (1) 對第 3 條禁止令之申請，法院得核發有條件之禁制令，且於適當情況下駁回原告申請。

- (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.
- (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) 第 3 條禁制令之採用，法院得核發有條件之禁制令，且於適當情況下駁回被告申請。
- (3) 禁止令得包含下列內容—
 - (a) 申請相關之條款或通知，或
 - (b) 相似或具相似效力之消費者契約條款，或消費者通知。
- (4) 第 3 條之申請呈現契約強制執行條款並非抗辯，此基於法律規則。
- (5) CMA 以外之主管機關申請時，應先通知 CMA—
 - (a) 申請結果，以及
 - (b) 當核發禁止令或禁制令時，核發之情形和核發之對象。

承諾

- 6. (1) 根據第 3 段，主管機關得接受申請核准禁止令或禁制令針對之對象的承諾。
- (2) 承諾內容可包含自然人將遵守自然人和主管機關有關條款或通知之使用之協議條件，或承諾特定之相似條款或通知。
- (3) 若 CMA 以外之主管機關接受承諾時，應先通知 CMA—
 - (a) 承諾經接受之條件，以及
 - (b) 提供之自然人。

公開，資訊和建議

- 7. (1) CMA 應處理以下內容之細節之公開—

- (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) 第 3 條禁止令和禁制令申請，
 - (b) 本附件任一禁止令和禁制令，以及
 - (c) 本附件之任何承諾。
- (2) CMA 應回應要求，無論條款或通知，或相似或具相似效力，已經為本附件之禁止令或禁制令或承諾。
- (3) 條款或通知，或相似或具相似效力，已經為本附件之禁止令或禁制令或承諾，CMA 應提供該自然人要求禁止令或禁制令複本。
- (4) 條款或通知，或相似或具相似效力，已經為本附件之禁止令或禁制令或承諾，CMA 應提供該自然人要求禁止令或禁制令複本。
- (a) 承諾細節，以及
 - (b) 若提供承諾之自然人已同意修正條款或通知，修正之複本。
- (5) CMA 得處理有關本部分規定建議和資訊之公開。
- (6) 在本條—
- (a) 對本附件禁止令或禁制令之參考指 CMA 依照第 3 條核發之禁止令或禁制令或依第 5 條通知，以及
 - (b) 對承諾之參考指本附件禁止令或禁制令是對於 CMA 依照第 6 條或本條通知。

主管機關定義

8. (1) 本附件主管機關指—
- (a) CMA，

- (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) 北愛爾蘭企業貿易和投資部，
 - (c) 大不列顛地方度量衡主管機關，
 - (d) 金融行為主管機關，
 - (e) 通訊辦公室，
 - (f) 資訊委員，
 - (g) 天然氣和電力市場主管機關
 - (h) 供水服務管制主管機關
 - (i) 鐵路管制辦公室，
 - (j) 北愛爾蘭公共事業管制主管機關，
 - (k) 消費者協會。
- (2) 各部會部長得依命令或依法律文件修正第 1 款以增加、修改或移除任一事業體。
- (3) 第 2 款之命令得修正第 1 款，增加非公權力之機構，只要各部會部長認為該機構代表消費者利益(或特定描述消費者之利益)。
- (4) 各部會部長應公開(且得隨時變更)其決定從第 1 款增加或刪除事業體之標準。
- (5) 第 2 款命令得對本附件(包含對第 1 項機構不同適用或不適用條款之效果)持續修正。
- (6) 第 2 款命令得包含暫時或過渡或保留條款。
- (7) 第 2 款命令除已公布或下議院通過法律文件草案，不生效力。

- (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 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) 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）本條之公部門與 1998 年人權法第 6 條定義相同。

其他定義

9. 在本附件一

「CMA 指競爭和市場主管機關」；

「禁止令指暫時禁止」；

「禁制令包含禁止令」。

金融行為主管機關

10. 金融行為主管機關在本附件之職權，將視為與 2000 年金融服務和市場法相同。

附件四

第 75 條

第二部分附隨之修正

1967 年錯誤代理法

1. (1) 1967 年錯誤代理法第 3 條（避免排除錯誤代理責任條款）經修正如下

(2) 於開頭新增「(1)」。

(3) 於末處後段新增一

「(2) 本條不適用於 2015 年消費者權利法第二部分之契約（但準用本法第 62 條契約）。」

1977 年不公平契約條款法

2. 1977 年不公平契約條款法修正如下

(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.

SCHEDULE 4

Section 75

AMENDMENTS CONSEQUENTIAL ON PART 2

Misrepresentation Act 1967 (c. 7)

1 (1) Section 3 of the Misrepresentation Act 1967 (avoidance of provision excluding liability for misrepresentation) is amended as follows.

(2) At the beginning insert “(1)”.

(3) At the end insert—

“(2) This section does not apply to a term in a consumer contract within the meaning of Part 2 of the Consumer Rights Act 2015 (but see the provision made about such contracts in section 62 of that Act).”

Unfair Contract Terms Act 1977 (c. 50)

2 The Unfair Contract Terms Act 1977 is amended as follows.

3. 第 1 條第 2 項（第一部分範圍）「對於 4」取代為「，3」。

4. 第 2 條（過失責任），在第 3 項後新增—

「(4) 本條不適用以下情況—

(a) 消費者契約條款，或

(b) 可被認為屬於消費者通知之通知，

（但準用 2015 年消費者權利法第 62 條和第 65 條此類契約和通知之規定）。」

5. (1) 第 3 條（因契約而生之責任）修正如下。

(2) 第 1 項刪除「當消費者或」。

(3) 第 2 項後新增—

「(3) 本條不適用於消費者契約（但準用 2015 年消費者權利法第 62 條。）」

6. 刪除第 4 條（不合理賠償條款）。

7. 刪除第 5 條（消費者商品保證）。

8. (1) 第 6 條（買賣和限期占有商品契約）修正如下

(2) 第 1 項後新增—

「(1A) 違反因下列情況所生義務之責任—

(a) 1979 年（商品買賣）法第 13、14 或 15 條（有關出賣人暗示有關物品描述或樣本一致性或特定目的商品品質或適當性之承諾）；

(b) 1973 年（商品供給）法（限期占有商品契約相關規定）第 9、10 或 11 條，

不得排除或限制相關契約條款，且僅於符合公平且合理性時。」

3 In section 1(2) (scope of Part 1) for “to 4” substitute “, 3” .

4 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 62 and 65 of the Consumer Rights Act 2015).”

5 (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 62 of the Consumer Rights Act 2015).”

6 Omit section 4 (unreasonable indemnity clauses).

7 Omit section 5 (“guarantee” of consumer goods).

8 (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) 刪除第 2 項和第 3 項。

(4) 第 4 項後新增—

「(5) 本條不適用於消費者契約（但準用 2015 年消費者權利法第 31 條）。」

9. (1) 第 7 條（其他有關商品通行契約）修正如下

(2) 第 1 項後新增—

「(1A) 商品描述或樣本一致性相關責任或特定目的下商品品質或適當性責任不得排除或限制，除符合合理性要求。」

(3) 刪除第 2 項和第 3 項。

(4) 第 4 項後新增—

「(4A) 本條不適用消費契約（但準用 2015 年消費者權利法第 31 條規定）。」

10. 刪除第 9 條（違反契約效力）。

11. 刪除第 12 條（作為應對消費者）。

12. 第 13 條第 1 項（豁免條款種類）「以及 5 以便」取代為「6 以及」。

13. 第 14 條（第一部分解釋），在適當處新增—

「『消費者契約』與 2015 年消費者權利法定義相同（準用第 61 條）；」；

「『消費者通知』與 2015 年消費者權利法定義相同（準用第 61 條）；」。

14. (1) 第 15 條（第二部分範圍）修正如下

(2) 第 2 項「以及 18 以便」取代為「17 以及」。

(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 31 of the Consumer Rights Act 2015).”

9 (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 31 of the Consumer Rights Act 2015).”

10 Omit section 9 (effect of breach of contract).

11 Omit section 12 (“dealing as consumer”).

12 In section 13(1) (varieties of exemption clauses) for “and 5 to” substitute “, 6 and” .

13 In section 14 (interpretation of Part 1), at the appropriate places insert—

“ “consumer contract” has the same meaning as in the Consumer Rights Act 2015 (see section 61);” ; “

“consumer notice” has the same meaning as in the Consumer Rights Act 2015 (see section 61);” .

14 (1) Section 15 (scope of Part 2) is amended as follows.

(2) In subsection (2) for “to 18” substitute “and 17” .

(3) 第 3 項—

- (a) 「以及 18 以便」取代為「17 以及」，以及
- (b) 第 (b) 條刪除第 (ii) 項以及其後之「或」。

15. 在第 16 條（違反義務之責任），在第 3 項後新增—

「(4) 本條不適用於—

- (a) 消費者契約條款，或
 - (b) 屬於消費者通知
- （但準用 2015 年消費者權利法第 62 條至第 65 條相關契約和通知之規定）。」

16. (1) 第 17 條（對消費者或定型化契約不合理免責之控制）修正如下

- (2) 前段刪除「消費者或」。
- (3) 在第 1 項—
 - (a) 刪除「消費者契約或」，
 - (b) 第 (a) 條刪除「消費者或」，以及
 - (c) 第 (b) 條刪除「消費者或」。

(4) 在第 2 項後新增—

「(3) 本條不適用於消費者契約條款（但準用 2015 年消費者權利法第 62 條相關契約之規定）。」

17. 刪除第 18 條（消費者契約中不合理賠償條款）。

18. 刪除第 19 條（消費者商品保證）。

19. (1) 第 20 條（買賣和限期占有商品契約中法定默示責任）修正如下。

(2) 第 1 項之後新增—

「(1A) 契約條款意圖排除或限制基於下列原因而生之違約責任者—

(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.

15 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 62 and 65 of the Consumer Rights Act 2015).”

16 (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 62 of the Consumer Rights Act 2015).”

17 Omit section 18 (unreasonable indemnity clauses in consumer contracts).

18 Omit section 19 (“guarantee” of consumer goods).

19 (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) 1979 年（商品買賣）法第 13、14 或 15 條（有關出賣人暗示有關物品描述或樣本一致性或特定目的商品品質或適當性之承諾）；

(b) 1973 年（商品供給（適用條款））法第 9、10 或 11 條，

僅於公平且合理合併契約條款始生效力。

（1B）本條不適用消費者契約（但準用 2015 年消費者權利法第 31 條相關契約之規定）。」

(3) 刪除第 2 項。

20. (1) 第 21 條（其他商品供給契約中法定默示責任）修正如下

(2) 第 1 項，第 (a) 段和第 (b) 段取代為「有關第 3 項以下，僅於公平且合理合併契約條款始生效力。」

(3) 第 2 條第 (b) 項刪除「除消費者契約（以及僅對消費者有利情況下）」。

(4) 第 3A 項後新增—

「(3B) 本條不適用消費者契約（但準用 2015 年消費者權利法第 31 條相關契約之規定）」

21. 刪除第 22 條（違反契約結果）。

22. (1) 第 25 條（第二部分之解釋）修正如下。

(2) 第 1 項—

(a) 刪除消費者定義，

(b) 「消費者契約」定義取代為—

「『消費者契約』和 2015 年消費者權利法定義相同（準用第 61 條）；」，以及

(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 section 31 of the Consumer Rights Act 2015).”

(3) Omit subsection (2).

20 (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 31 of the Consumer Rights Act 2015).”

21 Omit section 22 (consequence of breach of contract).

22 (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 2015 (see section 61);” , and

(c) 在適當處新增—

「『消費者通知』和 2015 年消費者權利法定義相同（準用第 61 條）」。

(3) 刪除 (1A) 和 (1B)。

(4) 第 5 項，「以及 16 和 19 以便」取代為「16, 20 以及」。

23. 第 26 條第 2 項（國際供給契約）刪除「或 4」。

24. (1) 第 27 條（準據法選擇）修正如下

(2) 第 2 項—

(a) 刪除（其一或兩者均），以及

(b) 刪除第 (b) 條以及其後之「或」。

(3) 刪除第 3 項。

25. 刪除第 28 條（乘客海運暫時性條款）

26. (1) 附件一（第 2 條至第 4 條以及第 7 條範圍）修正如下

(2) 前段為「4」取代為「, 3」。

(3) 第 1 段，為「4」取代為「, 以及 3」。

(4) 第 2 段—

(a) 為「4」構取代為「, 3」, 以及

(b) 刪除「除對於應屬消費者有利」。

(5) 第 3 段—

(a) 為「3 及 4」取代為「及 3」, 且

(b) 刪除「除對於應消費者有利」。

27. 附件二（如何適用合理檢驗法之指引）「為 6(3), 7(3) 和 4」取代為「為 6(1A), 7(1A) 和 (4)」。

1985 年公司法

28. (1) 1985 年公司法（基於第 449 條目的之特別描述揭露）附件 15D 修正如下

(c) at the appropriate place insert—

““consumer notice” has the same meaning as in the Consumer Rights Act 2015 (see section 61);”.

(3) Omit subsections (1A) and (1B).

(4) In subsection (5), for “and 16 and 19 to” substitute “, 16, 20 and” .

23 In section 26(2) (international supply contracts) omit “or 4” .

24 (1) Section 27 (choice of law clauses) is amended as follows.

(2) subsection (2)—

(a) omit “(either or both)” , and

(b) omit paragraph (b) and the “or” preceding it.

(3) Omit subsection (3).

25 Omit section 28 (temporary provision for sea carriage of passengers).

26 (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) for “, 3 and 4” substitute “and 3” , and

(b) omit “, except in favour of a person dealing as consumer,” .

27 In Schedule 2 (“guidelines” for application of reasonableness test), for “6(3), 7(3) and (4),” substitute “6(1A), 7(1A) and (4),” .

Companies Act 1985 (c. 6)

28 (1) Schedule 15D to the Companies Act 1985 (specified descriptions of disclosures for the purposes of section 449) is amended as follows.

(2) 第 17 條—

(a) 刪除第 (i) 項，和

(b) 在第 1 項後新增—

「(m) 2015 年消費者權利法附件三」。

(3) 第 25 條內容取代為—

「25 附件三揭露目的為促使或協助主管機關執行 2015 年消費者權利法，而非為競爭和市場主管機關行使其功能。」

1995 年商船運送法

29. 1995 年商船運送法（附件六英國島嶼間運送之適用）第 184 條，刪除第 2 項。

1996 年仲裁法

30. 1996 年仲裁法修正如下

31. (1) 第 89 條（消費者仲裁協議不公平條款管制之適用）修正如下。

(2) 第 1 項，「1994 消費者不公平契約條款法」取代為「2015 年消費者權利法第二部分（不公平條款）」。

(3) 第 2 項內容取代為—

「(2) 本條項所稱「本部分」指 2015 年消費者權利法第二部分（不公平條款）」

32. 第 90 條（法人消費者之規定）內容取代為—

「90 本部分適用法人消費者之規定本部分適用消費者為法人之情況，如同消費者為自然人。」

(2) In paragraph 17—

(a) omit paragraph (i), and

(b) after paragraph (l) insert—

“(m) Schedule 3 to the Consumer Rights Act 2015” .

(3) For paragraph 25 substitute—

“25 A disclosure for the purposes of enabling or assisting a regulator under Schedule 3 to the Consumer Rights Act 2015 other than the Competition and Markets Authority to exercise its functions under that Schedule.”

Merchant Shipping Act 1995 (c. 21)

29 In section 184 of the Merchant Shipping Act 1995 (application of Schedule 6 to carriage within British Islands) omit subsection (2).

Arbitration Act 1996 (c. 23)

30 The Arbitration Act 1996 is amended as follows.

31 (1) Section 89 (application of unfair terms regulations to consumer arbitration agreements) is amended as follows.

(2) In subsection (1), for “the Unfair Terms in Consumer Contracts Regulations 1994” substitute “Part 2 (unfair terms) of the Consumer Rights Act 2015” .

(3) For subsection (2) substitute—

“(2) In those sections “the Part” means Part 2 (unfair terms) of the Consumer Rights Act 2015.”

32 For section 90 (regulations apply where consumer is a legal person) substitute—

“ 90 Part applies where consumer is a legal person

The Part applies where the consumer is a legal person as it applies where the consumer is an individual.”

33. 第 91 條第 1 項（中等數量不公平仲裁條款）之「法」取代為「部分」。

1999 年不公平契約規則

34. 1999 年不公平契約規則廢止。

2002 年企業法

35. 2002 年企業法（揭露目的而訂定之法規）附件 15 後段新增—
「2015 年消費者權利法附件三」。

2006 年公司法

36. 2006 年公司法修正如下。

37. (1) 附件二（為第 948 條目的特定揭露描述）第二部分第 (A) 條修正如下。

(2) 第 25 條—

(a) 刪除第 (h) 項，和

(b) 在第 (j) 項後新增—

「(k) 2015 年消費者權利法附件三」。

(3) 第 33 條內容取代為—

「33 附件三揭露目的為促使或協助主管機關執行 2015 年消費者權利法，而非為競爭和市場主管機關行使其功能。」

38. (1) 2015 年消費者權利法第二部分附件 11A（基於第 1224A 條意旨揭露特定描述）修正如下。

(2) 第 39 條第 (i) 項新增—

「(i) 2015 年消費者權利法附件三」。

(3) 第 48 條內容—

33 In section 91(1) (arbitration agreement unfair where modest amount sought) for “Regulations” substitute “Part” .

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

34 The Unfair Terms in Consumer Contracts Regulations 1999 are revoked.

Enterprise Act 2002 (c. 40)

35 In Schedule 15 to the Enterprise Act 2002 (enactments for the purposes of which disclosures may be made), at the end insert—

“Schedule 3 to the Consumer Rights Act 2015.”

Companies Act 2006 (c. 46)

36 The Companies Act 2006 is amended as follows.

37 (1) Section (A) of Part 2 of Schedule 2 (specified descriptions of disclosures for the purposes of section 948) is amended as follows.

(2) In paragraph 25—

(a) omit paragraph (h), and

(b) after paragraph (j) insert—

“(k) Schedule 3 to the Consumer Rights Act 2015” .

(3) For paragraph 33 substitute—

“33 A disclosure for the purposes of enabling or assisting a regulator under Schedule 3 to the Consumer Rights Act 2015 other than the Competition and Markets Authority to exercise its functions under that Schedule.”

38 (1) Part 2 of Schedule 11A (specified descriptions of disclosures for the purposes of section 1224A) is amended as follows.

(2) In paragraph 39, for paragraph (i) insert—

“(i) Schedule 3 to the Consumer Rights Act 2015” .

(3) For paragraph 48 substitute—

「48 附件三揭露目的為促使或協助主管機關執行 2015 年消費者權利法，而非為競爭和市場主管機關行使其功能。」

附隨之修正

39. 本附件附隨之修正一

- (a) 刪除 1979 年商品買賣法第 19 條第 (b) 項附件二，以及
- (b) 本附件第 21 條，刪除「以及 (2)(a)」和「(在每一個案中)」。

附件五

第 77 條

調查權等

第一部分 基本概念

前言

1. (1) 本附件授權對執行人調查權和特定調查權行使之限制。
- (2) 本附件第一部分包含名詞解釋；尤其是第 2 條到第 6 條針對執行人之解釋。
- (3) 本附件第二部分解釋執行人立法。
- (4) 本附件第三部分包含資訊產品相關權力；第 13 條闡述得行使權力之執行人態樣以及執行人得行使權力之目的。
- (5) 本附件第四部分包含更多權力；第 19 條和第 20 條闡述得行使權力之執行人態樣以及執行人得行使權力之目的。

“48 A disclosure for the purposes of enabling or assisting a regulator under Schedule 3 to the Consumer Rights Act 2015 other than the Competition and Markets Authority to exercise its functions under that Schedule.”

Consequential repeals

39 In consequence of the amendments made by this Schedule—

- (a) omit paragraph 19(b) of Schedule 2 to the Sale of Goods Act 1979, and
- (b) in paragraph 21 of that Schedule, omit “and (2)(a)” and “(in each case)” .

SCHEDULE 5

Section 77

INVESTIGATORY POWERS ETC.

PART 1 BASIC CONCEPTS

Overview

- 1 (1) This Schedule confers investigatory powers on enforcers and specifies the purposes for which and the circumstances in which those powers may be exercised.
- (2) Part 1 of this Schedule contains interpretation provisions; in particular paragraphs 2 to 6 explain what is meant by an “enforcer” .
- (3) Part 2 of this Schedule explains what is meant by “the enforcer’s legislation” .
- (4) Part 3 of this Schedule contains powers in relation to the production of information; paragraph 13 sets out which enforcers may exercise those powers, and the purposes for which they may do so.
- (5) Part 4 of this Schedule contains further powers; paragraphs 19 and 20 set out which enforcers may exercise those powers, and the purposes for which they may do so.

- (6) 本附件第五部分條文補充第三部分和第四部分條文。
- (7) 本附件第六部分條文包含執行人於轄區外或遠距行使職權，以及轄區外和遠距行使之相關程序。

執行人

- 2. (1) 本附件「執行人」指—
 - (a) 國內執行人，
 - (b) 歐盟執行人，
 - (c) 公設執行人，或
 - (d) 不公平契約條款執行人。
- (2) 但第四部分和本附件第 38 條至第 41 條「執行人」指—
 - (a) 國內執行人，
 - (b) 歐盟執行人。
- (3) 本附件第 13 條、第 19 條和第 20 條，有關執行人行使權力，包含執行人行使權力之執行人。

國內執行人

- 3. (1) 本附件「國內執行人」指—
 - (a) 競爭和市場部，
 - (b) 北愛爾蘭企業貿易和投資部，
 - (c) 英格蘭地方議會，
 - (d) 大不列顛地方度量衡主管機關，
 - (e) 北愛爾蘭地方議會，

- (6) Part 5 of this Schedule contains provisions that are supplementary to the powers in Parts 3 and 4 of this Schedule.
- (7) Part 6 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.

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) But in Part 4 and paragraphs 38 and 41 of this Schedule “enforcer” means—

- (a) a domestic enforcer, or
- (b) an EU enforcer.

(3) In paragraphs 13, 19 and 20 of this Schedule, a reference to an enforcer exercising a power includes a reference to an officer of the enforcer exercising that power.

Domestic enforcers

3 (1) 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) 各部會部長，
- (g) 天然氣和電力市場主管機關，
- (h) 大不列顛市議會，
- (i) 1973 年市成立法，或

- (j) 任何人因 1987 年消費者保護法第 27 條第 1 項（執行安全條款責任）而須負擔責任者，適用該法立法意旨。

- (2) 但天然氣和電力市場主管機關於本附件第四部分不屬於國內執行人。
- (3) 有關北愛爾蘭企業貿易和投資部包含該部已安排人員，在第 15 部分第 3 條第 1 項對於 1997 年電梯條例執行部分。

歐盟執行人

4. 本附件「歐盟執行人」指一

- (a) 競爭和市場部，
- (b) 大不列顛地方度量衡主管機關，
- (c) 北愛爾蘭企業貿易和投資部，

- (d) 金融行為主管機關，
- (e) 民航主管機關，
- (f) 各部會部長，
- (g) 北愛爾蘭衛生，社會服務和公共安全部，

- (h) 通訊辦公室，

- (f) the Secretary of State,
 - (g) the Gas and Electricity Markets Authority,
 - (h) the British Hallmarking Council,
 - (i) an assay office within the meaning of the Hallmarking Act 1973,
or
 - (j) 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.
- (2) But the Gas and Electricity Markets Authority is not a domestic enforcer for the purposes of Part 4 of this Schedule.
- (3) The reference to the Department of Enterprise, Trade and Investment in Northern Ireland includes a person with whom the Department has made arrangements, under paragraph 3(1) of Schedule 15 to the Lifts Regulations 1997 (SI 1997/831) for enforcement of those regulations.

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) 2003 年通訊法第 120 條第 15 項（服務租金管制）執行主管機關或，
- (j) 資訊委員。

公設執行人

5. 本附件「公設執行人」指自然人或機構—

- (a) 依 2002 年企業法第 213 條第 2 項授權之命令，以及
- (b) 依本條第 3 項意指指派（各部部长僅得於公設機構屬獨立機關時始得指派之）。

不公平契約條款執行人

6. 本附件「不公平契約條款執行人」指自然人或機構—

- (a) 附件三（得執行不公平契約條款之自然人或機構）第 8 條第 1 項所列條款，以及
- (b) 1998 年人權法第 6 條所稱公設執行人。

執行人

7. (1) 本附件「執行人」相關指—

- (a) 執行人指派之監督人依本附件執行，或授權執行，
- (b) 由執行人指派之執行人依本附件行使職權，或授權執行，
- (c) 執行人的受僱人（監督人或執行人以外之人）由執行人依照本附件行使職權而指派者，或授權其執行者，或

- (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.

Officers

7 (1) In this Schedule “officer” , in relation to an enforcer, means—

- (a) an inspector appointed by the enforcer to exercise powers under this Schedule, or authorised to do so,
- (b) an officer of the enforcer appointed by the enforcer to exercise powers 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 powers under this Schedule, or authorised to do so, or

(d) 自然人（其他監督人，執行人）

(2) 但本附件有關執行人涉及僅對第 1 項自然人有特殊權力，當該自然人已被指派或授權行使權力。

(3) 自然人在本附件生效前即被指派或授權行使權力者，若該權力被本附件取代，視為被指派或授權行使新權力。

(4) 本條「受僱人」涉及各部會部長者，指受僱於國家公務服務之自然人。

其他條款解釋

8. 在本條中—

「團體侵權」與 2002 年企業法第 212 條定義相同；

「文件」包含 2002 年企業法第 217 條以任何形式記錄之資訊；

「執行命令」指 2002 年企業法第 217 條之命令；

「暫時執行命令」指 2002 年企業法第 218 條；

「信賴和市場監督規則」指於 2008 年 7 月 9 日有關商品市場之認證和市場監督要求之取代 Regulation (EEC) No 339/93 之歐洲議會法案。

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

Interpretation of other terms

8 In this Schedule—

“Community infringement” has the same meaning as in section 212 of the Enterprise Act 2002;

“document” includes information recorded in any form;

“enforcement order” means an order under section 217 of the Enterprise Act 2002;

“interim enforcement order” means an order under section 218 of that Act;

“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.

第二部分 執行者立法

執行人立法

9. (1) 本條「執行人立法」涉及國內執行人，指—
- (a) 依第 10 條意旨之立法或通知，國內執行人有責任或權力行使，以及
 - (b) 國內執行人名列第 11 條表格第一欄之實體，相對應表格第二欄立法所列之立法。
- (2) 本附件關於違反或遵守執行人之立法包含違反或遵守下列所核發之通知—
- (a) 執行人立法，或
 - (b) 執行人立法所訂定之法。
- (3) 本附件有關執行人立法遵守或違反參考 1997 年電梯條例規定；有關適用相關產品時（該法附件 15 定義）亦適用該法；

執行者立法：第 9 條第 (1) 項第 (a) 款所稱責任和權利

10. 第 9 條第 1 項第 (a) 款提及之責任和權力源自下列條款—

1968 年商品說明法第 26 條第 1 項或第 40 條第 1 項(b)（包括水晶玻璃說明規則第 8 條第 3 項之適用）；

PART 2

THE ENFORCER'S LEGISLATION

Enforcer's legislation

- 9 (1) In this Schedule “the enforcer’s legislation” , in relation to a domestic enforcer, means—
- (a) legislation or notices which, by virtue of a provision listed in paragraph 10, the domestic enforcer has a duty or power to enforce, and
 - (b) where the domestic enforcer is listed in an entry in the first column of the table in paragraph 11, the legislation listed in the corresponding entry in the second column of that table.
- (2) References in this Schedule to a breach of or compliance with the enforcer’s legislation include a breach of or compliance with a notice issued under—
- (a) the enforcer’s legislation, or
 - (b) legislation under which the enforcer’s legislation is made.
- (3) References in this Schedule to a breach of or compliance with the enforcer’s legislation are to be read, in relation to the Lifts Regulations 1997 (SI 1997/831), as references to a breach of or compliance with the Regulations as they apply to relevant products (within the meaning of Schedule 15 to the Regulations) for private use or consumption.

Enforcer's legislation: duties and powers mentioned in paragraph

9(1)(a)

10 The duties and powers mentioned in paragraph 9(1)(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(3) of the Crystal Glass (Descriptions)

1973 年規則及 1995 年鞋類標示規則第 10 條第 2 項；

1973 年印記法第 9 條第 1 項或第 6 項；

1974 年價格法附件第 6 條（以及該附件第 14 條）；

1974 年消費者信用法第 161 條第 1 項；

1979 年不動產仲介法第 26 條第 1 項；

1981 年北愛爾蘭度量衡命令第 39 條；

1984 年錄音法第 16A 條第 1 項或第 4 項；

1987 年消費者保護法第 27 條第 1 項（包含「2003 年煙火法」第 12 條第 1 項規定）；

1988 年教育改革法第 215 條第 1 項；

1988 年著作權、設計和專利法第 107A 條第 1 項或第 3 項或第 198A 條第 1 項或第 3 項；

1991 年簡易壓力船（安全）規則附件五第 3 條；

1992 年套裝行程、套裝旅遊和套裝觀光規則附件三第 1 條；

1993 年潔淨空氣法第 30 條第 4 項或第 7 項或第 31 條第 4 項第 (a) 款；

1994 年星期日貿易法附件二第 1 條

1994 年商標法第 93 條第 1 項或第 3 項；

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;

Article 39 of the Weights and Measures (Northern Ireland) Order 1981 (SI 1981/231 (NI 10));

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 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) or 31(4)(a) 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;

- 1995 年奧林匹克符號等（保護）法第 8A 條第 1 項或第 3 項；
- 1997 年電梯條例附件五第 2 條第 a 項或第 3 條第 1 項；
- 1999 年壓力平衡法附件八第 2 條第(a)向第 3 條第(3)項第(a)款；
- 1999 年動力燃料（組成和內容）法第 5C 條第 5 項；
- 2000 年廣播設備和電訊頻道設備法附件九第 1 條第 1 項第(b)款或第 2 項第(b)款或第 2 條；
- 2002 年個人保護設備法附件十第 1 條第(a)項；
- 2003 年包裹（重要要求）法附件四第 1 條；
- 2004 年聖誕節交易法第 3 條第 1 項；
- 2005 年一般產品安全法第 10 條第 1 項；
- 2006 年度量衡（包裹商品）法第 10 條第 1 項；
- 2006 年測量工具（自動不連續總額計算器）法第 17 條；
- 2006 年測量工具（自動鐵路秤量台）法第 18 條；
- 2006 年測量工具（自動測量器）法第 20 條；
- 2006 年測量工具（自動動力測量填充工具）法第 18 條；
- 2006 年測量工具（自動測量器）法第 18 條；

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);
regulation 5C(5) of the Motor Fuel (Composition and Content) Regulations 1999 (SI 1999/3107);
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(a) 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(1) 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 Railweighbridges) 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);

2006 年測量工具（容量測量）法第 16 條；

2006 年測量工具（液體燃料及潤滑劑）法第 17 條；

2006 年測量工具（物質長度測量）法第 16 條；

2006 年測量工具（冷水計時器）法第 17 條；

2006 年測量工具（從油槽車運送之液體燃料）法第 18 條；

2006 年電磁相容性法第 37 第 1 項第(a)款第(ii)目或第(b)款第(ii)目；

2008 年市場誤導商業保護法第 13 條第 1 項第 1A 條；

2008 年消費者不公平交易保護法第 19 條第 1A 項；

2008 年商品供給（安全）法附件五第 2 條或第 5 條；

2010 年時間分享，假日商品，零售和契約交換法第 32 條第 2 項或第 3 項；

2011 年北愛爾蘭度量衡（包裹商品）法第 10 條第 1 項；

2012 年紡織品產品（標籤和纖維組成）第 11 條；

2013 年化妝品產品執行法第 6 條第 1 項；

本法第 87 條第 1 項；

本法第 93 條第 1 項或第 2 項。

- 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) or (1A) of the Business Protection from Misleading Marketing Regulations 2008 (SI 2008/1276);
- regulation 19(1) or (1A) of the Consumer Protection from Unfair Trading Regulations 2008 (SI 2008/1277);
- paragraph 2 or 5 of Schedule 5 to 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 10(1) of the Weights and Measures (Packaged Goods) Regulations (Northern Ireland) 2011 (SR 2011/331);
- regulation 11 of the Textile Products (Labelling and Fibre Composition) Regulations 2012 (SI 2012/1102);
- regulation 6(1) of the Cosmetic Products Enforcement Regulations 2013 (SI 2013/1478);
- section 87(1) of this Act;
- section 93(1) or (2) of this Act.

執行人立法：第9條第(1)項第(b)款之立法

11. 第9條第(1)項第(b)款之表格

執行人	立法
大不列顛地方度量衡主管機關或北愛爾蘭企業貿易和投資部	1949年註冊新型法第35 ZA條
大不列顛地方度量衡主管機關或北愛爾蘭企業貿易和投資部	1977年容器瓶罐測量（歐體要求）法
各部會部長	1977年酒精計時器和酒精濃度計時器（歐體要求）法
大不列顛地方度量衡主管機關	1985年度量衡法，以及本法相關法規命令和法規
大不列顛地方度量衡主管機關或北愛爾蘭企業貿易和投資部	1988年測量工具（歐體要求）法
大不列顛地方度量衡主管機關或北愛爾蘭企業貿易和投資部	2000年金融服務及市場法以及2012年金融服務法第107條第4項第(a)款相關法規內容
大不列顛地方度量衡主管機關或北愛爾蘭企業貿易和投資部	2000年非自動重量工具法

Enforcer’s legislation: legislation mentioned in paragraph 9(1)(b)

11 Here is the table mentioned in paragraph 9(1)(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	Section 35ZA of the Registered Designs Act 1949
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 and orders 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 Financial Services and Markets Act 2000 so far as it relates to a relevant regulated activity within the meaning of section 107(4)(a) of the Financial Services Act 2012
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)

第 10 條或第 11 條修正之授權

12. (1) 各部會部長得依法規命令或法律文件—

(a) 以新增、修改或移除第 10 條或第 11 條表格中之實體以修正之；

(b) 依第 (a) 款制訂之結果，將修改、取代或撤銷其他（包含本法）無論何時通過或制訂之法規。

(2) 各部會部長不得依本條訂定法規命令實體權力或相關權力限制本法以外由實體權力取代，或附件相關權力，除各部部長認為第 3 款為合理限制。

(3) 限制透過法規命令於改變前後，安全港條款適用新權力，提供相較於舊權力較高保護。

(4) 在第 2 款所稱實體權力和相關權力與 2012 年權利保護法第 46 條定義相同。

(5) 本條之法規命令得包含臨時或過渡或保留條款。

(6) 法律文件包含本條之法規命令者，除該法律文件草案先前已公布且由下議院決議通過，否則將不制訂。

(7) 任何包含本條法規命令之其他法律文件依據下議院決議而無效。

(8) 在本條「主要立法」指—

(a) 國會法，

Powers to amend paragraph 10 or 11

- 12 (1) The Secretary of State may by order made by statutory instrument—
- (a) amend paragraph 10 or the table in paragraph 11 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) 蘇格蘭國會法，
- (c) 威爾斯國民議會措施或法律，
- (d) 北愛爾蘭法規。

第三部分 有關資訊產品相關權力

本部分權力行使

13. (1) 本條所稱執行人僅於本條與執行人相關之目的和情況下得行使本附件本部分之權力。
- (2) 競爭和市場部得為以下目的行使本附件本部分之權力—
- (a) 為促使主管機關行使或考量其於 2002 年企業法第八部分之職權；
 - (b) 為促使私人指派執行人考量其於本部分之職權；
 - (c) 為促使委員會執行人考量其於本部分之職權；
 - (d) 為確保自然人已遵守或將遵守執行命令或暫時執行命令；
 - (e) 為確保自然人已遵守或將遵守依 2002 年企業法第 217 條第 9 項、第 218 條第 10 項或第 219 條之承諾。
- (3) 公設執行人，指競爭和市場部以外之大不列顛地方度量衡主管機關、北愛爾蘭企業貿易和投資部或歐盟執行人，得基於下列目的行使本附件本部分之權力—

- (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

POWERS IN RELATION TO THE PRODUCTION OF INFORMATION

Exercise of powers in this Part

- 13 (1) An enforcer of a kind mentioned in this paragraph may exercise a power in this Part of this Schedule only for the purposes and in the circumstances mentioned in this paragraph in relation to that kind of enforcer.
- (2) The Competition and Markets Authority may exercise the powers in this Part of this Schedule for any of the following purposes—
- (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 as under that Part;
 - (d) to ascertain whether a person has complied with or is complying with an enforcement order or an interim enforcement order;
 - (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.
- (3) A public designated enforcer, a local weights and measures authority in Great Britain, the Department of Enterprise, Trade and Investment in Northern Ireland or an EU enforcer other than the Competition and Markets Authority may exercise the powers in this Part of this Schedule for any of the following purposes—

- (a) 為促使執行人行使或考量其於 2002 年企業法第八部分之職權；
 - (b) 為確保自然人已遵守或將遵守執行命令（或暫時執行命令）；
 - (c) 為確保自然人已遵守或將遵守依 2002 年企業法第 217 條第 9 項、第 218 條第 10 項之承諾；
 - (d) 為確保自然人已遵守或將遵守 2002 年企業法第 219 條賦予執行人之業務。
- (4) 國內執行人得行使本附件本部分之權力，基於確任是否有違反執行單位執行法規之情事。
- (5) 但除執行單位執行人合理懷疑有違反執行單位執行法規之情事外，國內執行人不得基於本條第 4 項目的而行使第 14 條（要求資訊產品之權力）。
- (6) 本條第 5 項不適用於執行人屬「信賴和市場監督規則」第 2 條第 18 項所稱市場監督主管機關且其權力基於該法第 2 條第 17 項目的而行使之情況。
- (7) 不公平契約條款執行人得為以下目的行使本附件本部分之權力
- (a) 為促使執行人行使或考量是否依附件三（不公平契約條款和通知之執行）所賦予之職權行使；

- (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 that 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;
 - (d) to ascertain whether a person has complied with or is complying with an undertaking given to that enforcer under section 219 of that Act.
- (4) A domestic enforcer may exercise the powers in this Part of this Schedule for the purpose of ascertaining whether there has been a breach of the enforcer's legislation.
- (5) But a domestic enforcer may not exercise the power in paragraph 14 (power to require the production of information) for the purpose in sub-paragraph (4) unless an officer of the enforcer reasonably suspects a breach of the enforcer's legislation.
- (6) Sub-paragraph (5) does not apply if the enforcer is a market surveillance authority within the meaning of Article 2(18) of the Regulation on Accreditation and Market Surveillance and the power is exercised for the purpose of market surveillance within the meaning of Article 2(17) of that Regulation.
- (7) An unfair contract terms enforcer may exercise the powers in this Part of this Schedule for either of the following purposes—
- (a) to enable the enforcer to exercise or to consider whether to exercise any function it has under Schedule 3 (enforcement of the law on unfair contract terms and notices);

- (b) 為確保自然人已遵守或將遵守本附件第 5 條之禁止令或禁制令（本附件定義下）或本附件第 6 條之承諾。
- (8) 但除不公平契約條款執行人合理懷疑自然人使用、意圖使用或建議使用附件三第 3 條契約條款或通知情事外，國內執行人不得基於本條第 7 項第 (a) 款目的而行使第 14 條。
- (9) 大不列顛地方度量衡主管機關得基於下列理由行使本附件本部分權力—
- (a) 為決定其是否依 1979 年不動產仲介法第 3 條或第 4 條制訂法規命令；
- (b) 為促使其行使該法第 5 條、第 6 條、第 8 條、第 13 條或第 17 條。
- (10) 本條下一
- 「委員會執行人」指 2002 年企業法相關條文定義(準用第 213 條第 5 項)；
- 「私人指派執行人」指自然人或機構—
- (a) 依該法第 213 條第 2 項命令指派，且
- (b) 已依該法該條第 4 項意旨指派（明文各部會部長得指派自然人或公立機構以外之執行人僅當藉由命令符合標準時）。

要求資訊產品之權力

14. 執行人或執行單位執行人得通知自然人要求其提供資訊並於通知中載明需提供之資訊。

- (b) to ascertain whether a person has complied with or is complying with an injunction or interdict (within the meaning of that Schedule) granted under paragraph 5 of that Schedule or an undertaking given under paragraph 6 of that Schedule.
- (8) But an unfair contract terms enforcer may not exercise the power in paragraph 14 for a purpose mentioned in sub-paragraph (7)(a) unless an officer of the enforcer reasonably suspects that a person is using, or proposing or recommending the use of, a contractual term or notice within paragraph 3 of Schedule 3.
- (9) A local weights and measures authority in Great Britain may exercise the powers in this Part of this Schedule for either of the following purposes—
 - (a) to enable it to determine whether to make an order under section 3 or 4 of the Estate Agents Act 1979;
 - (b) to enable it to exercise any of its functions under section 5, 6, 8, 13 or 17 of that Act.
- (10) In this paragraph—
 - “Community enforcer” has the same meaning as in the Enterprise Act 2002 (see section 213(5) 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).

Power to require the production of information

- 14 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.

第 14 條之通知程序

15. (1) 第 14 條之通知應以書面並明確說明目的。
 - (2) 通知應明確說明相關職權，基於促使自然人行使或考量是否行使職權。
 - (3) 通知得明確說明—
 - (a) 對收到通知的自然人有關應遵守之時間和方式；
 - (b) 資訊被提供之方式。
 - (4) 通知得要求—
 - (a) 通知所載明之文件產製或文件描述要求，以及
 - (b) 對執行人或執行單位執行人提供文件。
 - (5) 要求提供資訊或產製文件係以清楚方式提供。
 - (6) 第 14 條之通知不要求自然人提供有權得拒絕提供或產製之資訊或文件—
 - (a) 於高等法院程序進行中律師客戶保密協議；
 - (b) 於蘇格蘭高等民事法院程序中具溝通保密性。
 - (7) 本條第 6 項「溝通」—
 - (a) 專業法律顧問和顧問之客戶間之溝通；
 - (b) 與法律程序相關或進行時或為此程序目的之溝通。

Procedure for notice under paragraph 14

- 15 (1) A notice under paragraph 14 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 must be provided.
- (4) The notice may require—
- (a) the creation of documents, or documents of a description, specified in the notice, and
 - (b) the provision of those documents to the enforcer or an officer of the enforcer.
- (5) A requirement to provide information or create a document is a requirement to do so in a legible form.
- (6) A notice under paragraph 14 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.
- (7) In sub-paragraph (6) “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.

第 14 條通知之執行

16. (1) 自然人未遵守第 14 條之通知，執行人或執行單位執行人得依本條向法院申請。
- (2) 若法院認定該自然人未能遵守該通知，則法院得依本項核發命令。
- (3) 本條命令指要求自然人執行法院認為有理由要求自然人依照通知目的完成，已確保通知被遵守。
- (4) 本條命令得要求自然人支付申請費用和支出。
- (5) 若自然人為公司，合夥或非公司之組織，第 4 項承辦法院得要求應負責官員因該自然人未能支付申請費用和支出而支付費用和支出。
- (6) 在本條—
- 「法院」指
- (a) 高等法院，
 - (b) 於英格蘭和威爾斯地區，郡法院，
 - (c) 於北愛爾蘭地區，郡法院，
 - (d) 高等民事法院，或
 - (e) 警長；
- 「官員」指
- (a) 個案中公司，負責人，經理，秘書或其他類似人員，
 - (b) 在個案中有限合夥，會員，
 - (c) 在非有限責任之合夥，合夥人，且

Enforcement of notice under paragraph 14

- 16 (1) If a person fails to comply with a notice under paragraph 14, 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 paragraph may require the person to meet the costs or expenses of the application.
- (5) If the person is a company, partnership or unincorporated association, the court in acting under sub-paragraph (4) may require an official 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;
- “official” means—
- (a) in the case of a company, a director, manager, secretary or other similar officer,
 - (b) in the case of a limited liability partnership, a member
 - (c) in the case of a partnership other than a limited liability partnership, a partner, and

(d) 在非公司之組織，事務掌管之負責人。

依第 14 條通知而提供之資訊使用限制

17. (1) 本條適用於自然人依第 14 條要求提供資訊。

(2) 資訊包含該通知相關由自然人產製之文件。

(3) 在不利於自然人之刑事程序中—

(a) 證據相關資訊不能被引用或引用在檢察程序中，以及

(b) 證據相關資訊檢察程序中不能質詢。

(4) 第 3 項不適用下列程序—

(a) 自然人代表自己提供之與資訊相關證據被引用或引用在該程序；

(b) 自然人代表自己被問與資訊相關問題。

(5) 第 3 項不適用為下列事由進行之程序—

(a) 本附件第 36 條（妨礙）之犯罪行為，

(b) 1911 年偽證法（未宣誓偽造法定宣言和其他虛偽聲明）第 5 條之犯罪行為，

(c) 1995 年蘇格蘭統一刑法（偽造聲明和宣言）第 44 條第 2 項之犯罪行為，或

(d) 1979 年北愛爾蘭偽證指令第 10 條之犯罪行為（偽造法定宣言和其他未宣誓的虛偽聲明），

- (d) in the case of an unincorporated association, a person who is concerned in the management or control of its affairs.

Limitations on use of information provided in response to a notice under paragraph 14

- 17 (1) This paragraph applies if a person provides information in response to a notice under paragraph 14.
- (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 36 (obstruction),
 - (b) an offence under section 5 of the Perjury Act 1911 (false statutory declarations and other false statements without oath),
 - (c) an offence under section 44(2) of the Criminal Law (Consolidation) (Scotland) Act 1995 (false statements and declarations), or
 - (d) an offence under Article 10 of the Perjury (Northern Ireland) Order 1979 (SI 1979/1714 (NI 19)) (false statutory declarations and other false unsworn statements).

皇室之適用

18. (1) 相關適用於一

- (a) 執行人依本附件第 13 條第 2 項或第 3 項行使時，或
- (b) 執行人為確保是否有違反 2008 年消費者不公平交易保護規則情事時，

此部分拘束皇室。

第四部分

國內執行人和歐盟執行人之進階權力

本部分權力行使：國內執行人

19. (1) 國內執行人僅得於本條與此權力相關之情況下，行使本附件本部分權力。
- (2) 國內執行人僅基於促進執行單位執行法規遵守，而行使第 21 條至第 26 條，第 31 條至第 34 條之權力。
- (3) 國內執行人得基於下列目的行使第 27 條權力（要求產製文件之權力）
- (a) 依第 4 項，確保遵守執行單位執行法規；
 - (b) 為確認要求文件於程序中做為證據是否違反或合乎執行單位執行法規。
- (4) 執行單位執行人合理地懷疑有違反執行人立法之情事時，國內執行人得基於第 27 條第 3 項第 (a) 款目的行使第 27 條權力（要求產製文件之權力），下列情況不再此限一

Application to Crown

18 In its application in relation to—

- (a) an enforcer acting for a purpose within paragraph 13(2) or (3), or
- (b) an enforcer acting for the purpose of ascertaining whether there has been a breach of the Consumer Protection from Unfair Trading Regulations 2008 (SI 2008/1277),

this Part binds the Crown.

PART 4

FURTHER POWERS EXERCISABLE BY DOMESTIC ENFORCERS AND EU ENFORCERS

Exercise of powers in this Part: domestic enforcers

19 (1) A domestic enforcer may exercise a power in this Part of this Schedule only for the purposes and in the circumstances mentioned in this paragraph in relation to that power.

- (2) A domestic enforcer may exercise any power in paragraphs 21 to 26 and 31 to 34 for the purpose of ascertaining compliance with the enforcer's legislation.
- (3) A domestic enforcer may exercise the power in paragraph 27 (power to require the production of documents) for either of the following purposes—
 - (a) subject to sub-paragraph (4), to ascertain compliance with the enforcer's legislation;
 - (b) to ascertain whether the documents may be required as evidence in proceedings for a breach of, or under, the enforcer's legislation.
- (4) A domestic enforcer may exercise the power in paragraph 27 for the purpose mentioned in sub-paragraph (3)(a) only if an officer of the enforcer reasonably suspects a breach of the enforcer's legislation, unless—

- (a) 行使權力相關文件，企業經營者根據執行單位執行法規意旨被要求保留，或
 - (b) 執行人為「信賴和市場監督規則」第 2 條第 18 項所稱之市場監督主管機關，且依該法第 2 條第 17 項監督市場之目的行使權力。
- (5) 國內執行人得於下列情況行使第 28 條權力（扣押和留置物品權力）—
- (a) 執行單位執行人合理懷疑之商品可能揭露（藉由測試或其他方法）違反執行單位執行法規，
 - (b) 執行單位執行人合理懷疑之商品根據該法可有效沒收，且，
 - (c) 執行單位執行人合理懷疑之商品可作為依據或違反該法於程序中作為證據。
- (6) 國內執行人得於下列情況行使第 29 條權力（扣押做為證據之權力），當執行單位執行人合理懷疑該文件得作為證據文件—
- (a) 在違反執行單位執行法規之程序中，或
 - (b) 在執行單位執行法規程序下。
- (7) 國內執行人得基於下列目的行使第 30 條權力（停止或關閉固定分期付款權力）
- (a) 若執行單位執行人合理懷疑違反「2006 年電磁相容性規則」，以及

- (a) the power is being exercised in relation to a document that the trader is required to keep by virtue of a provision of the enforcer's legislation, or
 - (b) the enforcer is a market surveillance authority within the meaning of Article 2(18) of the Regulation on Accreditation and Market Surveillance and the power is exercised for the purpose of market surveillance within the meaning of Article 2(17) of that Regulation.
- (5) A domestic enforcer may exercise the power in paragraph 28 (power to seize and detain goods) in relation to—
- (a) goods which an officer of the enforcer reasonably suspects may disclose (by means of testing or otherwise) a breach of the enforcer's legislation,
 - (b) goods which an officer of the enforcer reasonably suspects are liable to forfeiture under that legislation, and
 - (c) goods which an officer of the enforcer reasonably suspects may be required as evidence in proceedings for a breach of, or under, that legislation.
- (6) A domestic enforcer may exercise the power in paragraph 29 (power to seize documents required as evidence) in relation to documents which an officer of the enforcer reasonably suspects may be required as evidence—
- (a) in proceedings for a breach of the enforcer's legislation, or
 - (b) in proceedings under the enforcer's legislation.
- (7) A domestic enforcer may exercise the power in paragraph 30 (power to decommission or switch off fixed installations)—
- (a) if an officer of the enforcer reasonably suspects a breach of the Electromagnetic Compatibility Regulations 2006 (SI 2006/3418), and

(b) 為確認（藉由測試或其他方法）是否違反之。

(8) 基於 1979 年不動產仲介法執行目的

(a) 第 2 項和第 3 項為確保遵守執行單位執行法規相關包含確認是否自然人涉及該法（各部會部長宣稱無意願之不動產仲介工作業務）第 3 條第 1 項第 (d) 款業務，以及

(b) 第 4 項和第 23 條第 6 項第 (a) 款和第 32 條第 3 項第 (a) 款相關違反執行單位執行法規，包含自然人涉及此業務等情況。

本部分權力行使：歐盟執行人

20. (1) 歐盟執行人僅得於本附件之本部分經授權而執行與本條規定與此權力相關之情況之權力。

(2) 在符合本條第 3 項條件下，歐盟執行人得行使第 21 條至第 25 條以及第 31 條至第 34 條權力，基於 2002 年契約法第八部分執行人之權力，在其權能下作為該部分 CPC 執行人。

(3) 前述情形指歐盟執行人合理懷疑—

(a) 已經或可能會委員會侵權，

(b) 未遵守執行人採取之執行命令或臨時執行命令

- (b) for the purpose of ascertaining (by means of testing or otherwise) whether there has been such a breach.
- (8) For the purposes of the enforcement of the Estate Agents Act 1979—
- (a) the references in sub-paragraphs (2) and (3)(a) to ascertaining compliance with the enforcer’s legislation include ascertaining whether 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), and
 - (b) the references in sub-paragraph (4) and paragraphs 23(6)(a) and 32(3)(a) to a breach of the enforcer’s legislation include references to a person’s engaging in such a practice.

Exercise of powers in this Part: EU enforcers

- 20 (1) Any power in this Part of this Schedule which is conferred on an EU enforcer may be exercised by such an enforcer only for the purposes and in the circumstances mentioned in this paragraph in relation to that power.
- (2) If the condition in sub-paragraph (3) is met, an EU enforcer may exercise any power conferred on it by paragraphs 21 to 25 and 31 to 34 for any purpose relating to the functions that the enforcer has under Part 8 of the Enterprise Act 2002 in its capacity as a CPC enforcer under that Part.
- (3) The condition is that an officer of the EU enforcer reasonably suspects—
- (a) that there has been, or is likely to be, a Community infringement,
 - (b) a failure to comply with an enforcement order or an interim enforcement order made on the application of that enforcer,

- (c) 未遵守 2002 年企業法第 217 條第 9 項或第 218 條第 10 項於申請後之承諾，或
 - (d) 未遵守該法第 219 條執行人應遵守之承諾。
- (4) 歐盟執行人得基於下列目的行使第 27 條（要求文件產製之權力）－
- (a) 若符合第 3 條條件，本條第 2 項所指目的，
 - (b) 為確認是否文件得被要求成為 2002 年企業法第八部分之證據使用。
- (5) 執行單位執行人合理懷疑商品有下列情況時，歐盟執行人得行使第 28 條權力（扣押和留置商品之權力）－
- (a) 可能揭露（藉由測試或其他方式）委員會侵權或無法遵守第 3 條第（b）項，第（c）項或第（d）項機制
 - (b) 可能被要求在成為 2002 年企業法第八部分之程序使用。
- (6) 當執行單位執行人合理懷疑文件可被要求依 2002 年企業法第八部分程序作為證據時，歐盟執行人得就該文件行使第 29 條之權力（扣留文件做為證據之權力）。

購買產品權力

21. (1) 執行單位執行人得－
- (a) 購買產品，或
 - (b) 進行確保產品提供的協議。

- (c) a failure to comply with an undertaking given under section 217(9) or 218(10) of the Enterprise Act 2002 following such an application, or
 - (d) a failure to comply with an undertaking given to that enforcer under section 219 of that Act.
- (4) An EU enforcer may exercise the power in paragraph 27 (power to require the production of documents) for either of the following purposes—
- (a) the purpose mentioned in sub-paragraph (2), if the condition in subparagraph (3) is met;
 - (b) to ascertain whether the documents may be required as evidence in proceedings under Part 8 of the Enterprise Act 2002.
- (5) An EU enforcer may exercise the power in paragraph 28 (power to seize and detain goods) in relation to goods which an officer of the enforcer reasonably suspects—
- (a) may disclose (by means of testing or otherwise) a Community infringement or a failure to comply with a measure specified in subparagraph (3)(b), (c) or (d), or
 - (b) may be required as evidence in proceedings under Part 8 of the Enterprise Act 2002.
- (6) An EU enforcer may exercise the power in paragraph 29 (power to seize documents required as evidence) in relation to documents which an officer of the enforcer reasonably suspects may be required as evidence in proceedings under Part 8 of the Enterprise Act 2002.

Power to purchase products

- 21 (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) 基於第 1 項權力行使目的，執行人得—

(a) 於合理時間進入公共進入之場地（是否當時公共已進入），以及

(b) 於公眾得檢視之場地檢視產品。

(3) 第 2 項進入權力得無須第一次通知或取得搜索令。

觀察商業運作權力等

22. (1) 執行單位執行人得為觀察商業運作進入場地公眾得已進出之場地。

(2) 本條第 1 項權力得在任何合理時間行使已觀察場地商業運作（是否公眾已經在該時間進入場地）。

(3) 本條第 1 項進入權力得無須第一次通知或取得搜索令。

無搜索令之場地進入權

23. (1) 執行單位執行人得在任何合理時間進入場地。

(2) 本條第 1 項不包含授權進入全部或主要為住宅區之場地。

(3) 除有本條第 5 項之情事，在例行檢視中，本條第 1 項之進入權力，僅得於通知已依本條第 4 項要求提供場地占有人而行使。

(4) 該些要求為—

(a) 書面通知且由執行單位執行人提供，

(b) 通知闡明為何進入為必要且指出第 36 條（障礙）違法行為為本質，以及

- (2) For the purposes of exercising the power in sub-paragraph (1), an officer may—
 - (a) at any reasonable time, enter premises to which the public has access (whether or not the public has access at that time), and
 - (b) inspect any product on the premises which the public may inspect.
- (3) The power of entry in sub-paragraph (2) may be exercised without first giving notice or obtaining a warrant.

Power to observe carrying on of business etc

- 22 (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).
- (3) The power of entry in sub-paragraph (1) may be exercised without first giving notice or obtaining a warrant.

Power to enter premises without warrant

- 23 (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) In the case of a routine inspection, the power of entry in sub-paragraph (1) 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 36 (obstruction), and

- (c) 在收受通知和進入日期之間至少間隔兩個工作天。
- (5) 當場地占有人放棄前述要求時，通知無須被提供。
- (6) 本條所稱例行檢視指第 1 項所行使之權力，而非下列情況—
 - (a) 執行進入權力之國內執行單位執行人，其合理懷疑違反執行單位執行法規，
 - (b) 執行人合理考量提供與本條第 3 項相同之通知可能會破壞進入目的，
 - (c) 非在所有情況下提供本項通知均為可合理執行者，特別是因為執行人合理懷疑對公共健康和 safety 有立即風險，或
 - (d) 執行人屬「信賴和市場監督規則」第 2 條第 18 項之市場監督主管機關，且進入目的符合該規則第 2 條第 17 項。
- (7) 若執行單位執行人進入本條第 1 項之場地而非例行檢視，且發現一或更多場地占有人，執行人應提供占有人（若有多於一位以上）或至少其中之一之文件—
 - (a) 闡明為何進入為必要，且
 - (b) 指出於第 36 條（妨礙）之犯罪行為性質。
- (8) 若執行單位執行人進入本條第 1 項之場地，且發現一或更多場地占有人，執行人應提供占有人（若有多於一位以上）或至少其中之一，提出執行人識別和授權之證據。

- (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 the occupier has waived the requirement to give notice.
- (6) In this paragraph “routine inspection” means an exercise of the power in sub-paragraph (1) other than where—
 - (a) the power is exercised by an officer of a domestic enforcer who reasonably suspects a breach of the enforcer’s legislation,
 - (b) the officer reasonably considers that to give notice in accordance with sub-paragraph (3) would defeat the purpose of the entry,
 - (c) it is not reasonably practicable in all the circumstances to give notice in accordance with that sub-paragraph, in particular because the officer reasonably suspects that there is an imminent risk to public health or safety, or
 - (d) 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.
- (7) If an officer of an enforcer enters premises under sub-paragraph (1) otherwise than in the course of a routine inspection, and 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 36 (obstruction).
- (8) If an officer of an enforcer enters premises under sub-paragraph (1) and 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.

(9) 若非屬可合理執行者，執行人不需遵守本條第 7 項和第 8 項。

(10) 依本條第 1 項行使權力程序不會僅因為未遵守本條第 7 項或第 8 項而無效。

(11) 執行人依本條第 1 項進入場地時得有人陪同，且於執行人認必要時得攜帶設備。

(12) 本條—

「提供」，指提供場地占有人相關通知，包含提供或留在該場地或郵寄寄送

「工作日」，指下列以外之時間—

(a) 星期六或星期日，

(b) 聖誕節或耶穌受難日，或

(c) 1971 年銀行金融交易法中規定之銀行公休日，於場地所在地為英國時。

第 25 條至第 31 條之適用

24. 當執行單位執行人依本附件第 23 條第 1 項或第 32 條持有搜索令時，適用本附件第 25 條至第 31 條規定。

檢查產品等權力

25. (1) 執行人得檢視場地內商品。

(2) 本條第 3 項對於國內執行者之執行人依 1987 年消費者保護法第 27 條第 1 項或 2005 年一般商品安全法第 10 條第 1 項執行時，適用之。

- (9) An officer need not comply with sub-paragraph (7) or (8) if it is not reasonably practicable to do so.
- (10) 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 (7) or (8).
- (11) 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.
- (12) 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;
- “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.

Application of paragraphs 25 to 31

24 Paragraphs 25 to 31 apply if an officer of an enforcer has entered any premises under the power in paragraph 23(1) or under a warrant under paragraph 32.

Power to inspect products etc

25 (1) The officer may inspect any product on the premises.

- (2) The power in sub-paragraph (3) is 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).

- (3) 執行人得檢視任何程序（包含任何與產品製程相關之檢驗安排）。
- (4) 本條第 5 項權利對於國內執行單位執行人根據下列法規執行時，適用之一
 - (a) 2006 年度量衡（包裹商品）法（簡稱 2006 年法）第 10 條第 1 項之責任，或
 - (b) 2011 年北愛爾蘭度量衡（包裹商品）法（簡稱 2011 年法）第 10 條第 1 項之責任。
- (5) 執行人得依下列法規檢視和複製文件—
 - (a) 2006 年法第 5 條第 2 項或第 9 條第 1 項之紀錄，或
 - (b) 2011 年法第 9 條第 3 項所提及之證據。
- (6) 本條第 5 項相關參考 2006 年法之案件為大英國協境內執行人，或 2011 年法之案件為北愛爾蘭境內執行人案件。
- (7) 本條第 8 項權力於國內執行單位執行人依 2006 年電磁相容性法第 37 條第 1 項第(a)款第(ii)目或第(b)款第(ii)目行使時，適用之。
- (8) 執行人得—
 - (a) 檢視任何儀器或固定分期付款（依前述相關法規之定義），
 - (b) 檢視任何有關儀器製程之程序（包含檢測安排）。

- (3) The officer may examine any procedure (including any arrangements for carrying out a test) connected with the production of a product.
- (4) The powers in sub-paragraph (5) are also available to an officer of a domestic enforcer acting pursuant to—
 - (a) the duty in regulation 10(1) of the Weights and Measures (Packaged Goods) Regulations 2006 (SI 2006/659) (“the 2006 Regulations”), or
 - (b) the duty in regulation 10(1) of the Weights and Measures (Packaged Goods) Regulations (Northern Ireland) 2011 (SR 2011/331) (“the 2011 Regulations”).
- (5) 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), or
 - (b) evidence of a kind mentioned in regulation 9(3).
- (6) The references in sub-paragraph (5) to regulations are to regulations in the 2006 Regulations in the case of a domestic enforcer in Great Britain or the 2011 Regulations in the case of a domestic enforcer in Northern Ireland.
- (7) The powers in sub-paragraph (8) 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 officer may—
 - (a) inspect any apparatus or fixed installation (as defined in those Regulations), or
 - (b) examine any procedure (including any arrangements for carrying out a test) connected with the production of apparatus.

檢測設備權力

26. (1) 國內執行單位執行人得檢測任何測重或量測設備，當該設備
- - (a) 執行人認有合理理由相信會用以或可能用以交易或任何人或場地為交易目的而持有，或
 - (b) 執行人認有合理理由相信已經認可的驗證者或其行為看起來像驗證者之人，符合目的而通過。
- (2) 本條第 1 項措辭與下列相同—
- (a) 1985 年度量衡法對於位於大英國協之國內執行人之規定，
 - (b) 1981 年北愛爾蘭度量衡法對於位於北愛爾蘭之國內執行人之規定。
- (3) 本條第 4 項權利於國內執行單位執行人依下列法規行使時，適用之一
- (a) 2006 年度量衡（包裹商品）法（簡稱 2006 年法）第 10 條第 1 項之責任，或
 - (b) 2011 年北愛爾蘭度量衡（包裹商品）法（簡稱 2011 年法）第 10 條第 1 項之責任。
- (4) 執行人合理相信任何設備將用以下列用途時，得測試設備—
- (a) 在英國境內包裝者（2006 年法第 2 條定義），
 - (b) 執行 2011 年法第 9 條第(1)項和第(3)項之檢查。

Power to test equipment

- 26 (1) An officer of a domestic enforcer may test any weighing or measuring equipment—
- (a) which is, or which the officer has reasonable cause to believe may be, used for trade or in the possession of any person or on any premises for such use, or
 - (b) which has been, or which the officer has reasonable cause to believe to have been, passed by an approved verifier, or by a person purporting to act as such a verifier, as fit for such use.
- (2) Expressions used in sub-paragraph (1) have the same meaning—
- (a) as in the Weights and Measures Act 1985, in the case of a domestic enforcer in Great Britain;
 - (b) as in the Weights and Measures (Northern Ireland) Order 1981 (SI 1981/231 (NI 10)), in the case of a domestic enforcer in Northern Ireland.
- (3) The powers in sub-paragraph (4) are available to an officer of a domestic enforcer acting pursuant to—
- (a) the duty in regulation 10(1) of the Weights and Measures (Packaged Goods) Regulations 2006 (SI 2006/659) (“the 2006 Regulations”), or
 - (b) the duty in regulation 10(1) of the Weights and Measures (Packaged Goods) Regulations (Northern Ireland) 2011 (SR 2011/331) (“the 2011 Regulations”).
- (4) The officer may test any equipment which the officer has reasonable cause to believe is used in—
- (a) making up packages (as defined in regulation 2) in the United Kingdom, or
 - (b) carrying out a check mentioned in paragraphs (1) and (3) of regulation 9.

- (5) 參考第 4 項規定是以 2006 年法規範位於大英國協之國內執行人，以及 2011 年法規範位於北愛爾蘭之國內執行人。

要求產品文件權力

27. (1) 執行人得於任何時候—

(a) 要求占有場地之企業經營者，或於場地內代表企業經營者之自然人產製與企業經營者已進入之商業相關之文件，以及

(b) 複製或進入任何文件。

(2) 本條第 1 項之權力在下列情況仍適用之，而不論—

(a) 文件被要求與企業經營者或其他自然人相關之目的，

(b) 可能對抗企業經營者或其他自然人於第 19 條第 3 項第 (b) 款或第 20 項第 4 款之 (b) 之程序。

(3) 本條權力包含要求自然人提供文件解釋之權力。

(4) 依第 1 項產製之文件包含電子記錄資訊，第 1 項權力包含要求文件副本，以容易被攜帶和被看見和被閱讀之方式。

(5) 本條不允許執行人要求自然人產製第 4 項以外之文件。

(6) 本條不允許執行人要求有權拒絕之自然人產製文件—

- (5) The references in sub-paragraph (4) to regulations are to regulations in the 2006 Regulations in the case of a domestic enforcer in Great Britain or the 2011 Regulations in the case of a domestic enforcer in Northern Ireland.

Power to require the production of documents

27 (1) The officer 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) The power in sub-paragraph (1) is available regardless of whether—

(a) the purpose for which the documents are required relates to the trader or some other person, or

(b) the proceedings referred to in paragraph 19(3)(b) or 20(4)(b) could be taken against the trader or some other person.

(3) That power includes power to require the person to give an explanation of the documents.

(4) 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.

(5) This paragraph does not permit an officer to require a person to create a document other than as described in sub-paragraph (4).

(6) 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) 於高等法院程序進行中律師客戶保密協議；
 - (b) 於蘇格蘭高等民事法院程序中具溝通保密性。
- (7) 本條第 6 項「溝通」—
- (a) 專業法律顧問和顧問之客戶間之溝通；
 - (b) 與法律程序相關或進行時或為此程序目的之溝通。
- (8) 本條所稱企業經營者與本法第一部分定義相同。

扣押和留置商品之權力

28. (1) 執行人得扣押和留置商品而非文件（準用第 29 條）。
- (2) 執行人依本條自經占有之場地扣押商品時應於扣押前提供該占有者證據，以證明執行人識別和授權。
- (3) 執行人無須遵守本條第 2 項，當執行已無合理可能時。
- (4) 執行人依本條扣押物品實應採取下列合理措施—
- (a) 告知被扣押人扣押情事，以及
 - (b) 提供被扣押人扣押內容之書面記錄。
- (5) 在本條下若執行人從販賣機扣押物品，第 4 項告知義務亦適於下列情況—
- (a) 被扣押人，其姓名和住址顯示於販賣機上，如同該機器之所有人時，或

- (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.
- (7) In sub-paragraph (6) “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.
- (8) In this paragraph “trader” has the same meaning as in Part 1 of this Act.

Power to seize and detain goods

- 28 (1) The officer may seize and detain goods other than documents (for which see paragraph 29).
- (2) 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.
 - (3) The officer need not comply with sub-paragraph (2) if it is not reasonably practicable to do so.
 - (4) 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.
 - (5) If, under this paragraph, an officer seizes any goods from a vending machine, the duty in sub-paragraph (4) 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) 販賣機所在或固定處之場地占有人，當姓名和住址未顯示於販賣機時。

- (6) 執行人於英格蘭和威爾斯或北愛爾蘭依本條行使權力時，應參考相關財產扣押法規，以決定本條第 4 項所應採取之步驟—
 - (a) 「1984 年警察和犯罪證據法」第 66 條執行準則或
 - (b) 「1989 年北愛爾蘭警察和犯罪證據法」第 65 條執行準則。

- (7) 本條被扣押之物品（除為第 19 條第 5 項第 (b) 款目的而扣押之物品）得不留置—
 - (a) 自被扣押日起算超過 3 個月以上時，或
 - (b) 執行人基於合理目的要求長期留置物品，而已超過其當初長期留置之目的時。

扣押文件做為證據之權力

29. (1) 執行人得扣押和留置文件。
- (2) 執行人依本條自經占有之場地扣押文件實應於扣押前提供該占有人證據，以證明執行人識別和授權。

 - (3) 執行人無須符合本條第 2 項，當執行已無合理可能時。

 - (4) 執行人依本條扣押文件實應採取下列合理措施—

- (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 determining the steps to be taken under sub-paragraph (4), 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).
- (7) Goods seized under this paragraph (except goods seized for a purpose mentioned in paragraph 19(5)(b)) 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.

Power to seize documents required as evidence

- 29 (1) The officer may seize and detain documents.
- (2) An officer seizing 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.
 - (3) The officer need not comply with sub-paragraph (2) if it is not reasonably practicable to do so.
 - (4) An officer seizing documents under this paragraph must take reasonable steps to—

- (a) 告知被扣押人扣押情事，以及
 - (b) 提供被扣押人扣押內容之書面記錄。
- (5) 執行人於英格蘭和威爾斯或北愛爾蘭依本條行使權力時，應參考相關財產扣押法規，以決定本條第 4 項所應採取之步驟—
- (a) 「1984 年警察和犯罪證據法」第 66 條執行準則或
 - (b) 「1989 年北愛爾蘭警察和犯罪證據法」第 65 條執行準則。
- (6) 本條不賦予執行人從有權拒絕產製文件之自然人扣押文件—
- (a) 於高等法院程序進行中律師客戶保密協議；
 - (b) 於蘇格蘭高等民事法院程序中具溝通保密性。
- (7) 本條第 6 項「溝通」—
- (a) 專業法律顧問和顧問之客戶間之溝通；
 - (b) 與法律程序相關或進行時或為此程序目的之溝通。
- (8) 本條被扣押文件得不被留置
- (a) 自被扣押日起算超過 3 個月以上時，或
 - (b) 執行人基於合理目的要求長期留置物品，而已超過其當初長期留置之目的時。

- (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.
- (5) In determining the steps to be taken under sub-paragraph (4), 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).
- (6) 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.
- (7) In sub-paragraph (6) “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.
- (8) 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 documents are reasonably required to be detained for a longer period by the enforcer for the purposes of the proceedings for which they were seized, for longer than they are required for those purposes.

固定分期付款轉換或解除權力

30. (1) 本條第 2 項之權力，於國內執行單位執行人依 2006 年電磁相容性法第 37 條第 1 項第(a)款第(ii)目或第(b)款第(ii)目行使時，適用之。

(2) 執行人得以部分或全部停止或解除固定分期付款。

破壞開口容器等權力

31. (1) 執行人得基於本附件第 28 條至第 30 條權力行使目的，要求自然人—

- (a) 破壞任何開口容器，
- (b) 開啟任何販賣機，或
- (c) 進入儲存資訊之電子裝置。

(2) 本條第 1 項不適用於下列情況，當執行人基於本附件第 28 條至第 30 條目的行使權力—

- (a) 破壞任何開口容器，
- (b) 開啟任何販賣機，或
- (c) 進入電子裝置。

(3) 當適用本條第 1 項或第 2 項權力為合理必要時，第 1 項和第 2 項權力適用之。

(4) 本條容器指可儲存商品之任何東西。

附搜索令進入場地之權力

32. (1) 法院得依執行單位執行人宣誓後提供之書面資訊核發其搜索令以進入場地，當以下條件實現時—

Power to decommission or switch off fixed installations

30 (1) The power in sub-paragraph (2) 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) The officer may decommission or switch off any fixed installation (as defined in those Regulations) or part of such an installation.

Power to break open container etc

31 (1) The officer may, for the purpose of exercising any of the powers in paragraphs 28 to 30, 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, the officer may, for the purpose of exercising any of the powers in paragraphs 28 to 30—

- (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 may be stored.

Power to enter premises with warrant

32 (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) 條件 A 或條件 B 實現，以及
 - (b) 條件 C、條件 D 或條件 E 實現。
- (2) 條件 A 指於場地存在—
- (a) 執行單位執行人有權依第 25 條檢視之產品，或
 - (b) 執行單位執行人得依第 27 條要求自然人產製之文件。
- (3) 條件 B 指於場地存在—
- (a) 對於國內執行單位，已經存在或有關於違反執行單位執行法規之情事，
 - (b) 對於歐盟執行單位，已經存在或有關於違反 2002 年企業法第 212 條所定義之委員會侵權情事，
 - (c) 對於歐盟執行單位，已經存在或有關於違反本附件第 20 條第 3 項第 (b) 款、第 (c) 款或第 (d) 款之措施。
- (4) 條件 C 指—
- (a) 已經或可能被拒絕進入土地，以及
 - (b) 執行單位將依本條申請搜索令之通知已提供場地占有人。
- (5) 條件 D 指執行單位將進入之通知給予場地佔有人時，可能造成場地內之產品或文件隱藏或干擾時。
- (6) 條件 E 指—
- (a) 場地無人占有，或
 - (b) 場地占有人缺席，且等待其出現可能有損進入場地之目的。
- (7) 本條適用於蘇格蘭—

- (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 25, or
 - (b) documents which an officer of the enforcer could require a person to produce under paragraph 27.
- (3) Condition B is that, on the premises—
- (a) in the case of a domestic enforcer, there has been or is about to be a breach of the enforcer’s legislation,
 - (b) in the case of an EU enforcer, there has been or is about to be a Community infringement as defined in section 212 of the Enterprise Act 2002, or
 - (c) in the case of an EU enforcer, there has been a failure to comply with a measure specified in paragraph 20(3)(b), (c) or (d).
- (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) 法院於本條第 1 項之相關核發規定，對於郡警長亦可適用，且
 - (b) 本條第 1 項之宣誓後提供資料之相關規定，對於宣誓後提供證據亦可適用。
- (8) 本條適用於北愛爾蘭—
- (a) 法院於本條第 1 項之相關核發規定，對於兼職治安法官亦可適用，且
 - (b) 本條第 1 項之書面資料之相關規定，對於書面申訴亦可適用。

附搜索令進入場地之權力

33. (1) 第 32 條搜索令授權執行單位執行人於任何合理時間進入場地，如必要可行使合理武力。
- (2) 本條搜索令於核發後一個月後失其效力。
- (3) 執行人依第 32 條搜索令進入場地者，得有人陪同，且如有必要得攜帶設備進入場地。
- (4) 當執行人進入場地時，若該場地已經占有，執行人應出示檢視搜索令與場地之占有人。
- (5) 當場地無人占有或場地占有人暫時離開，本條第 6 項適用之。
- (6) 下列情況下，執行人應離開場地—
- (a) 留通知於場地，說明已持第 32 條搜索令進入該場地，且
 - (b) 當執行人發現無故入侵者，保持場地有效保全以對抗之。

- (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

- 33 (1) A warrant under paragraph 32 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 32 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 32, and
 - (b) leave the premises as effectively secured against trespassers as the officer found them.

要求場地內人員協助之權力

34. (1) 當執行單位執行人已經基於第 23 條第 1 項或持第 32 條搜索令進入場地，執行人得要求場地內人員提供其認為必要之協助或資訊。
- (2) 當執行單位執行人已經基於第 23 條第 1 項或持第 32 條搜索令進入場地，為執行下列法規之目的，適用第 3 條—
- (a) 2006 年度量衡（包裹商品）法（簡稱 2006 年法），或
- (b) 2011 年北愛爾蘭度量衡（包裹商品）法（簡稱 2011 年法）。
- (3) 執行人得要求場地內人員提供其所持有之資訊有關包裝人以及執行人於場地發現之包裹進口人之姓名和住址。
- (4) 本條第 3 項「進口人」、「包裝人」與下列定義相同—
- (a) 於國內執行單位在大英國協之案件中，適用 2006 年度量衡（包裹商品）法（簡稱 2006 年法）（準用第 2 條），或
- (b) 於國內執行單位在北愛爾蘭之案件中，2011 年北愛爾蘭度量衡（包裹商品）法（簡稱 2011 年法）。

本部分名詞解釋

35. (1) 本附件本部分中—
- 「商品」和第 2 條第 8 項定義相同；
- 「占有人」和場地相關，指執行單位執行人可合理懷疑為場地之占有人；

Power to require assistance from person on premises

- 34 (1) If an officer of an enforcer has entered premises under the power in paragraph 23(1) or under a warrant under paragraph 32, the officer may require any person on the premises to provide such assistance or information as the officer reasonably considers necessary.
- (2) Sub-paragraph (3) applies if an officer of a domestic enforcer has entered premises under the power in paragraph 23(1) or under a warrant under paragraph 32 for the purposes of the enforcement of—
- (a) the Weights and Measures (Packaged Goods) Regulations 2006 (SI 2006/659), or
 - (b) the Weights and Measures (Packaged Goods) Regulations (Northern Ireland) 2011 (SR 2011/331).
- (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—
- (a) the Weights and Measures (Packaged Goods) Regulations 2006 (see regulation 2), in the case of a domestic enforcer in Great Britain, or
 - (b) the Weights and Measures (Packaged Goods) Regulations (Northern Ireland) 2011 (see regulation 2), in the case of a domestic enforcer in Northern Ireland.

Definitions for purposes of this Part

35 In this Part of this Schedule—

“goods” has the meaning given by section 2(8);

“occupier”, in relation to premises, means any person an officer of an enforcer reasonably suspects to be the occupier of the premises;

「場地」包含任何貨攤，汽車，船舶或航空器；

「產品」指—

- (a) 商品，
- (b) 服務，
- (c) 數位內容，如同第 2 條第 9 項定義，
- (d) 不動產，或
- (d) 權利或義務。

第五部分

第三部分和第四部分之補充條文

妨礙執行之犯罪行為

36. (1) 自然人有下列行為時，屬妨礙執行之犯罪行為—

- (a) 故意阻礙執行單位或執行單位執行人行使或意圖行使本附件第四部分權力者，
- (b) 故意不遵守執行單位或執行單位執行人依本附件第四部分之適當要求者，或
- (c) 無合理理由未提供執行單位或執行單位執行人，依本附件第四部分之適當要求所須之協助或資訊。

(2) 自然人因本條第 1 項第 (c) 款提供相關資訊時，若該自然人有以下情形，構成妨礙執行之犯罪行為，—

- (a) 陳述錯誤或誤導之重要內容，
- (b) 因過失陳述有錯誤或誤導之重要內容。

“premises” includes any stall, vehicle, vessel or aircraft;

“product” means—

- (a) goods,
- (b) a service,
- (c) digital content, as defined in section 2(9),
- (d) immovable property, or
- (e) rights or obligations.

PART 5

Provisions supplementary to Parts 3 and 4

Offence of obstruction

36 (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 power under Part 4 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 4 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 power under Part 4 of this Schedule.
- (2) A person commits an offence if, in giving information of a kind referred to in sub-paragraph (1)(c), the person—
- (a) makes a statement which the person knows is false or misleading in a material respect, or
 - (b) recklessly makes a statement which is false or misleading in a material respect.

- (3) 自然人在本條第 1 項或第 2 項違反有罪之犯罪行為應對即席判決負責而處以不超過標準層級三之罰金。
- (4) 本條不要求自然人回答或提供可能自陷己罪之問題或資訊。

意圖假冒執行人之犯罪

- 37. (1) 非執行單位執行人之自然人，意圖依本附件第三部分或第四部分規定行為，係屬意圖假冒執行人之犯罪行為。
- (2) 自然人違反本條第 1 項，應對即席判決而處以不超過標準層級五之罰金。
- (3) 2012 年犯罪人法律扶助刑期和處理法若於本法通過日或通過之前已生效時—
 - (a) 該法第 85 條（治安法院移除犯罪罰金限制）適用於本條犯罪，若為相關犯罪時（指第 85 條第 3 項定義之犯罪），以及
 - (b) 該法第 85 條第 11 項得修改或因此修正本條第 2 項。

扣押商品和文件管道

- 38. (1) 本條適用執行單位執行人扣押本附件第四部分執行人留置之物品。
- (2) 若自然人向執行關請求進入且獲得許可，在被執行人扣押前由自然人即時監管或控制之物品，執行人應允許該自然人在執行單位執行人監督下取得之。

- (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

- 37 (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 or 4 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.
 - (3) If section 85(1) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 comes into force on or before the day on which this Act is passed—
 - (a) section 85 of that Act (removal of limit on certain fines on conviction by magistrates' court) applies in relation to the offence in this paragraph as if it were a relevant offence (as defined in section 85(3) of that Act), and
 - (b) regulations described in section 85(11) of that Act may amend or otherwise modify sub-paragraph (2).

Access to seized goods and documents

- 38 (1) This paragraph applies where anything seized by an officer of an enforcer under Part 4 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) 若自然人向執行人請求要求拍照或備份，在被執行人扣押前由自然人即時監管或控制中，執行人應—
 - (a) 允許該自然人在執行單位執行人監督下，基於拍照或備份之目的而取得之，
 - (b) 拍照或備份或使其拍照或備份之。
- (4) 依照本條第 3 項拍照或備份，該照片或備份應於提出請求之合理期間內，提供該自然人。
- (5) 當執行單位有合理依據相信授權取得或拍照或備份物品將妨礙調查而違反當初扣押目的時，本條不適用之。
- (6) 執行單位得補償因遵守本條要求之自然人或其代表人之合理成本。
- (7) 本條有關於扣押前自然人已即時監管或控制物品，該自然人包含其代理人。

物品測試通知

- 39. (1) 由國內執行單位執行人依第 21 條購買而用以檢測之物品，本條第 3 項和第 4 項適用之一
 - (a) 程序違反或遵守執行單位法規或執行單位物偽造，或
 - (b) 由執行單位為避免自然人做此行為所發之通知。

- (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

- 39 (1) Sub-paragraphs (3) and (4) apply where goods purchased by an officer of a domestic enforcer under paragraph 21 are submitted to a test and as a result—
- (a) proceedings are brought for a breach of, or under, the enforcer's legislation or for the forfeiture of the goods by the enforcer, or
 - (b) a notice is served by the enforcer preventing a person from doing any thing.

- (2) 由國內執行單位執行人依第 28 條扣押而用以檢測之物品，本條第 3 項和第 4 項亦適用之。
- (3) 執行單位應告知相關人員檢測結果。
- (4) 當有合理實益時，執行單位應允許相關人員檢測物品。
- (5) 本條第 3 項「相關人員」係指對之購買或扣押物品，或從販賣機購買或扣押物品時—
 - (a) 姓名和住址顯示於販賣機上如同販賣機所有人之人員，
或
 - (b) 當有姓名和住址顯示於販賣機上，該販賣機所在或固定處之場地占有人。
- (6) 本條第 4 項「相關人員」係指—
 - (a) 本條第 5 項所指之人員，
 - (b) 在本條第 1 項第 (a) 款情況下，指程序之當事人，以及
 - (c) 在本條第 1 項第 (b) 款情況下，指對物品具利益之人。

留置物品和文件之上訴

40. (1) 物品或文件因執行本附件第四部分權力而被留置者，本條適用之。
- (2) 對於物品或文件有利益之人得申請命令，要求釋出或讓與其他人。
 - (3) 本條適用得於英格蘭和威爾斯或北愛爾蘭之一

- (2) Sub-paragraphs (3) and (4) also apply where goods seized by an officer of a domestic enforcer under paragraph 28 are submitted to a test.
- (3) The enforcer must inform the relevant person of the results of the test.
- (4) The enforcer must allow a relevant person to have the goods tested if it is reasonably practicable to do so.
- (5) In sub-paragraph (3) “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 (4) “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

- 40 (1) This paragraph applies where goods or documents are being detained as the result of the exercise of a power in Part 4 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) 受理調查有關違反物品或文件扣押訴訟程序之治安法院；
 - (b) 受理調查有關違反物品或文件沒收訴訟程序之治安法院；
 - (c) 非第 3 項第 (a) 款和第 (b) 款程序，受理申訴之治安法院。
- (4) 本條得適用於蘇格蘭得立即適用於警長。
- (5) 本條適用，法院或警長得命令只有符合條件 A 或 B 情況下，貨物才能釋出。
- (6) 條件 A 指—
- (a) 未發生以下程序—
 - (i) 有關違反物品或文件扣押之調查程序，或
 - (ii) 有關違反物品或文件沒收程序（文件扣押案件），或文件相關物品，以及
 - (b) 自物品或文件被扣押起六個月內已過期。
- (7) 條件 B 指—
- (a) 本條第 6 款第 (a) 目所指已進行之程序，以及
 - (b) 已結案之程序無涉物品或文件偽造者。
- (8) 自然人因本條治安法院之命令或不下命令而受到損害，得向以下法院對此命令或決定抗辯—

- (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 paragraph, 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) 在英格蘭或威爾斯，向皇家法院；
 - (b) 在北愛爾蘭，向郡法院。
- (9) 本條治安法院所下命令，得包含當法院認為將抗辯之判決延遲效力為合理時。
- (10) 本條第 9 項抗辯包含 1980 年治安法院法第 111 條或 1981 年北愛爾蘭治安法院法（案件聲明）第 146 條之適用。

補償

41. (1) 執行單位執行人已依本附件第四部分第 19 條第 5 項第 (a) 款或第 20 條第 5 項第 (a) 款目的扣押和留置物品，本條適用之。
- (2) 當執行單位符合本條第 3 項和第 4 項條件時，執行單位對於因扣押或留置物品而有損失之物品相關利害關係之人應給予補償。
- (3) 與國內執行單位相關之條件為—
- (a) 物品未顯示出違反執行單位法規，以及
 - (b) 扣押或留置物品非因尋求補償之人之過失或錯誤而造成。
- (4) 與歐盟執行單位相關之條件為—
- (a) 物品未顯示出違反委員會侵權規定或不符合本附件第 20 條第 3 項第 (b) 款、第 (c) 款或第 (d) 款機制，以及
 - (b) 扣押或留置物品非因尋求補償之人之過失或錯誤而造成。

- (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

- 41 (1) This paragraph applies where an officer of an enforcer has seized and detained goods under Part 4 of this Schedule for a purpose within paragraph 19(5)(a) or 20(5)(a).
- (2) The enforcer must pay compensation to any person with an interest in the goods in respect of any loss or damage caused by the seizure and detention, if the condition in sub-paragraph (3) or (4) that is relevant to the enforcer is met.
 - (3) The condition that is relevant to a domestic enforcer is that—
 - (a) the goods have not disclosed a breach of the enforcer's legislation, 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) The condition that is relevant to an EU enforcer is that—
 - (a) the goods have not disclosed a Community infringement or a failure to comply with a measure specified in paragraph 20(3)(b), (c) or (d), 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.

（5）本條有關可給付補償之數額或權利爭議由下列決定之一

- （a）在英格蘭和威爾斯或北愛爾蘭，由仲裁，或，
- （b）在蘇格蘭，由當事人指定之單一仲裁人，或當事人無協議時，由警長。

本部分「商品」之定義

42. 本附件本部分所稱「商品」不包含文件。

第六部分 地區執行單位執行職權之行使

本部分名詞解釋

43. 本部分區域執行單位」指—
- （a）大不列顛地方度量衡主管機關
 - （b）英格蘭地區議會，或
 - （c）北愛爾蘭地區議會。

調查權

44. （1）本條第 3 項到第 6 項適用於區域執行單位行使本附件第三部分或第四部分之權力。
- （2）本條第 3 項到第 6 項適用於區域執行單位行使調查權—
- （a）依本附件第 10 條所列之法規授權或授權這些法規之法律，地區執行單位有責任或權力行使職權，或

- (5) 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 arbitrator appointed by the parties or, if there is no agreement between the parties as to that appointment, by the sheriff.

Meaning of “goods” in this Part

42. In this Part of this Schedule “goods” does not include a document.

PART 6

Exercise of enforcement functions by area enforcers

Interpretation of this Part

43. 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 powers

- 44 (1) Sub-paragraphs (3) to (6) apply in relation to an area enforcer’s exercise, in accordance with this Schedule, of a power in Part 3 or 4 of this Schedule.
- (2) Sub-paragraphs (3) to (6) also apply in relation to an area enforcer’s exercise of an investigatory power—
- (a) conferred by legislation which, by virtue of a provision listed in paragraph 10 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) 本附件第 11 條表格第二欄所列之法規授權。

為確保是否有違反法律或有依該法由區域執行單位所發布之通知之目的。

- (3) 英格蘭和威爾斯地方度量衡主管機關得於轄區外之部分英格蘭或威爾斯行使權力。
- (4) 蘇格蘭地方度量衡主管機關得於轄區外之部分蘇格蘭行使權力。
- (5) 英格蘭地區議會得於轄區外之部分英格蘭行使權力。
- (6) 北愛爾蘭地區議會得於轄區外之部分北愛爾蘭行使權力。

民事訴訟程序

45. (1) 本條第 4 項到第 7 項適用於區域執行單位依下列法規所生之民事程序—
- (a) 2002 年企業法第八部分，
 - (b) 本法附件三，
 - (c) 本附件第 10 條所列之法規，區域執行單位有責任或權力行使，
 - (d) 本項第 (c) 款所指法規被完成，或
 - (e) 本附件第 11 條表格第二欄所列之法規授權。
- (2) 本條第 4 項到第 7 項適用於區域執行單位申請沒收，在下列情況下無涉刑事程序—

- (b) conferred by legislation listed in the second column of the table in paragraph 11 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 power 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 power in a part of Scotland which is outside that authority's area.
- (5) A district council in England may exercise the power in a part of England which is outside that council's district.
- (6) A district council in Northern Ireland may exercise the power in a part of Northern Ireland which is outside that council's district.

Civil proceedings

- 45 (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 10 of this Schedule, the area enforcer has a duty or power to enforce,
- (d) legislation under which legislation mentioned in paragraph (c) is made, or
- (e) legislation listed in the second column of the table in paragraph 11 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) 1949 年註冊新型法第 35ZC 條，
- (b) 1987 年消費者保護法第 16 條，
- (c) 1994 年商標法（包含 1995 年奧林匹克符號等（保護）法第 11 條）第 97 條，或

- (d) 本附件第 10 條所列之法規，區域執行單位有責任或權力行使。

- (3) 本條第 4 項、第 5 項、第 6 項和第 7 項有關民事程序包含本條第 2 項之申請—

- (4) 英格蘭和威爾斯地方度量衡主管機關，對於發生於轄區外但部分發生於英格蘭和威爾斯時，得在北愛爾蘭提起民事訴訟。

- (5) 蘇格蘭地方度量衡主管機關，對於發生於轄區外但部分發生於蘇格蘭時，得在蘇格蘭提起民事訴訟。

- (6) 英格蘭地區議會對於發生於轄區外但部分發生於英格蘭時，得在英格蘭提起民事訴訟。

- (7) 北愛爾蘭地區議會對於發生於轄區外但部分發生於北愛爾蘭時，得在北愛爾蘭提起民事訴訟。

刑事訴訟程序

- 46. (1) 英格蘭或威爾斯地方度量衡主管機關得對發生於轄區外但部分發生於英格蘭或威爾斯之消費者侵權行為提起訴訟。

- (2) 本條第 1 項所稱消費者侵權指—

- (a) under section 35ZC of the Registered Designs Act 1949,
 - (b) under section 16 of the Consumer Protection Act 1987,
 - (c) under section 97 of the Trade Marks Act 1994 (including as applied by section 11 of the Olympic Symbol etc (Protection) Act 1995), or

 - (d) under legislation which, by virtue of a provision listed in paragraph 10 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

- 46 (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) 本附件第 10 條之侵權行為，英格蘭和威爾斯地方度量衡主管機關有責任或權力行使職權，
 - (b) 第 (a) 款侵權行為，
 - (c) 本附件第 11 條表格第二欄所列之法規授權，有關地方度量衡主管機關清單對應第一欄執行人。
 - (d) 因調查第 (a)，(b) 或 (c) 款違法所生之侵權行為，或
 - (e) 本附件第 36 條或第 37 條之侵權行為。
- (3) 英格蘭地區議會對於發生於轄區外但部分發生於英格蘭之消費者侵權行為，得在英格蘭提起訴訟。
- (4) 本條第 3 項所稱消費者侵權指—
- (a) 本附件第 10 條之侵權行為，英格蘭地方度量衡主管機關有責任或權力行使職權，
 - (b) 第 (a) 款侵權行為，
 - (c) 因調查第 (a) 或 (b) 條違法所生之侵權行為，或
 - (d) 本附件第 36 條或第 37 條之侵權行為。
- (5) 北愛爾蘭地區議會對於發生於轄區外但部分發生於北愛爾蘭之消費者侵權行為，得在北愛爾蘭提起訴訟。
- (6) 本條第 5 項所稱「消費者違法行為」指—

- (a) an offence under legislation which, by virtue of a provision listed in paragraph 10 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 under which legislation within paragraph (a) is made,
 - (c) an offence under legislation listed in the second column of the table in paragraph 11 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,
 - (d) an offence originating from an investigation into a breach of legislation mentioned in paragraph (a), (b) or (c), or
 - (e) an offence described in paragraph 36 or 37 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 10 of this Schedule, a district council in England has a duty or power to enforce,
 - (b) an offence under legislation under which legislation within paragraph (a) is made,
 - (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 36 or 37 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) 本附件第 10 條之侵權行為，北愛爾蘭地方度量衡主管機關有責任或權力行使職權，
- (b) 第 (a) 款侵權行為，
- (c) 因調查第 (a) 或 (b) 條違法所生之侵權行為，或
- (d) 本附件第 36 條或第 37 條之侵權行為。

附件六

第 77 條

調查權：附隨之修正

1949 年登記設計法

1. (1) 1949 年登記設計法第 35ZB 條（執行）修正如下。
 - (2) 第 (1) 項刪除。
 - (3) 於第 (2) 項之前加入—

「(1A) 對於地方重量和度量衡主管機關可適用之調查權或北愛爾蘭之企業貿易和投資部基於執行第 35ZA 條之目的，準用 2015 年消費者保護法附件 5。」

1968 年貿易說明法

2. 1968 年貿易說明法修正如下。
3. 於第 26 條（執行機關）第 (1) 項後加入—

「(1A) 對於地方重量和度量衡主管機關可適用之調查權基於第 (1) 項責任之目的，準用 2015 年消費者保護法附件 5。」

- (a) an offence under legislation which, by virtue of a provision listed in paragraph 10 of this Schedule, a district council in Northern Ireland has a duty or power to enforce,
- (b) an offence under legislation under which legislation within paragraph (a) is made,
- (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 36 or 37 of this Schedule.

SCHEDULE 6

Section 77

Investigatory powers: consequential amendments

Registered Designs Act 1949 (c. 88)

1. (1) Section 35ZB of the Registered Designs Act 1949 (enforcement) is amended as follows.
 - (2) Omit subsection (1).
 - (3) Before subsection (2) insert—

“(1A)For the investigatory powers available to a local weights and measures authority or the Department of Enterprise, Trade and Investment in Northern Ireland for the purposes of the enforcement of section 35ZA, see Schedule 5 to the Consumer Rights Act 2015.”

Trade Descriptions Act 1968 (c. 29)

2. The Trade Descriptions Act 1968 is amended as follows.
3. In section 26 (enforcing authorities) after subsection (1) insert—

“(1A)For the investigatory powers available to a local weights and measures authority for the purposes of the duty in subsection (1), see Schedule 5 to the Consumer Rights Act 2015.”

4. 第 27 條（行測試採購之權力）刪除。
5. 第 28 條（進入場地和檢查和沒收商品與文件之權力）刪除。
6. 第 29 條（妨礙有權執行人）刪除。
7. 第 30 條（測試與預期起訴之通知）刪除。
8. 第 33 條（第 28 條以下沒收商品之損失等之補償）刪除。
9. (1) 第 40 條（有關北愛蘭之條款）修正如下。
 - (2) 刪除第 (1) 項之第 (c) 款。
 - (3) 於第 (1) 項後加入—

「(1A) 對於北愛爾蘭之企業貿易和投資部可適用之調查權基於第 (1) (b) 項責任之目的，準用 2015 年消費者保護法附件 5。」

1973 年印記法

10. (1) 1973 年印記法第 9 條（法案之施行）修正如下。
 - (2) 於第 (2) 項後加入—

「(2A) 對於地方重量和度量衡主管機關可適用之調查權，議會和檢驗局基於第 (1) 項責任與第 (2) 項權力之目的，準用 2015 年消費者保護法附件 5。」
 - (3) 第 (3)、(4) 和 (7) 項刪除。

1974 年價格法

11. (1) 1974 年價格法（施行）之附件修正如下。
 - (2) 第 3、7、9 和 10 條刪除。

4. Omit section 27 (power to make test purchases).
5. Omit section 28 (power to enter premises and inspect and seize goods and documents).
6. Omit section 29 (obstruction of authorised officers).
7. Omit section 30 (notice of test and intended prosecution).
8. Omit section 33 (compensation for loss, etc of goods seized under section 28).
9. (1) Section 40 (provisions as to Northern Ireland) is amended as follows.
 - (2) In subsection (1), omit paragraph (c).
 - (3) After subsection (1) insert—

“(1A)For the investigatory powers available to the Department of Enterprise, Trade and Investment in Northern Ireland for the purposes of the duty in subsection (1)(b), see Schedule 5 to the Consumer Rights Act 2015.”

Hallmarking Act 1973 (c. 43)

- 10.(1) Section 9 of the Hallmarking Act 1973 (enforcement of Act) is amended as follows.
 - (2) After subsection (2) insert—

“(2A)For the investigatory powers available to a local weights and measures authority, the Council and an assay office for the purposes of the duty in subsection (1) and the power in subsection (2), see Schedule 5 to the Consumer Rights Act 2015.”
 - (3) Omit subsections (3), (4) and (7).

Prices Act 1974 (c. 24)

- 11.(1) The Schedule to the Prices Act 1974 (enforcement) is amended as follows.
 - (2) Omit paragraphs 3, 7, 9 and 10.

(3) 第 14 (1) 條刪除「及第 10 條以上應刪除」。

(4) 於第 14 條後加入一

「15 對於地方重量和度量衡主管機關可適用之調查權或北愛爾蘭之企業貿易和投資部基於第 6 條責任之目的，準用 2015 年消費者保護法附件 5。」

1974 年消費者信用法

12. 1974 年消費者信用法修正如下。

13. 第 161 條（執行主管機關）於第（1A）項後加入一

「(1B) 對於地方重量和度量衡主管機關可適用之調查權或北愛爾蘭之企業貿易和投資部基於第（1）項責任之目的，準用 2015 年消費者保護法附件 5。」

14. 第 162 條（進入檢查權）刪除。

15. 第 163 條（損失補償）刪除。

16. 第 164 條（行測試採購等權力）刪除。

17. 第 165 條（妨礙有權執行人）刪除。

18. 附件 1（犯罪之起訴與處罰）刪除第 162 (6)、165 (1) 及 165 (2) 條條目。

1979 年不動產仲介法

19. 1979 年不動產仲介法修正如下。

20. 第 3 (1) (cb) 條（下令禁止不適任人員從事不動產仲介工作之權力：違反第 9 (1) 或第 11 (1A) (b) 條）於「第 9 (1) 或第 11 (1A) (b) 條以下 (below)」以「2015 年消費者保護法附件 5 第 14 或 27 條」取代。

(3) In paragraph 14(1) omit “and paragraph 10 above shall be omitted”.

(4) After paragraph 14 insert—

“15F or the investigatory powers available to a local weights and measures authority or the Department of Enterprise, Trade and Investment in Northern Ireland for the purposes of the duty in paragraph 6, see Schedule 5 to the Consumer Rights Act 2015.”

Consumer Credit Act 1974 (c. 39)

12.The Consumer Credit Act 1974 is amended as follows.

13.In section 161 (enforcement authorities), after subsection (1A) insert—

“(1B)For the investigatory powers available to a local weights and measures authority or the Department of Enterprise, Trade and Investment in Northern Ireland for the purposes of the duty in subsection (1), see Schedule 5 to the Consumer Rights Act 2015.”

14.Omit section 162 (powers of entry and inspection).

15.Omit section 163 (compensation for loss).

16.Omit section 164 (power to make test purchases etc).

17.Omit section 165 (obstruction of authorised officers).

18.In Schedule 1 (prosecution and punishment of offences) omit the entries for sections 162(6), 165(1) and 165(2).

Estate Agents Act 1979 (c. 38)

19.The Estate Agents Act 1979 is amended as follows.

20.In section 3(1)(cb) (power to make orders prohibiting unfit persons from doing estate agency work: failure to comply with section 9(1) or 11(1A)(b)) for “section 9(1) or 11(1A)(b) below” substitute “paragraph 14 or 27 of Schedule 5 to the Consumer Rights Act 2015”.

21. 第 9 條（主要執行主管機關之資訊）刪除第（1）至（4）項。
22. 第 11 條（進入與檢查權）刪除。
23. 第 11A 條（未提供資訊）刪除。
24. 第 26 條（執行主管機關）於第（1）項後加入—
「(1A) 對於主管機關可適用之調查權基於第（1）項責任之目的，
準用 2015 年消費者保護法附件 5。」
25. 第 27 條（妨礙與假冒有權執行人）刪除。
26. (1) 附件 2 第 14 條（本法第 6（1）及 8（3）條下之適用）修正如下。
 - (2) 於「本法第 9 條」以「2015 年消費者保護法附件 5 第 14 條」取代。
 - (3) 刪除「或文件之產製」。

1984 年錄影法（c.39）

27. (1) 1984 年錄影法第 16A 條（施行）修正如下。
 - (2) 第（1A）、（1B）及（2）項刪除。
 - (3) 第（4）項—
 - (a) 於「第（1）及（1A）項」以「第（1）項」取代，以及
 - (b) 刪除從「基於該目的」至該項結束之文字。
 - (4) 於該項後加入—
「(4ZA) 對於地方重量和度量衡主管機關可適用之調查權或
北愛爾蘭之企業貿易和投資部基於本條功能之目的，準用
2015 年消費者保護法附件 5。」
 - (5) 第（4A）項刪除。

21. In section 9 (information for the lead enforcement authority) omit subsections (1) to (4).
22. Omit section 11 (powers of entry and inspection).
23. Omit section 11A (failure to produce information).
24. In section 26 (enforcement authorities), after subsection (1) insert—

“(1A) For the investigatory powers available to an authority for the purposes of the duty in subsection (1), see Schedule 5 to the Consumer Rights Act 2015.”
25. Omit section 27 (obstruction and personation of authorised officers).
26. (1) Paragraph 14 of Schedule 2 (applications under sections 6(1) and 8(3)) is amended as follows.
 - (2) For “section 9 of this Act” substitute “paragraph 14 of Schedule 5 to the Consumer Rights Act 2015”.
 - (3) Omit “or the production of documents”.

Video Recordings Act 1984 (c. 39)

27. (1) Section 16A of the Video Recordings Act 1984 (enforcement) is amended as follows.
 - (2) Omit subsections (1A), (1B) and (2).
 - (3) In subsection (4)—
 - (a) for “Subsections (1) and (1A)” substitute “Subsection (1)”, and
 - (b) omit the words from “For that purpose” to the end of the subsection.
 - (4) After that subsection insert—

“(4ZA) For the investigatory powers available to a local weights and measures authority or the Department of Enterprise, Trade and Investment in Northern Ireland for the purposes of the functions in this section, see Schedule 5 to the Consumer Rights Act 2015.”
 - (5) Omit subsection (4A).

1985 年重量和度量衡法

28. 1985 年重量和度量衡法修正如下。
29. 第 38（2）條（與特定商品有關之檢查人權力）於「第 79 條以下」以「2015 年消費者保護法附件 5」取代。
30. 第 42 條（行測試採購權）刪除。
31. 第 79 條（檢查與進入之一般權力）刪除。
32. 於第 80 條前加入—
 「79A 調查權
 對於地方重量和度量衡主管機關可適用之調查權基於執行本法之目的，準用 2015 年消費者保護法附件 5。」
33. 第 80 條刪除「或包裹物品法」。
34. 第 81（1）（b）條（未提供協助或資訊）刪除「或本法此部分以下」。
35. （1）第 84 條（罰則）修正如下。
 （2）第 2 項於第 20（8）條條目後加入—
 「第 80 條；第 81（1）條；第 81（2）條」。
 （3）第（5）項刪除。
36. 附件 11 第 21（2）（b）條（1963 年重量和度量衡法所授權人員對於檢查人有關條款之適用）刪除「及除在第 79（3）條外」。

1987 年消費者保護法

37. 1987 年消費者保護法修正如下。
38. 第 27 條（執行）於第（3）項後加入—

Weights and Measures Act 1985 (c. 72)

28. The Weights and Measures Act 1985 is amended as follows.
29. In section 38(2) (special powers of inspectors with respect to certain goods) for “section 79 below” substitute “Schedule 5 to the Consumer Rights Act 2015”.
30. Omit section 42 (power to make test purchases).
31. Omit section 79 (general powers of inspection and entry).
32. Before section 80 insert—

“79A Investigatory powers
For the investigatory powers available to a local weights and measures authority for the purposes of the enforcement of this Act, see Schedule 5 to the Consumer Rights Act 2015.”
33. In section 80 omit “or the packaged goods regulations”.
34. In section 81(1)(b) (failure to provide assistance or information) omit “or under this Part of this Act”.
35. (1) Section 84 (penalties) is amended as follows.
 - (2) In subsection (2), after the entry for section 20(8) insert—

“section 80; section 81(1); section 81(2);”.
 - (3) Omit subsection (5).
36. In paragraph 21(2)(b) of Schedule 11 (application of provisions applying to inspectors to persons authorised under the Weights and Measures Act 1963) omit “and except in section 79(3)”.

Consumer Protection Act 1987 (c. 43)

37. The Consumer Protection Act 1987 is amended as follows.
38. In section 27 (enforcement) after subsection (3) insert—

「(3A) 對於自然人可適用之調查權基於第(1)項所要求責任之目的，準用 2015 年消費者保護法附件 5（以及本法第 29 條）。」

39. 刪除第 28 條（測試採購）。

40. (1) 第 29 條（搜索等權）修正如下。

(2) 第(1)項於「由本條以下各款所授予之任何權力」以「第(4)項授予之權力」取代。

(3) 第(2)、(3)、(5)及(6)項刪除。

(4) 第(7)項刪除—

(a) 「、(5)或(6)」、及

(b) 「或記錄」。

41. (1) 第 30 條（第 29 條補充條款）修正如下。

(2) 第(1)項—

(a) 「29」以「29(4)」取代，以及

(b) 在兩者皆刪除「或記錄」。

(3) 第(2)(a)(i)項—

(a) 刪除「商品或」，以及

(b) 「29」以「29(4)」取代。

(4) 第(3)項刪除「第 29 條以上或」。

(5) 第(5)、(6)和(7)各項中，「29」以「29(4)」取代。

42. 第 31 (1) 條（海關官員扣留商品之權力）於「或此部分以下」以「本法第 29 (4) 條或 2015 年消費者保護法附件 5」取代。

43. 第 32 (1) 條（妨礙有權執行人）—

(a) 第(a)款—

“(3A)For the investigatory powers available to a person for the purposes of the duty imposed by subsection (1), see Schedule 5 to the Consumer Rights Act 2015 (as well as section 29).”

39. Omit section 28 (test purchases).

40.(1) Section 29 (powers of search etc) is amended as follows.

(2) In subsection (1) for “any of the powers conferred by the following provisions of this section” substitute “the power conferred by subsection (4)”.

(3) Omit subsections (2), (3), (5) and (6).

(4) In subsection (7) omit—

(a)“, (5) or (6)”, and

(b)“or records”.

41.(1) Section 30 (provisions supplemental to section 29) is amended as follows.

(2) In subsection (1)—

(a) for “29” substitute “29(4)”, and

(b) omit “or records” in both places.

(3) In subsection (2)(a)(i)—

(a) omit “goods or”, and

(b) for “29” substitute “29(4)”.

(4) In subsection (3) omit “section 29 above or”.

(5) In each of subsections (5), (6) and (7) for “29” substitute “29(4)”.

42. In section 31(1) (power of customs officer to detain goods) for “or under this Part” substitute “section 29(4) of this Act or Schedule 5 to the Consumer Rights Act 2015”

43. In section 32(1) (obstruction of authorised officer)—

(a) in paragraph (a)—

(i) 「此部分之各條款」以「第 29 (4) 條」取代，以及

(ii) 「依此行為」以「依第 31 條行為」取代，

(b) 第 (b) 款之「此部分之各條款」以「第 29 (4) 條」取代，
以及

(c) 第 (c) 款之「此部分之各條款」以「第 29 (4) 條」取代。

44. 第 33 (1) 條（對商品遭扣留之上訴）之「此部分之各條款」以「第 29 (4) 條」取代。

45. 第 34 (1) 條（沒收與扣留之補償）之「29」以「29 (4)」取代。

46. 第 44 (4) 條（文件服務）—

(a) 刪除「28 (2) 或」，以及

(b) 於各處刪除「已採購或」

1988 年教育改革法 (c.40)

47. (1) 1988 年教育改革法第 215 條（未承認之學位：施行）修正如下。

(2) 於該條後加入—

「(1A) 對於地方重量和度量衡主管機關可適用之調查權基於執行第 (1) 項所要求責任之目的，準用 2015 年消費者保護法附件 5。」

(3) 第 (2) 至 (8) 項刪除。

1988 年著作權、設計和專利法

48. 1988 年著作權、設計和專利法修正如下。

49. (1) 第 107A 條（地方重量和度量衡主管機關對第 107 條之執行）修正如下。

(2) 第 (2) 項刪除。

- (i) for “any provision of this Part” substitute “section 29(4)”, and
 - (ii) for “so acting” substitute “acting in pursuance of section 31”,
 - (b) in paragraph (b) for “any provision of this Part” substitute “section 29(4)”, and
 - (c) in paragraph (c) for “any provision of this Part” substitute “section 29(4)”.
44. In section 33(1) (appeals against detention of goods) for “any provision of this Part” substitute “section 29(4)”.
45. In section 34(1) (compensation for seizure and detention) for “29” substitute “29(4)”.
46. In section 44(4) (service of documents)—
- (a) omit “28(2) or”, and
 - (b) omit “purchased or” in each place.

Education Reform Act 1988 (c. 40)

- 47.(1) Section 215 of the Education Reform Act 1988 (unrecognised degrees: enforcement) is amended as follows.
- (2) After that section insert—
“(1A) For the investigatory powers available to a local weights and measures authority for the purposes of the duty to enforce imposed by subsection (1), see Schedule 5 to the Consumer Rights Act 2015.”
 - (3) Omit subsections (2) to (8).

Copyright, Designs and Patents Act 1988 (c. 48)

48. The Copyright, Designs and Patents Act 1988 is amended as follows.
- 49.(1) Section 107A (enforcement of section 107 by local weights and measures authority) is amended as follows.
- (2) Omit subsection (2).

(3) 於第 (3) 項刪除從「基於該目的」至該項結束之文字。

(4) 於該項後加入一

「(3A) 對於地方重量和度量衡主管機關可適用之調查權或北愛爾蘭之企業貿易和投資部基於本條責任之目的，準用 2015 年消費者保護法附件 5。」

50. (1) 第 198A 條（地方重量和度量衡主管機關對第 198 條之執行）修正如下。

(2) 第 (2) 項刪除。

(3) 於第 (3) 項刪除從「基於該目的」至該項結束之文字。

(4) 於該項後加入一

「(3A) 對於地方重量和度量衡主管機關可適用之調查權或北愛爾蘭之企業貿易和投資部基於本條責任之目的，準用 2015 年消費者保護法附件 5。」

1993 年乾淨空氣法

51. 1993 年乾淨空氣法修正如下。

52. (1) 第 30 條（有關電動機燃料之管制）修正如下。

(2) 第 (5) 項刪除。

(3) 於第 (6) 項前加入一

「(5A) 對於地方重量和度量衡主管機關可適用之調查權基於第 (4) 項責任之目的，準用 2015 年消費者保護法附件 5。」

(4) 第 (8) 項刪除。

(5) 於第 (9) 項前加入一

(3) In subsection (3) omit the words from “For that purpose” to the end of the subsection.

(4) After that subsection insert—

“(3A)For the investigatory powers available to a local weights and measures authority or the Department of Enterprise, Trade and Investment in Northern Ireland for the purposes of the duties in this section, see Schedule 5 to the Consumer Rights Act 2015.”

50.(1) Section 198A (enforcement of section 198 by local weights and measures authority) is amended as follows.

(2) Omit subsection (2).

(3) In subsection (3) omit the words from “For that purpose” to the end of the subsection.

(4) After that subsection insert—

“(3A)For the investigatory powers available to a local weights and measures authority or the Department of Enterprise, Trade and Investment in Northern Ireland for the purposes of the duties in this section, see Schedule 5 to the Consumer Rights Act 2015.”

Clean Air Act 1993 (c. 11)

51. The Clean Air Act 1993 is amended as follows.

52.(1) Section 30 (regulations about motor fuel) is amended as follows.

(2) Omit subsection (5).

(3) Before subsection (6) insert—

“(5A)For the investigatory powers available to a local weights and measures authority for the purposes of the duty in subsection (4), see Schedule 5 to the Consumer Rights Act 2015.”

(4) Omit subsection (8).

(5) Before subsection (9) insert—

「(8A) 對於地方重量和度量衡主管機關可適用之調查權或北愛爾蘭之企業貿易和投資部基於第(7)項責任之目的，準用 2015 年消費者保護法附件 5。」

53. 第 31 條（有關熔爐或引擎用燃油之硫含量管制）於第(4)項後加入—

「(4A) 對於地方主管機關可適用之調查權基於第(4)(a)項責任之目的，準用 2015 年消費者保護法附件 5。」

54. 第 32(4) 條（進入權不適用於與政府公共服務人員）之「第 56 至 58 條（進入與檢查權及其他地方主管機關權力）」以「2015 年消費者保護法附件 5（調查權）」取代。

55. 第 49(1) 條（非正當之資訊揭露）於「本法」後加入「或基於本法第(30)(4)或(7)或 31(4)(a) 條責任之目的行使 2015 年消費者保護法附件 5 之權力」。

56. 第 56 條（進入與檢查等權）於第(6)項後加入—

「(7) 本條不適用有關於—

(a) 第 4 部分授予地方主管機關之功能，或

(b) 於該部分下所訂立政策工具之條款。」

57. 第 58(1) 條（地方主管機關取得資訊之權力）—

(a) 刪除「IV 或」，及

(b) 「該些部分」以「該部分」取代。

1994 年星期日貿易法 (c.20)

58. (1) 1994 年星期日貿易法附件 2 第 1 部分（一般施行條款）修正如下。

“(8A)For the investigatory powers available to the Department of Enterprise, Trade and Investment in Northern Ireland for the purposes of the duty in subsection (7), see Schedule 5 to the Consumer Rights Act 2015.”

53. In section 31 (regulations about sulphur content of oil fuel for furnaces or engines) after subsection (4) insert—

“(4A)For the investigatory powers available to a local authority for the purposes of the duty in subsection (4)(a), see Schedule 5 to the Consumer Rights Act 2015.”

54. In section 32(4) (powers of entry not to apply in relation to persons in the public service of the Crown) for “sections 56 to 58 (rights of entry and inspection and other local authority powers)” substitute “Schedule 5 to the Consumer Rights Act 2015 (investigatory powers)”.

55. In section 49(1) (unjustified disclosures of information) after “this Act” insert “or in the exercise of a power in Schedule 5 to the Consumer Rights Act 2015 for the purposes of the duty in section 30(4) or (7) or 31(4)(a) of this Act”.

56. In section 56 (rights of entry and inspection etc) after subsection (6) insert—

“(7)This section does not apply in relation to—

(a) a function conferred on a local authority by Part 4, or

(b) a provision of an instrument made under that Part.”

57. In section 58(1) (power of local authorities to obtain information)—

(a) omit “IV or”, and

(b) for “those Parts” substitute “that Part”.

Sunday Trading Act 1994 (c. 20)

58.(1) Part 1 of Schedule 2 to the Sunday Trading Act 1994 (general enforcement provisions) is amended as follows.

(2) 第 3 和 4 條刪除。

(3) 於第 5 條前加入一

「調查權

4A 對於地方主管機關和依第 2 條由該機關指派之檢查人可適用之調查權基於第 1 條責任之目的，準用 2015 年消費者保護法附件 5。」

1994 年商標法

59. (1) 1994 年商標法第 93 條（地方重量與度量衡主管機關之執行功能）修正如下。

(2) 第 2 項刪除。

(3) 於第 (3) 項刪除從「基於該目的」至該項結束之文字。

(4) 於該項後加入一

「(3A)對於地方重量和度量衡主管機關可適用之調查權或北愛爾蘭之企業貿易和投資部基於本條責任之目的，準用 2015 年消費者保護法附件 5。」

1995 年奧林匹克符號等（保護）法

60. (1) 1995 年奧林匹克符號等（保護）法第 8A 條修正如下。

(2) 第 2 項刪除。

(3) 第 3 項刪除第 (b) 款及緊接於該款之前的「和」。

(4) 於該項後加入一

「(3A)對於地方重量和度量衡主管機關可適用之調查權或北愛爾蘭之企業貿易和投資部基於本條責任之目的，準用 2015 年消費者保護法附件 5。」

- (2) Omit paragraphs 3 and 4.
- (3) Before paragraph 5 insert—

“Investigatory powers

4A For the investigatory powers available to a local authority and the inspectors appointed by it under paragraph 2 for the purposes of the duty in paragraph 1, see Schedule 5 to the Consumer Rights Act 2015.”

Trade Marks Act 1994 (c. 26)

59.(1) Section 93 of the Trade Marks Act 1994 (enforcement function of local weights and measures authority) is amended as follows.

- (2) Omit subsection (2).
- (3) In subsection (3) omit the words from “For that purpose” to the end of the subsection.
- (4) After that subsection insert—

“(3A) For the investigatory powers available to a local weights and measures authority or the Department of Enterprise, Trade and Investment in Northern Ireland for the purposes of the duties in this section, see Schedule 5 to the Consumer Rights Act 2015.”

Olympic Symbol etc (Protection) Act 1995 (c. 32)

60.(1) Section 8A of the Olympic Symbol etc (Protection) Act 1995 is amended as follows.

- (2) Omit subsection (2).
- (3) In subsection (3) omit paragraph (b) and the “and” immediately preceding that paragraph.
- (4) After that subsection insert—

“(3A) For the investigatory powers available to a local weights and measures authority or the Department of Enterprise, Trade and Investment in Northern Ireland for the purposes of the powers in this section, see Schedule 5 to the Consumer Rights Act 2015.”

2001 年刑事司法與警察法

61. 2001 年刑事司法與警察法修正如下。

62. 第 57（1）條（扣押項目之滯留）—

（a）刪除第（d）、（g）和（pa）款，及

（b）於第（r）款後加入—

「（s）2015 年消費者保護法附件 5 第 28（7）和 29（8）條」。

63. （1）第 65 條（法律豁免權之意義）修正如下。

（2）刪除第（6）和第（8A）項。

（3）於第（9）項前加入—

「（8B）一物件屬，或組成部分屬，經行使或聲稱行使 2015 年消費者保護法附件 5 第 27（1）（b）或 29（1）條所授予之沒收權而被沒收之財物基於本部分之目的應視為適用法律豁免惟須在該物件被沒收時違反該附件（豁免文件）之第 27（6）或（因該案可能是）29（6）款。」

（4）第（9）項—

（a）刪除第（c）款，

（b）於第（d）款中最後加入「或」，及

（c）刪除第（f）款及緊接於該款之前的「或」。

64. 第 66（4）條（搜索依據之建立）

（a）刪除第（a）、（c）、（d）、（e）、（f）、（g）、（ma）、（q）、（r）和（s）款，

（b）第（h）款之「29」以「29（4）」取代，

（c）第（o）款之「22」以「22（4）」取代，和

（d）於第（p）款後加入—

「（t）2015 年消費者保護法附件 5 第 4 部分」。

Criminal Justice and Police Act 2001 (c. 16)

61. The Criminal Justice and Police Act 2001 is amended as follows.

62. In section 57(1) (retention of seized items)—

- (a) omit paragraphs (d), (g) and (pa), and
- (b) after paragraph (r) insert—

“(s) paragraphs 28(7) and 29(8) of Schedule 5 to the Consumer Rights Act 2015”.

63.(1) Section 65 (meaning of legal privilege) is amended as follows.

- (2) Omit subsections (6) and (8A).
- (3) Before subsection (9) insert—

“(8B) An item which is, or is comprised in, property which has been seized in exercise or purported exercise of the power of seizure conferred by paragraph 27(1)(b) or 29(1) of Schedule 5 to the Consumer Rights Act 2015 shall be taken for the purposes of this Part to be an item subject to legal privilege if, and only if, the seizure of that item was in contravention of paragraph 27(6) or (as the case may be) 29(6) of that Schedule (privileged documents).”

- (4) In subsection (9)—
 - (a) omit paragraph (c),
 - (b) at the end of paragraph (d) insert “or”, and
 - (c) omit paragraph (f) and the “or” immediately preceding that paragraph.

64. In section 66(4) (construction of references to a search)—

- (a) omit paragraphs (a), (c), (d), (e), (f), (g), (ma), (q), (r) and (s),
- (b) in paragraph (h) for “29” substitute “29(4)”,
- (c) in paragraph (o) for “22” substitute “22(4)”, and
- (d) after paragraph (p) insert—

“(t) Part 4 of Schedule 5 to the Consumer Rights Act 2015”.

65. (1) 附件 1 第 1 部分（第 50 條適用之權力）修正如下。

(2) 刪除—

- (a) 第 9 條，
- (b) 第 16 條，
- (c) 第 18 條，
- (d) 第 19 條，
- (e) 第 24 條，
- (f) 第 36 條，
- (g) 第 73BA 條，
- (h) 第 73G 條第一段，
- (i) 第 73J 條第二段，
- (j) 第 73K 條第二段，
- (k) 第 73N 條，和
- (l) 第 73O 條。

(3) 第 45 條之「29 (4)、(5) 和 (6)」以「29 (4)」取代。

(4) 第 73G 條第二段之「22 (4) 至 (6)」以「22 (4)」取代。

(5) 在第 73M 條後加入—

「2015 年消費者保護法

73P2015 年消費者保護法附件 5 第 27 (1) (b)、28 (1) 和 29 (1) 條所授予之各沒收權。」

66. (1) 附件 2 第 1 部分（訂定之適用）修正如下。

(2) 第 1、4B、4C、5、7、9B 和 9C 條刪除。

(3) 第 3 條之各「29」以「29 (4)」取代。

(4) 第 4A 條—

65.(1) Part 1 of Schedule 1 (powers to which section 50 applies) is amended as follows.

(2) Omit—

- (a) paragraph 9,
- (b) paragraph 16,
- (c) paragraph 18,
- (d) paragraph 19,
- (e) paragraph 24,
- (f) paragraph 36,
- (g) paragraph 73BA,
- (h) the first paragraph 73G,
- (i) the second paragraph 73J,
- (j) the second paragraph 73K,
- (k) paragraph 73N, and
- (l) paragraph 73O.

(3) In paragraph 45 for “29(4), (5) and (6)” substitute “29(4)”.

(4) In the second paragraph 73G for “22(4) to (6)” substitute “22(4)”.

(5) After paragraph 73M insert—

“Consumer Rights Act 2015

73P Each of the powers of seizure conferred by paragraphs 27(1)(b), 28(1) and 29(1) of Schedule 5 to the Consumer Rights Act 2015.”

66.(1) Part 1 of Schedule 2 (application of enactments) is amended as follows.

(2) Omit paragraphs 1, 4B, 4C, 5, 7, 9B and 9C.

(3) In paragraph 3 for “29” in each place substitute “29(4)”.

(4) In paragraph 4A—

(a) 「23」以「22(4)」取代，及

(b) 「22」以「22(4)」取代。

(5) 於第4A條後加入—

「4D 2015年消費者保護法附件5第39條(商品測試之通知)應適用於本法第50條下有關依該附件第28(1)條所授予之沒收權而被沒收之物件如同其適用於該條下有關沒收之商品。」

取得被沒收物件

4E 以本法第61條為準，2015年消費者保護法附件5第38條(取得被沒收商品和文件)應適用於本法第50條下有關依該附件第28(1)或29(1)條所授予之沒收權而被沒收之物件如同其適用於該附件第4部分下有關沒收之物。」

(6) 第8條之各「29」以「29(4)」取代。

(7) 第9A條—

(a) 第一個「22」以「22(4)」取代，及

(b) 「該些法規之法規22下所稱之產品」以「該些物件，如同其適用於該些法規之法規22(4)下所沒收和扣留之產品」取代。

(8) 於第9A條後加入—

「9D 2015年消費者保護法附件5第41條(沒收與扣留之補償)應適用於本法第50條下有關依該附件第28(1)或29(1)條所授予沒收權之物件沒收，及該些物件之滯留，如同其適用於該附件第4部分下有關商品之沒收與扣押。」

(a) for “23” substitute “22(4)”, and

(b) for “22” substitute “22(4)”.

(5) After paragraph 4A insert—

“4D Paragraph 39 of Schedule 5 to the Consumer Rights Act 2015 (notice of testing of goods) shall apply in relation to items seized under section 50 of this Act in reliance on the power of seizure conferred by paragraph 28(1) of that Schedule as it applies in relation to goods seized under that paragraph.

Access to seized items

4E Subject to section 61 of this Act, paragraph 38 of Schedule 5 to the Consumer Rights Act 2015 (access to seized goods and documents) shall apply in relation to items seized under section 50 of this Act in reliance on the power of seizure conferred by paragraph 28(1) or 29(1) of that Schedule as it applies in relation to things seized under Part 4 of that Schedule.”

(6) In paragraph 8 for “29” in each place substitute “29(4)”.

(7) In paragraph 9A—

(a) for the first “22” substitute “22(4)”, and

(b) for “products under regulations 22 of those Regulations.” substitute “those items, as it applies to the seizure and detention of products under regulation 22(4) of those Regulations.”

(8) After paragraph 9A insert—

“9D Paragraph 41 of Schedule 5 to the Consumer Rights Act 2015 (compensation for seizure and detention) shall apply in relation to the seizure of items under section 50 of this Act in reliance on the power of seizure conferred by paragraph 28(1) or 29(1) of that Schedule, and the retention of those items, as it applies in relation to the seizure and detention of goods under Part 4 of that Schedule.”

2002 年企業法

67. 2002 年企業法修正如下。

68. 第 224 條（競爭和市場部要求提供資訊之權力）刪除。

69. 第 225 條（其他執行人員要求提供資訊之權力）刪除。

70. 第 226 條（要求資訊之通知程序）刪除。

71. 第 227 條（通知之執行）刪除。

72. 第 227A 條（無搜索令進入場所之權力）刪除。

73. 第 227B 條（於場所可行使之權力）刪除。

74. 第 227C 條（有搜索令進入場所之權力）刪除。

75. 第 227D 條（有關進入權之附屬條款）刪除。

76. 第 227E 條（妨礙，或未與進入之公權力合作）刪除。

77. 第 227F 條（文件與商品之滯留）刪除。

78. 於第 228 條前（但在斜體標題「雜項」之後）加入一

「223A 調查權

對於執行人員可適用之調查權基於執行人員此部分下功能責任之目的，準用 2015 年消費者保護法附件 5。」

79. 第 228 條（證據）刪除第（4）項。

80. 第 236 條（政府第 8 部分之適用）刪除第（2）項。

81. 附件 14（第 9 部分對揭露限制之目的特定功能），於文末加入一

「2015 年消費者保護法附件 5 第 13（2）、（3）或 7 條。」

Enterprise Act 2002 (c. 40)

67. The Enterprise Act 2002 is amended as follows.
68. Omit section 224 (power of CMA to require the provision of information).
69. Omit section 225 (power of other enforcer to require the provision of information).
70. Omit section 226 (procedure for notices requiring information).
71. Omit section 227 (enforcement of notices).
72. Omit section 227A (power to enter premises without warrant).
73. Omit section 227B (powers exercisable on the premises).
74. Omit section 227C (power to enter premises with warrant).
75. Omit section 227D (ancillary provisions about powers of entry).
76. Omit section 227E (obstructing, or failing to co-operate with, powers of entry).
77. Omit section 227F (retention of documents and goods).
78. Before section 228 (but after the italic heading “Miscellaneous”) insert—

“223A Investigatory powers

For the investigatory powers available to enforcers for the purposes of enforcers’ functions under this Part, see Schedule 5 to the Consumer Rights Act 2015.”

79. In section 228 (evidence) omit subsection (4).
80. In section 236 (application of Part 8 to Crown) omit subsection (2).
81. In Schedule 14 (specified functions for the purposes of Part 9 restrictions on disclosure), at the end insert—

“Paragraph 13(2), (3) or (7) of Schedule 5 to the Consumer Rights Act 2015.”

2003 年煙火法

82. (1) 2003 年煙火法第 12 條（施行）修正如下。

(2) 於第 (2) 項—

(a) 刪除第 (a) 款，及

(b) 第 (b) 款，「29 (1) 至 (5)、(6) (a) 和 (7)」以「29 (4) 和 (7)」取代。

(3) 於第 (2) 項後加入—

「(2A) 對於人員可適用之調查權基於第 (1) 項 (1987 年消費者保護法第 4 部分權力之外另增) 要求執行責任之目的，準用 2015 年消費者保護法附件 5。」

2004 年聖誕節（交易）法

83. (1) 2004 年聖誕節（交易）法第 3 條（施行）修正如下。

(2) 第 (3) 項刪除。

(3) 於第 (4) 項前加入—

「(3A) 對於地方主管機關與其依第 (3) 項指派之檢查人可適用之調查權基於第 (1) 項之責任目的，準用 2015 年消費者保護法附件 5。」

2012 年金融服務法

84. (1) 2012 年金融服務法第 107 條（制定其他有關消費者信用管制條款之權力）修正如下。

(2) 第 (2) 項刪除 (g) 款。

(3) 第 (4) 項之各「(2) (g) 至 (i)」以「(2) (h) 和 (i)」取代。

Fireworks Act 2003 (c. 22)

82.(1) Section 12 of the Fireworks Act 2003 (enforcement) is amended as follows.

(2) In subsection (2)—

(a) omit paragraph (a), and

(b) in paragraph (b), for “29(1) to (5), (6)(a) and (7)” substitute “29(4) and (7)”.

(3) After subsection (2) insert—

“(2A) For the investigatory powers available to a person for the purposes of the duty to enforce imposed by virtue of subsection (1) (in addition to the powers in Part 4 of the Consumer Protection Act 1987), see Schedule 5 to the Consumer Rights Act 2015.”

Christmas Day (Trading) Act 2004 (c. 26)

83.(1) Section 3 of the Christmas Day (Trading) Act 2004 (enforcement) is amended as follows.

(2) Omit subsection (3).

(3) Before subsection (4) insert—

“(3A) For the powers available to a local authority and the inspectors appointed by it under subsection (3) for the purposes of the duty in subsection (1), see Schedule 5 to the Consumer Rights Act 2015.”

Financial Services Act 2012 (c. 21)

84.(1) Section 107 of the Financial Services Act 2012 (power to make further provision about regulation of consumer credit) is amended as follows.

(2) In subsection (2) omit paragraph (g).

(3) In subsection (4) for “(2)(g) to (i)” substitute “(2)(h) and (i)”.

附隨之廢止與撤銷

85. 由於本附件所為之修正，以下廢止或撤銷—

- (a) 1977 年價格委員會法第 16 (2) (b) 條；
- (b) 1999 年解除（重量與度量衡）管制令第 2 (13) 條；
- (c) 2002 年企業法附件 25 第 9 (8) (b) 和 (9) (a)；
- (d) 2004 年民事伴侶法附件 27 第 50 和 62 條；
- (e) 2006 年包裹物品重量與度量衡法附件 1 第 (10) 和 (24) 至 (27) 條；
- (f) 2002 企業法（修正）規則規則 15 至 18 及 24 至 28；
- (g) 2006 年消費者信用法第 51 (2) 條；
- (h) 2007 年法律服務法附件 21 第 41 條；
- (i) 2007 年消費者、不動產仲介與補償法第 57 和第 58 (1)、(3) 和 (4) 條；
- (j) 2008 年消費者不公平交易保護法附件 2 第 63 至 65 條；
- (k) 2010 年時間分享，假日商品，零售和契約交換法）附件 6 第 2 條；
- (l) 2011 時間分享（修正）規則規則 2；
- (m) 2011 年北愛爾蘭度量衡（包裹商品）法附件 1 第 17 至 20 條；
- (n) 2013 年犯罪與法院法附件 9 第 82 (a) 條。

Consequential repeals and revocations

85. In consequence of the amendments made by this Schedule, the following are repealed or revoked—

- (a) section 16(2)(b) of the Price Commission Act 1977;
- (b) article 2(13) of the Deregulation (Weights and Measures) Order 1999 (SI 1999/503);
- (c) paragraph 9(8)(b) and (9)(a) of Schedule 25 to the Enterprise Act 2002;
- (d) paragraphs 50 and 62 of Schedule 27 to the Civil Partnerships Act 2004;
- (e) paragraphs (10) and (24) to (27) of Schedule 1 to the Weights and Measures (Packaged Goods) Regulations 2006 (SI 2006/659);
- (f) regulations 15 to 18 and 24 to 28 of the Enterprise Act 2002 (Amendment) Regulations 2006 (SI 2006/3363);
- (g) section 51(2) of the Consumer Credit Act 2006;
- (h) paragraph 41 of Schedule 21 to the Legal Services Act 2007;
- (i) sections 57 and 58(1), (3) and (4) of the Consumers, Estate Agents and Redress Act 2007;
- (j) paragraphs 63 to 65 of Schedule 2 to the Consumer Protection from Unfair Trading Regulations 2008 (SI 2008/1277);
- (k) paragraph 2 of Schedule 6 to the Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010 (SI 2010/2960);
- (l) regulation 2 of the Timeshare (Amendment) Regulations 2011 (SI 2011/1065);
- (m) paragraphs 17 to 20 of Schedule 1 to the Weights and Measures (Packaged Goods) Regulations (Northern Ireland) 2011 (SR 2011/331);
- (n) paragraph 82(a) of Schedule 9 to the Crime and Courts Act 2013.

附件七

第 79 條

2002 年企業法：加強消費者措施與其他執行

1. 2002 年企業法第八部分（消費者法規執行）修正如下。
2. 第 210 條（消費者），刪除第 5 項。
3. （1）第 211 條（國內侵權）修正如下。
 - （2）本條第 1 項第（c）款，刪除「在英國」。
 - （3）本條第 1 項後段新增—
「(1A) 但只有當行為或疏失至少符合一項下列條件者，屬第 1 項之國內侵權—
 - （a）提供（或嘗試提供）商品或服務者在英國有營業場所，或
 - （b）物品或服務提供給或為英國人提供（準用第 232 條）。」
4. 第 213 條（5A）（CPC 執行單位），第（i）項內容取代為—
「(i) 指 2003 年通訊法（有關保險服務費規定）第 120 條第 15 項所稱執行主管機關；」。
5. （1）第 214 條（諮詢）修正如下。
 - （2）本條第 4 項第（a）款，於「14 天」後新增「或，第（4A）項適用，28 天」。
 - （3）第 4 項後新增—
「(4A) 本項適用於違反執行命令之自然人為代表機構成員或由代表機構代表，且該機構執行符合下列之消費者準則）—

SCHEDULE 7

Section 79

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) 執行人，非公設機構以外之指定執行人，
- (b) 第 (a) 款所稱執行人之代表機構，
- (c) 第 (a) 款所稱執行人之團體，或
- (d) 社群利益團體，其目的符合消費者準則。

(4B) 第 4A 項—

『消費者準則』指實務準則或其他意旨文件（無論以何種形式，用以保護或推廣消費者利益之角度，以任何方法規範提供物品或服務者（或其受雇人或代表）之行為），以及

『代表機構』指代表特定部門或領域中兩或多個商業之利益且為第 210 條所稱『商業』目的之機構。」

6. 第 217 條（執行命令），在第 10 項後新增—

「(10A) 執行命令得要求違反加強消費者措施（第 219A 條所稱）於自然人法院特定期間。

(10B) 第 9 項事業包含自然人在特定期間內採取之加強消費者保護機制。

(10C) 由非公立機構之指定執行人核發執行命令時，第 (10 A) 項和第 (10 B) 項受第 219 C 條拘束。

(10D) 自然人基於本條受執行命令或事業要求採取加強消費者保護機制者，該命令或事業得包含提供法院資訊或文件之內容，法院得決定該自然人是否須要提供。」

- (a) an enforcer, other than a designated enforcer which is not a public body,
- (b) a body which represents an enforcer mentioned in paragraph (a),
- (c) a group of enforcers mentioned in paragraph (a), or
- (d) a community interest company whose objects include the approval of consumer codes.

(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) are subject to section 219C in a case 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. 第 219 條（事業），在第 5 項之後新增—

「(5ZA) 本條事業得包含自然人從事之進階事業—

(a) 在特定期間內採取之加強消費者保護機制（依第 219A 條定義），以及

(b) 自然人基於本條受執行命令或事業要求採取加強消費者保護機制者，該命令或事業得包含提供法院資訊或文件之內容，法院得決定該自然人是否須要提供。

(5ZB) 由非公立機構之指定執行人核發執行命令時，第 (5ZA) 項受第 219 C 條拘束。」

8. 第 219 條後新增—

「**219A 加強消費者保護機制之定義**

(1) 本部分，加強消費者保護機制（非第 5 項排除事項）指—

(a) 第 2 項所稱之救濟事項，

(b) 第 3 項所稱之法遵事項，或

(c) 第 4 項所稱之選擇事項。

(2) 該救濟事項指

(a) 提供因執行命令或事業而受損失之消費者補償或其他救濟機制，

(b) 第 (a) 款與契約相關行為提供消費者契約終止權（非變更），

(c) 消費者因執行命令或事業，意圖消費者集體利益而無法被識別，或以不合比例之成本識別。

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) is subject to section 219C in a case 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) 法遵事項機制指意圖避免或減少因執行命令或事業之救濟風險（包含得更一般性增進消費者法遵效果之機制）。
- (4) 選擇事項機制指意圖使消費者在供給或嘗試供給物品或服務者更有效選擇。
- (5) 下列非屬加強消費者保護機制—
 - (a) 第 217 條第 8 項之執行命令所包含之公開要求，
 - (b) 第 217 條第 10 項法院接受之事業所包含之公開要求，或
 - (c) 第 219 條第 5A 項第 (a) 款 CPC 執行人接受之事業所包含之公開要求。」

219B 加強消費者保護機制等之內涵

- (1) 執行命令或事業得僅包含法院或執行人（依情況須要）認為公平且合理之加強消費者保護機制—
- (2) 基於第 1 項目的，法院或執行人應特別考慮以下事項，以判斷預計之加強消費者保護機制為適當—
 - (a) 該機制對消費者之可能利益，
 - (b) 執行命令或事業可能之費用，以及
 - (c) 消費者取得機制利益之可能費用。
- (3) 第 2 條第 (b) 款所稱費用指—
 - (a) 機制費用，以及

- (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) 與採取機制相關之合理行政成本。
- (4) 執行命令或事業得包含加強救濟事項之消費者機制—
 - (a) 僅於損失適用，以及
 - (b) 僅於法院或執行人（可能個案）認定依照執行命令或事業所生之成本不可能高出消費者因該執行命令或事業所致之損失總額。....
- (5) 第 4 條第 (b) 款所指費用不包含與採取機制相關之行政費用。
- (6) 第 7 項僅於執行命令或事業包含加強消費者保護機制提供補償和和解協議和補償支付相關，適用之。
- (7) 當自然人於和解協議放棄權利招致民事訴訟程序，而非該程序和執行命令或事業相關行為而生，該放棄不生效。
- (8) 以下定義於第 4 條第 (a) 款目的下適用之。
- (9) 於第 217 條執行命令或事業案件下，「損失個案」指該個案—
 - (a) 本條第 1 項適用之（發現自然人構成侵權行為者），以及
 - (b) 消費者因該行為已遭受損失。
- (10) 第 219 條企業情況，「損失個案」指該個案—

- (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) 本條第 3 項第 (a) 款或第 (b) 款（相信自然人構成侵權行為者），適用之，以及

(b) 消費者因該行為已遭受損失。

219C 私部門執行人加強消費者保護機制運用

(1) 非公立單位指派之執行人，僅當符合以下條件後，始能以執行命令要求自然人採取加強消費者保護機制。

(2) 經非公立單位指派之執行人申請執行命令後所為之第 217 條第 9 項之承諾，或依第 219 條給予執行人之承諾，於符合以下條件時，可能包含自然人加強消費者機制之進階承諾。

(3) 第一個條件是各部會部長基於本條目的之命令所特定之執行人。

(4) 第二個條件是加強消費者機制不直接對執行人或相關企業利益相關有利。

(5) 加強消費者保護機制直接有利於執行人或相關企業包括特定機制—

(a) 要求自然人給付執行人或相關企業，

(b) 要求自然人參與建議自然人提供或嘗試提供物品或服務與消費者之機制，由執行人或相關企業規範，或

(c) 將提供執行人或相關企業之競爭者商業優惠。

- (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.

219C Availability of enhanced consumer measures to private enforcers

- (1) An enforcement order made on the application of a designated enforcer which is not a public body may require a person to take enhanced consumer measures only if the following conditions are satisfied.
- (2) An undertaking given under section 217(9) following an application for an enforcement order made by a designated enforcer which is not a public body, or an undertaking given to such an enforcer under section 219, may include a further undertaking by a person to take enhanced consumer measures only if the following conditions are satisfied.
- (3) The first condition is that the enforcer is specified for the purposes of this section by order made by the Secretary of State.
- (4) The second condition is that the enhanced consumer measures do not directly benefit the enforcer or an associated undertaking.
- (5) Enhanced consumer measures which directly benefit an enforcer or an associated undertaking include, in particular, measures which—
 - (a) require a person to pay money to the enforcer or associated undertaking,
 - (b) require a person to participate in a scheme which is designed to recommend persons supplying or seeking to supply goods or services to consumers and which is administered by the the enforcer or associated undertaking, or
 - (c) would give the enforcer or associated undertaking a commercial advantage over any of its competitors.

- (6) 各部會部長得命令依本條第 3 項特定執行人，僅當各部部長認定如此將可能發生以下情況—
 - (a) 改善消費者於與執行人指派相關侵權行為獲得救濟之可能，
 - (b) 改善消費者獲得可提升提供或尋求提供商品或服務之自然人之資訊，或
 - (c) 改善消費者法之法律遵循。
- (7) 各部會部長得基於第 3 項命令特定執行人僅當本部分已經基於 2006 年立法和法制改革法第 24 條（第 21 條所示之原則之功能和第 22 條條文施行之適用），至執行人可因而被特定。
- (8) 依本條第 3 項制訂命令之權力—
 - (a) 依法律文件為可行使取消，根據下議院決議；
 - (b) 包括臨時、補充、後續、暫時、過渡或保留條款。
- (9) 當下列情況下，第 10 項適用之一—
 - (a) 執行人行使有關自然人依本條第 1 項和第 2 項之功能，
 - (b) 功能指 2008 年法規執行和罰則法第二部分目的（法規執行協調）相關職權，
 - (c) 主要主管機關（於本部分定義中）已依本法第 27 條第 1 項給建議或指南—

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- (6) The Secretary of State may make an order under subsection (3) specifying an enforcer only if the Secretary of State is satisfied that to do so is likely to—
- (a) improve the availability to consumers of redress for infringements to which the enforcer’s designation relates,
 - (b) improve the availability to consumers of information which enables them to choose more effectively between persons supplying or seeking to supply goods or services, or
 - (c) improve compliance with consumer law.
- (7) The Secretary of State may make an order under subsection (3) specifying an enforcer only if the functions of the enforcer under this Part have been specified under section 24 of the Legislative and Regulatory Reform Act 2006 (functions to which principles under section 21 and code of practice under section 22 apply), to the extent that they are capable of being so specified.
- (8) The power to make an order under subsection (3)—
- (a) is exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament;
 - (b) includes power to make incidental, supplementary, consequential, transitional, transitory or saving provision.
- (9) Subsection (10) applies if—
- (a) an enforcer exercises a function in relation to a person by virtue of subsection (1) or (2),
 - (b) that function is a relevant function for the purposes of Part 2 (co-ordination of regulatory enforcement) of the Regulatory Enforcement and Sanctions Act 2008, and
 - (c) a primary authority (within the meaning of that Part) has given advice or guidance under section 27(1) of that Act—

- (i) 給自然人相關職權，或
- (ii) 給其他地方主管機關（於本部分定義中）有關應如何對該自然人行使職權。

(10) 執行人應執行有關該自然人之功能時與建議或指南一致。

(11) 本條相關企業，與指定執行人相關，指—

(a) 執行人之母公司或子公司，或

(b) 執行人母公司之子公司，

以及本條目的「母公司」和「子公司」與 2006 年公司法第 1162 條定義相同。

9. (1) 第 220 條（進階程序）修正如下。

(2) 第 1 項後新增—

「(1A) 本條不適用於未依第 217 (10D) 提供資訊或文件。」

(3) 第 2 項，「對 CMA 而言」取代為「任何 CPC 執行單位」。

(4) 第 5 項—

(a) 前段，「第 215 條和第 217 條或第 218 條（個案適用）」取代為「第 215 條，第 217 條或 218（個案適用）以及第 219A 條，第 219B 條以及第 219C 條」，

(b) 第 (c) 款內容取代為—

- (i) to that person in relation to that function, or
 - (ii) to other local authorities (within the meaning of that Part) with that function as to how they should exercise it in relation to that person.
- (10) The enforcer must, in exercising the function in relation to that person, act consistently with that advice or guidance.
- (11) In this section “associated undertaking”, in relation to a designated enforcer, means—
- (a) a parent undertaking or subsidiary undertaking of the enforcer, or
 - (b) a subsidiary undertaking of a parent undertaking of the enforcer,
- and for this purpose “parent undertaking” and “subsidiary undertaking” have the meanings given by section 1162 of the Companies Act 2006.”
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 CMA” 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, 219B and 219C”,
 - (b) for paragraph (c) substitute—

「(c) 當有關第 217 條第 9 項事業時，第 217 條第 9 項，第 10 項，第 10B 項和第 11 項應被忽略，且第 217 條第 10C 項和第 10D 項應被忽略；」，

(c) 第 (d) 款後新增—

「(e) 當有關第 217 條第 9 項或第 219 條所稱事業時，第 219A 條，第 218B 條和第 219C 條應被忽略。」

10. 第 229 條（建議和資訊）第 1 項後新增—

「(1A) 只要在 2015 年消費者法附件五（調查權等）施行後可合理施行，CMA 應準備且公開相關建議和資訊—

(a) 當其有關附件五第 13 條第 2 項和第 3 項和第 19 條有關調查權行使，自然人可能受影響時，對該附件相關條文之解釋，以及

(b) 指出 CMA 期待相關條文如何行使。」

附件八

第 81 條

競爭法中之私行為 第一部分 1998 年競爭法

1. 1998 年競爭法依本部分修正。
2. 第一部分第四章標題取代為「有關違反競爭法之上訴、法院訴訟程序與和解」。
3. 第 46 條前之子標題取代為「上訴與法院訴訟程序」。
4. (1) 第 47A 條取代為—

“(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 section 217(9);”,

(c) after paragraph (d) insert—

“(e)sections 219A, 219B and 219C must be ignored to the extent that they relate to an undertaking under section 217(9) or 219.”

11. 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 2015 (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 investigatory powers exercised for the purposes set out in paragraphs 13(2) and (3) and 19 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 8

Section 81

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 法院訴訟程序：損害賠償請求權等。

- (1) 於不抵觸本法條款與法院規定下，自然人得就本條文適用之請求權於法院提起訴訟。
- (2) 本條文適用之請求權規定於第 3 項，承受損失或損害之自然人得於英國任一法院，提起有關下列侵權裁決或涉嫌侵權之民事訴訟—
 - (a) 第一章禁止規定。
 - (b) 第二章禁止規定。
 - (c) 第 101 條第 (1) 項之禁止規定，或
 - (d) 第 102 條之禁止規定。
- (3) 請求權為—
 - (a) 損害賠償請求權。
 - (b) 其他任何金錢總額之請求權。
 - (c) 於英格蘭、威爾斯或北愛爾蘭訴訟程序中之禁止令請求權。
- (4) 為確認得在民事訴訟中提出之請求權，任何與得適用於該訴訟之限制規定或時效相關規定均免除。
- (5) 本條文規定之訴訟權不影響以該請求權提起其他訴訟之權利。
- (6) 本部分（第 49C 條除外）之「侵權裁決」意指—
 - (a) CMA 針對違反第一章禁止規定、第二章禁止規定、第 101 條第 (1) 項之禁止規定或第 102 條之禁止規定所做之裁決。

“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) which a person who has suffered loss or damage may make in civil proceedings brought in any part of the United Kingdom 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) For the purpose of identifying claims which may be made in civil proceedings, any limitation rules or rules relating to prescription that would apply in such proceedings are to be disregarded.
- (5) 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.
- (6) 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) 法院針對違反第一章禁止規定、第二章禁止規定、第 101 條第 (1) 項之禁止規定或第 102 條之禁止規定之 CMA 裁決提起之上訴所做之裁決。

(c) 委員會針對違反第 101 條第(1)項之禁止規定或第 102 條之禁止規定所做之裁決。」

(2) 1998 年競爭法第 47A 條（如第(1)項修正）一體適用於條文生效前與生效後產生之請求權。

5. (1) 第 47B 條取代為一

「第 47B 條 法院集體訴訟程序

(1) 於不抵觸本法與法院規定下，得合併第 47A 條適用之兩個或以上請求權，向法院提起訴訟(以下稱「集體訴訟」)。

(2) 集體訴訟應由預計於訴訟中擔任訴訟代表之人進行。

(3) 與集體訴訟程序相關之訴訟適用以下各點—

(a) 所有請求權無須向訴訟中之所有被告主張。

(b) 訴訟中得合併第 47A 條規定與未規定之請求權。

(c) 已根據第 47A 條規定提起之訴訟，唯有獲得主張者同意，才得繼續於集體訴訟中進行。

(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) 唯有法院作出集體訴訟裁定時，集體訴訟才得繼續進行。
- (5) 法院僅得在下列情形作出集體訴訟裁定—
 - (a) 若法院作出裁定，則法院得指定提起訴訟之當事人擔任符合第（8）項規定之集體訴訟代表時，以及
 - (b) 所涉請求權符合併入集體訴訟之條件時。
- (6) 唯有在法院認定請求權源於相同、類似或相關之事實或法律，以及適合提起集體訴訟時，請求權才符合併入集體訴訟之條件。
- (7) 集體訴訟裁定應包含下列要件—
 - (a) 指定提起訴訟之當事人擔任集體訴訟代表之授權，
 - (b) 請求權符合併入集體訴訟之當事人類別之描述，以及
 - (c) 該訴訟選擇進入集體訴訟或選擇退出集體訴訟之規範（見第(10)項與第(11)項）。
- (8) 法院得指定一位自然人擔任集體訴訟之代表—
 - (a) 無論該自然人是否符合集體訴訟裁定中描述之當事人類別（以下稱「團體成員」），
 - (b) 僅須法院認為該自然人擔任集體訴訟之代表為合理正當即可。

- (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—
 - (a) whether or not that person is a person falling within the class of persons described in the collective proceedings order for those proceedings (a “class member”), but
 - (b) only if the Tribunal considers that it is just and reasonable for that person to act as a representative in those proceedings.

- (9) 法院得隨時改變或廢除集體訴訟裁定。
- (10) 「選擇進入集體訴訟」為代表各團體成員提起訴訟之集體訴訟，團體成員以指定方式於特定時間經由通知訴訟代表其請求權應該併入集體訴訟，選擇進入訴訟。
- (11) 「選擇退出集體訴訟」為代表各團體成員提起訴訟之集體訴訟，下列除外—
- (a) 任何團體成員以指定方式於特定時間經由通知訴訟代表其請求權不得併入集體訴訟，選擇退出訴訟，以及
 - (b) 任何團體成員—
 - (i) 未於特定時間定居於英國者，以及
 - (ii) 未以指定方式於特定時間經由通知訴訟代表其請求權應該併入集體訴訟，選擇進入訴訟者。
- (12) 法院於集體訴訟中所作之判決或裁定，對全體被代表人均有拘束力，除另有規定者外。
- (13) 提起集體訴訟之訴訟權不影響以該請求權提起其他訴訟之權利。
- (14) 本條與第 47C 條中所謂「特定」意指於法院命令中特定者。
- (2) 1998 年競爭法第 47B 條（如第(1)項修正）一體適用於條文生效前與生效後產生之請求權。

- (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. 第 47B 條（如第 5 段修正）後加入—

「第 47C 條 集體訴訟：損害與費用

- (1) 法院不得於集體訴訟中作出懲戒性損害賠償之裁決。
- (2) 法院得於集體訴訟中，未經估算各被代表人請求權所涉損害回復之金額，作出損害賠償之裁決。
- (3) 法院於選擇退出集體訴訟作出損害賠償裁決時，應裁定損害賠償供代表人收受—
 - (a) 集體訴訟代表，或
 - (b) 法院認為較集體訴訟代表更適合之人。
- (4) 法院於選擇進入集體訴訟作出損害賠償裁決時，得作出第 3 項規定之裁定。
- (5) 於不抵觸第 6 項規定下，法院於選擇退出集體訴訟作出損害賠償裁決時，被代表人未於特定期間內主張之損害賠償，應支付予慈善機構存放一段時間，該時間由大法官根據 2007 年法律服務法第 194 條第 8 項所作裁定定之。
- (6) 於第 5 項之情形下，法院得命被代表人於特定期間內未主張之全部或一部損害賠償金，改用以支付訴訟代表因該訴訟所生之所有或部分費用或支出。

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) Subject to subsection (6), 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) In a case within subsection (5) the Tribunal may order that all or part of any damages not claimed by the represented persons within a specified period is instead to be paid to the representative in respect of all or part of the costs or expenses incurred by the representative in connection with the proceedings.

- (7) 各部會部長得透過命令修正第 5 項，以不同的慈善機構取代該項特定時間內的機構。
- (8) 若涉及選擇退出集體訴訟，則損害賠償合約則不得強制執行。
- (9) 本條文中—
 - (a) 「慈善機構」指僅以慈善目的而設之機構或信託受託人。
 - (b) 「損害賠償」（「賠償性損害賠償」除外）包含法院於集體訴訟中（於費用或支出之外）可能作出之賠償金額；
 - (c) 「損害賠償合約」之意涵規定於 1990 年法院和法律服務法第 58AA 條第 3 項。

7. 第 47C 條（以第 6 段加入）後加入—

「第 47D 條 根據第 47A 條所提訴訟或集體訴訟：禁止令等。

- (1) 法院於根據第 47A 條所提之訴訟或集體訴訟中核發禁止令—
 - (a) 與高等法院核發之禁止令有同等效力，且
 - (b) 其強制執行力與高等法院核發者同。
- (2) 法院於第 47A 條所提之訴訟或集體訴訟中，決定是否合法禁止令時，
 - (a) 於英格蘭與威爾斯進行之訴訟，根據 1981 年高等法院法第 37 條第 1 項，法院應適用高等法院用以決定是否核發禁止令之原則，且

- (7) The Secretary of State may by order amend subsection (5) so as to substitute a different charity for the one for the time being specified in that subsection.
- (8) A damages-based agreement is unenforceable if it relates to opt-out collective proceedings.
- (9) In this section—
 - (a) “charity” means a body, or the trustees of a trust, established for charitable purposes only;
 - (b) “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);
 - (c) “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) 於北愛爾蘭進行之訴訟，應適用高等法法院用以決定是否核發禁止令之原則。

(3) 法院曾於 2002 年企業法附件四中第 15A(3)段作出規定，第 (2)適用之（限於簡易訴訟中與請求權相關之損害賠償）。」

8. (1) 第 47D 條（以第 7 段加入）後加入—

「第 47E 條 根據第 47A 條所提之訴訟或集體訴訟之時效或時效取得期間

(1) 適用第 47A 條之請求權，為確定該請求權於進行下列訴訟時之時效或時效取得期間，適用第(2)項規定—

(a) 根據第 47A 條所提之訴訟，或

(b) 於集體訴訟開始進行時。

(2) 適用本項規定之情形為—

(a) 於英格蘭與威爾斯進行之訴訟，與該請求權於普通法院提起訴訟同，適用 1980 年訴訟時效法；

(b) 於蘇格蘭進行之訴訟，如該請求權符合適用 1973 年（蘇格蘭）時效取得與訴訟時效法第 6 條規定之義務，應適用之；

(c) 於北愛爾蘭進行之訴訟，與該請求權於普通法院提起訴訟同，適用 1989 年（北愛爾）訴訟時效法令。

- (b) in proceedings in Northern Ireland, apply the principles that the High Court would apply in deciding whether to grant an injunction.
- (3) Subsection (2) is subject to Tribunal rules which make provision of the kind mentioned in paragraph 15A(3) of Schedule 4 to the Enterprise Act 2002 (undertakings as to damages in relation to claims subject to the fast-track procedure).”
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) 請求權於集體訴訟（以下稱「第 47B 條請求權」）開始進行時，為確定該請求權若根據第 47A 條隨後提起訴訟將會適用之時效或時效取得期間，適用第 4 項至第 6 項。

- (4) 關於該請求權之時效或時效取得期間，於集體訴訟開始時暫停計算。

- (5) 根據第(4)項暫停計算後，於下列情形發生之日起，該請求權之時效或時效取得期間將恢復計算—
 - (a) 法院拒絕就相關集體訴訟，作出集體訴訟命令；

 - (b) 法院就相關集體訴訟，作出集體訴訟命令，惟該命令並無第 47B 條請求權符合併入該集體訴訟之條件；

 - (c) 法院駁回第 47B 條之請求權；

 - (d) 於選擇進入集體訴訟案件中，自然人得選擇使其第 47B 條之請求權併入訴訟之期間屆滿；

 - (e) 於選擇退出集體訴訟案件中—
 - (i) 定居英國之自然人（於選擇期間內）選擇使其第 47B 條之請求權排除於集體訴訟之外，或

- (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) 未定居英國之自然人得選擇使其第 47B 條之請求權併入訴訟之期間屆滿；

(f) 第 47B 條之請求權經撤回；

(g) 法院撤銷相關集體訴訟之集體訴訟命令；

(h) 法院變更集體訴訟命令，第 47B 條之請求權因而不包含於該集體訴訟內；

(i) 該第 47B 條之請求權和解，經由或未經法院核准；

(j) 該第 47B 條之請求權遭駁回、中止或案件事實未經審理即已作出處分。

(6) 該請求權之時效或時效取得期間，根據第(5)項恢復計算時，若期間將於恢復計算之日起算未至六個月即屆滿，則此期間視為六個月屆滿。

(7) 本條之效力應根據法院得延遲根據第 47A 條提起之訴訟或集體訴訟中請求權之時效或時效取得期間之規定。」

(2) 1998 年競爭法第 47E 條不適用於本段生效前產生之請求權。

9. (1) 第 49 條（後續上訴）依本段修正。

(2) 第 1 項中—

(a) 於 (a) 段末加入「以及」，此外

(b) 刪除 (b) 段與該段後的「以及」。

- (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) 於第 1 項後加入—

「(1A) 就法院於根據第 47A 條提起之訴訟或集體訴訟所作之判決，向適當法院提出上訴—

(a) 關於損害賠償或其他金額（除費用或支出之判決外），或

(b) 關於禁止令之核發。

(1B) 針對法院於根據第 47A 條提起之訴訟或集體訴訟所作判決中，關於損害賠償或其他金額（除費用或支出之額度外），向適當法院提出上訴。

(1C) 根據第(1A)項規定，因獨立請求權判決所生之上訴，於有關違反第 47A 條第(2)項所列禁止規定範圍內，得考量法院之法律意見。

(1D) 第(1C)項中之「獨立請求權」意指—

(a) 有關違反第 47A 條第(2)項所列禁止規定之請求權，以及

(b) 根據第 47A 條提起訴訟之請求權或包含於集體訴訟之請求權。」

(4) 於第(2)項第(a)款之首加入「除第(2A)項規定外，」。

(5) 於第(2)項後加入—

「(2A) 就法院於集體訴訟所作判決提起上訴，僅得由該集體訴訟代表或被告提起之。」

10. (1) 第 49 條後新增—

「競爭法侵權行為之和解

(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 集體訴訟：集體訴訟程序命令作成時

- (1) 符合本條和法院規則下，法院得於以下情形批准集體訴訟和解主張（集體和解）—
 - (a) 集體程序命令已作成相關主張，或
 - (b) 法院已特定為可選擇退出之集體訴訟程序。
- (2) 申請法院批准集體和解，應由該集體和解程序之代表或被告向特設法院提出。
- (3) 該程序代表或被告應提出經合意之集體和解協議細節和條文。
- (4) 當集體訴訟有多於一個以上之被告，第 2 項和第 3 項所稱「被告」指希冀受和解協議拘束之人。
- (5) 當集體和解協議條文公平且合理時，法院得作成命令批准所提議之集體和解。
- (6) 法院批准集體和解之日—
 - (a) 若自然人選擇退出（如非居住在英國之自然人）或選擇進入程序之期間已逾期，適用第 8 款和第 10 款以判斷該自然人是否受和解協議拘束，或
 - (b) 若期間尚未逾期，適用第 9 款和第 10 款以判斷該自然人是否受和解協議拘束。

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) 若自然人於得選擇退出集體和解期間屆至，和自然人未居住在英國得選擇加入和解程序之時間不同，第 6 款之屆期係指上述時間較晚屆至者。

- (8) 本項在下列情況下，法院所批准之集體和解應拘束和解程序命令中所提及之和解集團內所有自然人—
 - (a) 於判斷集體和解程序適用之居住期間內該自然人居住於英國（準用第 47B 條第 11 項第 (b) 款第 (i) 目），且未選擇退出此程序，或
 - (b) 該自然人選擇加入和解程序。

- (9) 特設法院所批准之集體和解應拘束和解程序命令中所提及之和解集團內所有自然人，適用本項規定。

- (10) 但和解協議在下列情況對自然人不生效—
 - (a) 該自然人藉由於特定的時間和方式通知代表該請求權不應包含於集體和解中退出，或
 - (b) 於特定期間內未居住英國，且通知代表其主張將放入和解協議中而未加入和解程序。

- (11) 本條不影響自然人提出選擇進入集體和解程序之權利。

- (12) 在本條和第 48B 條，「特定」指法院作成特別指示。

- (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) 1998 年競爭法第 49A 條適用於在本條開始生效前與後而生之主張。

11. (1) 第 49A 條（新增第 10 條）後新增—

「49B 集體和解：集體訴訟程序命令尚未作成時

(1) 符合本條和法院規則下，法院得於以下情形批准集體訴訟和解主張（集體和解）—

(a) 有關該主張之集體程序命令尚未作成，但

(b) 若和解程序已進行，主張可在程序開始時提出（不論和解程序中之主張的任何時效或取得時效）。

(2) 申請法院批准集體和解，應由由下列人員向法院提出—

(a) 預定為和解程序中擔任代表之自然人，或

(b) 若和解程序已提過相關主張，自然人將於該程序中具被告身分（或，多於一個以上之人將於程序中為被告，且願意受和解協議拘束）。

(3) 自然人於本條第 2 項向法院提出者，應提出經合意之集體和解協議細節和條文。

- (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 or prescriptive 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) 法院得做出命令批准提議和解訴訟（僅在法院第一次做集體和解命令時，準用第 8 項）。
- (5) 法院僅於下列情況得作集體和解命令—
 - (a) 法院於提出命令時認定第 2 項第(a)款提及之自然人為法院認定授權可作為依第 7 項集體和解之和解代表，且
 - (b) 於集體程序已提出時之主張可包含於程序中（準用第 47B 條第 6 項）。
- (6) 集體訴訟命令應包含以下事項—
 - (a) 依本條第 2 項第(a)款擔任有關集體和解程序之和解代表之授權，
 - (b) 第 5 項第 (b) 款所載集團人員之主張。」
- (7) 法院得授權以下自然人擔任有關和解協議之代表—
 - (a) 無論是否為和解協議命令所提和解集團中之人，但
 - (b) 僅在法院認為授權此人擔任和解代表為公平且合理時始得為之。
- (8) 當集體和解協議條文公平且合理時，法院得作成集體和解命令批准所提議之集體和解。

- (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—
- (a) whether or not that person is a person falling within the class of persons described in the collective settlement order for that settlement, but
 - (b) only if 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) 法院批准之和解協議拘束所有和解協議命令中所提及之和解集團所有人。

(10) 但和解協議在下列情況對自然人不生效—

(a) 於特定期間內通知和解代表其主張不包括在和解協議並退出者，或

(b) 於特定期間內未居住英國，且通知代表其主張將放入和解協議中且未選擇加入和解程序。

(11) 本條所稱和解代表指由和解協議授權代表行使和解協議者。

(2) 1998 年競爭法第 49B 條適用在本條開始生效前與後而生之主張。

12. 第 49B 條（新增第 11 條）之後新增—

「49C CMA 批准之救濟機制

(1) 自然人得向 CMA 申請救濟機制。

(2) CMA 得於救濟機制相關侵權決定完成前考量該申請，但僅得於下列情況下批准申請—

(a) 在侵權決定作成後，或

(b) CMA 之決定與該侵權決定同時發生。

(3) 判斷是否批准救濟機制申請時，CMA 得考量該機制提供之補償數額或價值。

(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 take into account the amount or value of compensation offered under the scheme.

- (4) CMA 得批准本條第 2 項第 (b) 款之救濟機制，並賦予條件或要求進一步提供有關運作該機制（包含該機制提供之補償數額或價值，以及如何決定之）之資訊。
- (5) 若 CMA 批准附條件救濟機制，其得—
 - (a) 允許該機制受其他條件限制；
 - (b) 當本條第 4 項或本項第 (a) 款條件未符時，取消該其批准；
 - (c) 批准並取代原先救濟機制（但不得批准限制條件）。
- (6) 任何經批准之救濟機制不得為 CMA 或補償當事人）改變。
- (7) 但 CMA 批准根據本條第 4 項和第 6 項附條件之機制時，無法免除配合提供進一步資訊已完成機制條款之責任。
- (8) 各部會部長得制訂有關申請救濟機制相關規定，以及得特別—
 - (a) 制訂有關管理申請批准救濟機制程序之規定，包含申請所需相關資訊；
 - (b) CMA 僅當根據法規特定程序建議始得批准救濟機制；

- (4) The CMA may approve a redress scheme under subsection (2)(b) subject to a condition or conditions requiring the provision of further information about the operation of the scheme (including about the amount or value of compensation to be offered under the scheme or how this will be determined).
- (5) If the CMA approves a redress scheme subject to such a condition, it may—
 - (a) approve the scheme subject to other conditions;
 - (b) withdraw approval from the scheme if any conditions imposed under subsection (4) or paragraph (a) are not met;
 - (c) approve a redress scheme as a replacement for the original scheme (but may not approve that scheme subject to conditions).
- (6) An approved scheme may not be varied by the CMA or the compensating party.
- (7) But, where the CMA approves a redress scheme subject to a condition of the kind mentioned in subsection (4), subsection (6) does not prevent further information provided in accordance with the condition from forming part of the terms of the scheme.
- (8) 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) CMA 僅於其以完整形式或包含條款於規定特定（得包含條款要求和解協議在此機制下其以完整形式或包含條款，於規定特定）始得批准救濟機制，；
 - (d) CMA 僅於（CMA 得依事實判斷）該機制以特定行政管制始得批准救濟機制；
 - (e) 描述 CMA 得或應考量或不得考量，以決定是否批准救濟機制 CMA 得或應考量或不得考量，已決定是否批准救濟機制。
- (9) CMA 應公布下列相關指引—
- (a) 批准救濟機制之申請；
 - (b) 救濟機制之批准，以及
 - (c) 已批准之救濟機制之執行，和 CMA 根據第 49E 條第 4 項規定所採取之審核標準。
- (10) 本條第 9 項應在公布前由各部會部長批准。
- (11) 本條和第 49D 條和第 49E 條—
- 「已批准之機制」指 CMA 批准之救濟機制。
 - 「賠償當事人」指基於已批准之機制提供賠償之自然人，
 - 「侵權決定」指—
 - (a) CMA 就第一章禁止，第二章禁止和第 101 條第 1 項禁止或侵害第 102 條禁止之決定，或

- (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.
- (9) 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).
- (10) Guidance under subsection (9) must be approved by the Secretary of State before it is published.
- (11) 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) 委員會就第 101 條第 1 項禁止或侵害第 102 條禁止之決定。

「救濟機制」指自然人於侵權決定後提供補償。

(12) 該自然人支付費用應以書面通知下列事項以特定之一

- (a) 得為金錢或非金錢，以及
- (b) 得提供給未因救濟機制相關之侵權決定而遭受損失者。

49D 救濟機制:費用之補償

- (1) CMA 得要求申請批准救濟機制之自然人支付部分或全部向 CMA 申請之合理費用。
- (2) 該自然人支付費用，以書面通知特定下列事項—
 - (a) 支付數額，
 - (b) 數額如何計算，以及
 - (c) 何時應支付。
- (3) 依本條應支付費用之自然人得向法院申訴數額。
- (4) 依本條應支付且與已批准之機制相關者，若費用於依第 2 項第 (c) 款特定日期尚未給付，CMA 得撤回批准該機制。
- (5) 依本條應給付之費用可被 CMA 回復成債務。

(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.

(12) 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 已批准機制之執行

- (1) 賠償當事人有義務遵守已批准之機制條款（簡稱「責任」）。
- (2) 任何在已批准之機制之條款下應賠償之自然人均有責任。
- (3) 自然人因違反責任而遭受損失或損害，該自然人得向法院提起民事訴訟請求賠償、禁止令或禁制令或任何其他合理救濟或補償。
- (4) CMA 考量賠償當事人違反責任時，CMA 得向法院提起民事訴訟請求賠償、禁止令或禁制令或任何其他救濟或補償。
- (5) 本條第 4 項亦適用任何自然人依第 3 項提起民事訴訟。
- (6) 依本條第 3 項或第 4 項提起訴訟程序時，賠償當事人可主張其已採取所有合理步驟履行責任來作為抗辯。
- (7) CMA 認為賠償當事人履行責任不再適當時，CMA 可以書面通知該當事人免除該責任。
- (8) 自然人與賠償當事人達成和解協議下，即便賠償當事人已因本條第 7 項免除責任，該協議仍得執行。
- (9) 本條「法院」指—
 - (a) 在英格蘭和威爾斯，高等法院或郡法院，
 - (b) 在北愛爾蘭，高等法院或郡法院，
 - (c) 在蘇格蘭，高等民事法院或郡警長。」

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) 第 58 條（CMA 事實發現）與本條修正一致。

(2) 本條第 1 項，在「法院」後新增「或法院」。

(3) 本條第 2 項—

(a) 「第一部分程序」定義，於第 (a) 條前新增—

「(za) 與侵權行為相關；」，以及

(b) 在「相關當事人」定義，第 (a) 條和第 (b) 條，「據稱違反禁止行為」取代為「已發現違反禁止行為或據稱違反禁止行為（該案得為禁止行為）」。

(4) 本條第 3 項—

(a) 在「法院規則」後新增「或法院規則」，以及

(b) 在「法院」後新增「或法院」。

(5) 在本條第 3 項之後新增—

「本條「法院」指—

(a) 英格蘭和威爾斯或北愛爾蘭，高等法院，

(b) 在蘇格蘭，高等民事法院或郡警長。」

14. (1) 第 58A 條取代為—

「**第 58A 條 侵權決定**

(1) 本條適用和侵權決定相關之主張之程序—

(a) 向法院提起，或

(b) 依照第 47A 條或第 47B 條向法院提起。

(2) 當侵權決定成為終局，法院或特設法院受拘束。

13. (1) Section 58 (findings of fact by CMA) 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;”, and
- (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) 下列情況下，第 47A 條第 6 項第 (a) 款或第 (b) 款所稱侵權決定為終局—

(a) 當對於侵權決定上訴期間經過而未上訴者；

(b) 第 47A 條第 6 項第 (a) 款所稱之決定，依第 46 條或第 47 條對於該決定上訴者，當上訴—

(i) 撤回，撤銷或另經中斷，或

(ii) 已確認侵權決定和對確定判決之上訴期間屆至但未提起上訴者。

(c) 依第 49 條對於該決定上訴者，當上訴—

(i) 對於侵權決定上訴者或確認侵權決定，已撤回，已撤銷或另經中斷，或

(ii) 已確認侵權決定和對確定判決上訴期間屆至但未向最高法院提起上訴者。

(d) 對於該決定向最高法院上訴者，當上訴—

(i) 對於侵權決定上訴者或確認侵權決定，已撤回，已撤銷或另經中斷，或

(ii) 已確認侵權決定者。

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- (3) An infringement decision specified in section 47A(6)(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(6)(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) 第 47A 條第 6 項第 (c) 款所稱侵權決定於以下情形時為終局—

(a) 當對於歐洲法院之侵權決定上訴期間屆至而未上訴者；或

(b) 當對該決定上訴時，該上訴—

(i) 經撤回，撤銷或另經中斷，或

(ii) 已確認侵權決定者。

(5) 本條適用於法院或特設法院不受在案之侵權決定拘束。

(6) 本條「法院」指—

(a) 英格蘭和威爾斯或北愛爾蘭，高等法院，

(b) 在蘇格蘭，高等民事法院或郡警長。」

(2) 1998 年競爭法第 58A 條（經第 1 項取代）不適用於本條生效前之決定。

15. (1) 第 59 條（第一部分解釋）依本條修正。

(2) 本條第 1 項，於適當處新增—

「集團成員」與第 47B 條第 8 項第(a)款定義相同；

「集體訴訟」與第 47B 條第 1 項定義相同。

「集體訴訟命令」指法院授權集體訴訟程序繼續之命令。

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- (4) An infringement decision specified in section 47A(6)(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;”;

「侵權決定」，除第 49C 條外，定義同於第 47A 條第 6 款；

「禁止令」包含暫時禁制令；

「選擇加入集體訴訟」定義同於第 47B 條第 10 項；

「選擇退出集體訴訟」) 定義同於 47B 條第 11 項；

「代表」指由集體訴訟命令授權進行集體訴訟程序之自然人；

「代表人」指集團成員—

(a) 已選擇加入集體訴訟，

(b) 於指定期間內基於判斷居住事實之目的居住在英國
(準用第 47B 條第 11 項第 (b) 款第 (i) 目規定)
且尚未選擇退出集體訴訟，或

(c) 已經選擇退出集團訴訟；」。

(3) 本條第 1 項，在「法院」定義，於「58」前新增「49E，」。

(4) 在本條第 1 項後新增—

「(1A) 在本部分，於蘇格蘭相關程序，「被告」稱為「被告」。

(1B) 1982 年民事管轄和判決法 1982) 第 41、42、45 和
46 條適用於依本部分目的判斷是否自然人視為『居住在英
國』。」

16. 第 71 條（法規，命令和規則），在第 4 項第 (cb) 款後新增「(ca)
第 47C 條第 7 項」。

““infringement decision”, except in section 49C, has the meaning given in section 47A(6);”;

““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(7),”.

17. (1) 附件八（上訴）依照本條修正。

(2) 第 2 條第 1 項，以「第 46 條或第 47 條」取代「第 46 條，第 47 條或第 49D 條第 3 項」。

(3) 在第 3 A 條後新增—

「3B (1) 本條適用於第 49D 條第 3 項上訴。

(2) 法院應參考通知上訴之理由判斷上訴利益。

(3) 法院得—

(a) 核准上訴費用數額，或

(b) 要求給付其他費用數額。

(4) 法院亦得依 CMA 已指示或採取之指示或手段提出法律意見者。

(5) 法院依本條第 3 項第 (b) 款之要求與 CMA 依第 49D 條之要求具相同效力，且得以相同方式執行。」

第二部分 2002 年企業法

18. 2002 年企業法根據本部分修正。

19. (1) 第 14 條（法院為特別程序之組織和其決定）修正如下。

(2) 本條第 1 項，於「在之前」後加入「，包括有關 1998 年法第 49A 條或第 49B 批准集體和解程序，」。

(3) 在第 1 項之後加入—

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) 但在有關 1998 年法第 47A 條相關程序，其為簡易程序（依法院規則說明），法院得僅由主席組成。」

20. 第 15 條（特設法院規則），第 1 項後段加入「，包含 1998 年法第 49A 條或第 49B 條關於批准集體和解程序。」

21. 第 16 條（從法院移轉或移轉至法院之程序），第 5 項「高等或高等民事法院之」取代為「任何或其他部分法院之」。

22. 附件四（特設法院：程序）之修正與本部分下列條文一致。

23. 第 1 條（法院判決），第 1 項第（a）款取代為

「(a) 陳述判決理由；

(aa) 陳述該判決於程序僅有主席聽審時是否無異議或採取多數意見，陳述其事實；」。

24. 於第 1 條後加入—

「*英格蘭和威爾斯和北愛爾蘭禁止令之執行*

1A (1) 自然人(A)未遵守法院依 1998 年法第 47A 條或第 47B 條核發之禁止令者，法院得向高等法院證實。

(2) 高等法院得要求調查事實。

(3) 若禁止令經高等法院核發時，當證人證詞對 A 不利或代表 A 時，任何由 A 或代表 A 之陳述，高等法院認為 A 有藐視法院之情況時，高等法院得視為 A 藐視法院。」

- “(1A) But in the case of proceedings relating to a claim under section 47A of the 1998 Act which is subject to the fast-track procedure (as described in Tribunal rules), the Tribunal may 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. 在第 4 條第（c）項和第 5 條第 1 項第（c）款—

- （a）「第 47B 條第 6 項」取代為「第 47C 條第 3 項或第 4 項」；以及
- （b）有關「指定機構」取代為「該法第 47B 條程序之代表」。

26. 在第 6 條—

- （a）第（a）項取代為—
 - 「(a) 針對自然人之主張給付損害賠償或繼續以該自然人身份（但非根據該法第 47C 條第 3 項或第 4 項）；或」；
- （b）第（b）項—
 - （i）「個人」取代為「自然人」，
 - （ii）「其代表」取代為「該自然人之代表」；且
- （c）在文末，「個人」取代為「自然人」。

27. 在第 7 條—

- （a）「指定機構」取代為「代表」；和
- （b）「個人」取代為「自然人」。

28. 在第 9 條—

- （a）現有條款編列為第 1 段，且
- （b）在該條文後新增—
 - 「(2) 本附件中，依 1998 年法第 49A 條或第 49B 條批准集體和解程序之申請規定，該條之程序包括相關程序。」

29. 第 11 條第 2 項，第（a）條取代為—

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) 進一步制訂關於請求權行使之限制和消滅時效程序規定，得依 1998 年法第 47A 條程序，和該法第 47E 條第 3 項到第 6 項。」

30. 第 13 條取代為—

「13 (1) 法院得依法院規則要求法院—

- (a) 拒絕依據 1998 年法第 47A 條或第 47B 條之請求，若法院認為該請求無理由；
- (b) 當有下列情況，拒絕第 47B 條之請求—
 - (i) 法院拒絕作與 1998 年法第 47B 條相關之集體訴訟命令，
 - (ii) 法院作成集體程序命令，但該命令不包含處理係爭請求。
 - (iii) 法院駁回集體訴訟程序命令，或
 - (iv) 法院以將請求排除於訴訟程序外，變更集體訴訟程序命令；
- (c) 因請求權先前依 1998 年法第 47B 條相關程序作成時，自然人無法滿足該法第 47B 條規定，而拒絕依第 47B 條主張之請求。

(2) 本條，「第 47B 條請求權」指依 1998 年法第 47B 條於程序開始前作成之請求。」

“(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. 在第 15 條後加入—

「簡易程序

15A (1) 法院對於依 1998 年法第 47A 條之請求，得制訂相關簡易程序規則，包含說明是否適合依相關程序處理之判斷因素。

(2) 法院對於依 1998 年法第 47A 條之請求，其不適用簡亦程序者，得制訂其他規則。

(3) 法院規則得在下列情況規定法院，—

(a) 依 1998 年法第 47A 條之程序主張核發暫時禁止令，根據對自然人之簡易程序，該自然人尚未獲得企業損害賠償，或

(b) 對於自然人依據該暫時禁止令而須給付之賠償設有總額上限。

(4) 在第 3 項「關於損害賠償之業務」指自然人因暫時禁止令而須承受給付之損害且法院認為該禁止令命自然人應給付者。

集體訴訟程序

15B (1) 法院得制訂依 1998 年法第 47B 條集體訴訟程序相關之規則。

(2) 於第 1 項之規則應特別與下列事項相關—

31. After paragraph 15 insert—

“Fast-track procedure

- 15A (1) Tribunal rules may make provision in relation to a fast-track 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.
- (3) Tribunal rules may, in particular, provide for the Tribunal to—
- (a) grant an interim injunction on a claim in proceedings under section 47A of the 1998 Act which is subject to the fast-track procedure to a person who has not given an undertaking as to damages, or
- (b) impose a cap on the amount that a person may be required to pay under an undertaking as to damages given on the granting of such an interim injunction.
- (4) In sub-paragraph (3) “an undertaking as to damages” means an undertaking to pay damages which a person sustains as a result of the interim injunction and which the Tribunal considers the person to whom the injunction is granted should pay.

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) 管理申請集體訴訟程序命令之程序；
- (b) 特設法院判斷是否和解程序中適當請求所應考量之因素（但規則不一定有判斷是否為相同，相似或相關事實或法律爭點）；
- (c) 特設法院判斷是否授權自然人於集體訴訟程序中擔任代表所應考量之因素；
- (d) 特設法院作成關於集體訴訟程序命令之程序；
- (e) 自然人得選擇加入或退出集體訴訟程序之程序；
- (f) 特設法院判斷是否變更或廢止集體訴訟程序命令所應考量之因素；
- (g) 集體訴訟程序中損害賠償之評估；
- (h) 集體訴訟程序中損害賠償支付，包含公開損害賠償金額之程序；
- (i) 集體訴訟程序判決和命令之效力。

集體和解

15C (1) 法院得制訂依 1998 年法第 49A 條和第 49B 條集體和解相關之規則。

- (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）於第 1 項之規則應特別與下列事項相關—

- （a）管理申請批准集體和解之程序；
- （b）第 49B 條適用下，法院判斷請求集體和解是否適當所應考量之因素（但規則不一定有判斷是否為相同，相似或相關事實或法律爭點）；
- （c）第 49B 條適用下，法院判斷是否授權自然人於集體和解中擔任代表所應考量之因素；
- （d）第 49B 條適用下，法院作成關於集體和解命令之程序；
- （e）法院判斷是否同意集體和解之提議所應考量之因素；
- （f）法院是否批准集體和解之程序；
- （g）自然人得選擇加入或退出集體和解之程序；
- （h）集體和解中損害賠償支付，包含公開損害賠償金額之程序。」

32. 第 17 條（聽證行為）—

- （a）在第 1 項第（h）款後加入—

- (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) 允許法院依照 1998 年法第 47A 條和第 47B 條就集體訴訟程序之法定代表無償提供服務時，命令支付有關程序之給付；」。

(b) 第 2 項中—

(i) 「個人」取代為「自然人」；和

(ii) 「該個人」取代為「該自然人」；

(c) 第 2 項之後加入—

「(2A) 第 1 項第 (h) 款之法院規則得規定提供費用或花費與於訴訟中主張或持續於程序中代表之自然人根據 1998 年法案第 47B 條該自然人之申請程序（於該申請非由代表自然人於訴訟中之代表人）。」；以及

(d) 第 3 項中，「個人」取代為「自然人」。

33. 在第 20 條後加入—

「*暫停程序*

20A (1) 有關 1998 年第 47A 條和第 47B 條在英格蘭和威爾斯或北愛爾蘭程序，法院規則得規定程序暫停，包含—

(a) 得依當事人要求命令或移除暫停程序之情況；

(b) 得在法院即時暫停程序；

(c) 後續程序。

“(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) after sub-paragraph (2) insert—

“(2A) Rules under sub-paragraph (1)(h) may provide for costs or expenses to be awarded to or against a person on whose behalf a claim is made or continued in proceedings under section 47B of the 1998 Act in respect of an application in the proceedings made by that person (where that application is not made by the representative in the proceedings on that person’s behalf).”; and

(d) 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) 有關 1998 年第 47A 條和第 47B 條在蘇格蘭程序，法院規則得規定程序暫停，包含—
- (a) 得依當事人要求命令或移除暫停程序之情況；
 - (b) 得在法院即時暫停程序；
 - (c) 後續程序。
- (3) 在第 1 項或第 2 項法院規則得依第 47A 條和第 47B 條規定有關侵權決定之請求權（第 47A 條第 6 項定義）尚未終局（準用 1998 年法第 58A 條）程序之暫停。」

34. 在第 21 條後加入—

「禁止令

21A 法院規則得制定有關 1998 年法第 47A 條或第 47B 條之禁止令之核發規定（包括暫時禁止令）。」

35. 第 23 條第 3 項，「個人」取代為「自然人」。

36. 第 25 條，在「之移轉」後加入「之全部或其他任何部分」。

第三部分 1990 年法院和法律服務法

37. 1990 年法院和法律服務法第 58AA 條（以損害賠償金為基礎之協議，於第 10 項後新增—

「11 第 1 項根據 1998 年競爭法第 47C 條第 8 項規定。」

- (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(6)) 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 of” 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(8) of the Competition Act 1998.”

附件九

第 87 條

房屋仲介公布手續費之義務：財務處罰

意圖通知

1. (1) 房屋仲介因違反第 83 條而被處以財務處罰前，地方度量衡主管機關應對之發出通知（意圖通知）。
 - (2) 依據本條第 3 項，意圖通知應在主管機關有足夠證據證明仲介違反責任之第一天起算六個月內完成。
 - (3) 仲介違反責任持續違法超過行為之期間，意圖通知應於以下期間提供—
 - (a) 違反情事持續期間，或
 - (b) 從違法情事開始之最後一天起算六個月內。
 - (4) 意圖通知應包含—
 - (a) 預定之財務處罰總額，
 - (b) 預定處罰之理由，以及
 - (c) 有關依照第 2 條代表權資訊。

表示權

2. 房屋仲介得於意圖通知寄出後 28 天內製作書面表示有關對房屋仲介課以處罰之聲明給地方度量衡主管機關。

SCHEDULE 9

Section 87

Duty of letting agents to publicise fees: financial penalties

Notice of intent

1. (1) Before imposing a financial penalty on a letting agent for a breach of a duty imposed by or under section 83, a local weights and measures authority must serve a notice on the agent of its proposal to do so (a “notice of intent”).
 - (2) The notice of intent must be served before the end of the period of 6 months beginning with the first day on which the authority has sufficient evidence of the agent’s breach, subject to sub-paragraph (3).
 - (3) If the agent is in breach of the duty on that day, and the breach continues beyond the end of that day, the notice of intent may be served—
 - (a) at any time when the breach is continuing, or
 - (b) within the period of 6 months beginning with the last day on which the breach occurs.
 - (4) The notice of intent must set out—
 - (a) the amount of the proposed financial penalty,
 - (b) the reasons for proposing to impose the penalty, and
 - (c) information about the right to make representations under paragraph 2.

Right to make representations

2. The letting agent may, within the period of 28 days beginning with the day after that on which the notice of intent was sent, make written representations to the local weights and measures authority about the proposal to impose a financial penalty on the agent.

最後通知

3. (1) 在第 2 條所提期間屆至後，地方度量衡主管機關應
 - (a) 決定是否對房屋仲介處以財務處罰，以及
 - (b) 若決定處罰，處罰之總額。
- (2) 若主管機關決定對房屋仲介處以財務處罰，應對該房屋仲介發出最後通知。
- (3) 最後通知應要求該罰金於通知寄送後 28 天內繳交。
- (4) 最後通知應包含
 - (a) 課予財務處罰之總額，
 - (b) 課予處罰之理由，以及
 - (c) 如何支付處罰之資訊。
 - (d) 處罰支付之期間，
 - (e) 上訴權之資訊，以及
 - (f) 未遵守通知之結果。

通知之撤回或修正

4. (1) 地方度量衡主管機關得於任何時間—
 - (a) 撤回意圖通知或最終通知，或，
 - (b) 減少意圖通知或最後通知明訂之處罰總額。
- (2) 第 1 項之權力行使應以書面通知房屋仲介。

Final notice

3. (1) After the end of the period mentioned in paragraph 2 the local weights and measures authority must—
 - (a) decide whether to impose a financial penalty on the letting agent, and
 - (b) if it decides to do so, decide the amount of the penalty.
- (2) If the authority decides to impose a financial penalty on the agent, it must serve a notice on the agent (a “final notice”) imposing that penalty.
- (3) The final notice must require the penalty to be paid within the period of 28 days beginning with the day after that on which the notice was sent.
- (4) The final notice must set out—
 - (a) the amount of the financial penalty,
 - (b) the reasons for imposing the penalty,
 - (c) information about how to pay the penalty,
 - (d) the period for payment of the penalty,
 - (e) information about rights of appeal, and
 - (f) the consequences of failure to comply with the notice.

Withdrawal or amendment of notice

4. (1) A local weights and measures authority may at any time—
 - (a) withdraw a notice of intent or final notice, or
 - (b) reduce the amount specified in a notice of intent or final notice.
- (2) The power in sub-paragraph (1) is to be exercised by giving notice in writing to the letting agent on whom the notice was served.

上訴

5. (1) 收到最後通知之房屋仲介得就該通知提起上訴—
 - (a) 於英格蘭之地方度量衡主管機關所發之通知，得向初級特設法院提起，
 - (b) 於威爾斯之地方度量衡主管機關所發之通知，得向住宅財產法院提起。
- (2) 本條上訴理由包含—
 - (a) 財務處罰判決源自錯誤事實，
 - (b) 判決適用法律錯誤，
 - (c) 財務處罰之額度不合理，或
 - (d) 判決因其他理由不合理。
- (3) 本條對於向住宅財產法院上訴者，應於最後通知寄出之隔日起算 28 天內提起。
- (4) 若房屋仲介基於本條上訴，最後通知將暫停至上訴確定或撤回。
- (5) 依本條上訴，初級法院或（如本案可能）住宅財產法院得撤回，確認或變更最後通知。
- (6) 當財務處罰多於 5000 英鎊者，本條第 5 項最後通知不得變更。

金錢處罰之補償

6. (1) 本條適用房屋仲介應有責任支付，但未支付全部或部分本附件之財務處罰時。

Appeals

5. (1) A letting agent on whom a final notice is served may appeal against that notice to—
 - (a) the First-tier Tribunal, in the case of a notice served by a local weights and measures authority in England, or
 - (b) the residential property tribunal, in the case of a notice served by a local weights and measures authority in Wales.
- (2) The grounds for an appeal under this paragraph are that—
 - (a) the decision to impose a financial penalty was based on an error of fact,
 - (b) the decision was wrong in law,
 - (c) the amount of the financial penalty is unreasonable, or
 - (d) the decision was unreasonable for any other reason.
- (3) An appeal under this paragraph to the residential property tribunal must be brought within the period of 28 days beginning with the day after that on which the final notice was sent.
- (4) If a letting agent appeals under this paragraph, the final notice is suspended until the appeal is finally determined or withdrawn.
- (5) On an appeal under this paragraph the First-tier Tribunal or (as the case may be) the residential property tribunal may quash, confirm or vary the final notice.
- (6) The final notice may not be varied under sub-paragraph (5) so as to make it impose a financial penalty of more than £5,000.

Recovery of financial penalty

6. (1) This paragraph applies if a letting agent does not pay the whole or any part of a financial penalty which, in accordance with this Schedule, the agent is liable to pay.

- (2) 課予財務處罰之地方度量衡主管機關得於該法院之命令可支付時回復處罰或郡法院命令之部分。
- (3) 於郡法院財務處罰補償程序中，證明將—
 - (a) 由課予財務處罰之地方度量衡主要財務官員簽名，以及
 - (b) 載明應支付總額於特定期日前尚未收到。為事實的決定性證據。
- (4) 除有反證提出，證明的效力應根據其所簽名之內容。
- (5) 地方度量衡主管機關得為其職權之目的依職權行使財務處罰程序(無論該職權是否明確指出為地方度量衡主管機關職權)。
- (6) 本條之「主要財務官員」與 1989 年地方治理和房屋法第 5 條定義相同。

附件十

第 93 條

二手票券：財務處罰

意圖通知

1. (1) 自然人因違反第三部分之第五章義務或禁止規定而被處以財務處罰前，執行主管機關應對其將處罰之自然人發出通知（意圖通知）。

- (2) The local weights and measures authority which imposed the financial penalty may recover the penalty or part on the order of the county court as if it were payable under an order of that court.
- (3) In proceedings before the county court for the recovery of a financial penalty or part of a financial penalty, a certificate which is—
 - (a) signed by the chief finance officer of the local weights and measures authority which imposed the penalty, and
 - (b) states that the amount due has not been received by a date specified in the certificate,is conclusive evidence of that fact.
- (4) A certificate to that effect and purporting to be so signed is to be treated as being so signed unless the contrary is proved.
- (5) A local weights and measures authority may use the proceeds of a financial penalty for the purposes of any of its functions (whether or not the function is expressed to be a function of a local weights and measures authority).
- (6) In this paragraph “chief finance officer” has the same meaning as in section 5 of the Local Government and Housing Act 1989.

SCHEDULE 10

Section 93

Secondary ticketing: financial penalties

Notice of intent

1. (1) Before imposing a financial penalty on a person for a breach of a duty or prohibition imposed by Chapter 5 of Part 3, an enforcement authority must serve a notice on the person of its proposal to do so (a “notice of intent”).

- (2) 依據本條第 3 項，意圖通知應在主管機關有足夠證據證明仲介違反責任之第一天起算六個月內完成。
- (3) 仲介違反責任持續違法超過行為之期間，意圖通知應於以下期間提供—
 - (a) 違反情事持續期間，或
 - (b) 從違法情事開始之最後一天起算六個月內。
- (4) 意圖通知應包含—
 - (a) 預定財務處罰之總額，
 - (b) 預定處罰之理由，以及
 - (c) 有關依照第 2 條代表權之資訊。

表示權

- 2. 自然人得於意圖通知寄出後 28 天內製作書面表示有關對房屋仲介課以處罰之聲明給地方度量衡主管機關。

最後通知

- 3. (1) 在第 2 條所提期間屆至後，地方度量衡主管機關應
 - (a) 決定是否對自然人處以財務處罰，以及
 - (b) 若其決定處罰，財務處罰之總額。
- (2) 若主管機關決定對自然人處以金錢處罰，其應對該自然人發出最後通知。

- (2) The notice of intent must be served before the end of the period of 6 months beginning with the first day on which the authority has sufficient evidence of the person's breach, subject to sub-paragraph (3).
- (3) If the person is in breach of the duty or prohibition on that day, and the breach continues beyond the end of that day, the notice of intent may be served—
 - (a) at any time when the breach is continuing, or
 - (b) within the period of 6 months beginning with the last day on which the breach occurs.
- (4) The notice of intent must set out—
 - (a) the amount of the proposed financial penalty,
 - (b) the reasons for proposing to impose the penalty, and
 - (c) information about the right to make representations under paragraph 2.

Right to make representations

2. A person on whom a notice of intent is served may, within the period of 28 days beginning with the day after that on which the notice was sent, make written representations to the enforcement authority about the proposal to impose a financial penalty on the person.

Final notice

3. (1) After the end of the period mentioned in paragraph 2 the enforcement authority must—
 - (a) decide whether to impose a financial penalty on the person, and
 - (b) if it decides to do so, decide the amount of the penalty.
- (2) If the authority decides to impose a financial penalty on the person, it must serve a notice on the person (a “final notice”) imposing that penalty.

- (3) 最後通知應要求該罰金於通知寄送後 28 天內繳交。

- (4) 最後通知應包含—
 - (a) 財務處罰之總額，
 - (b) 課以處罰之理由，以及
 - (c) 如何支付罰金之資訊。
 - (d) 處罰支付之期間，
 - (e) 上訴權之資訊，以及
 - (f) 未遵守通知之結果。

通知之撤回或修正

- 4. (1) 地方度量衡主管機關得於任何時間—
 - (a) 撤回意圖通知或最終通知，或，
 - (b) 減少意圖通知或最後通知明訂之總額。
- (2) 第 1 項之權力行使應以書面通知該自然人。

上訴

- 5. (1) 收到最後通知之自然人得就該通知提起上訴—
 - (a) 在英格蘭和威爾斯和蘇格蘭，向初級特設法院提起，
 - (b) 在北愛爾蘭，向郡法院提起。
- (2) 本條上訴理由包含—
 - (a) 財務處罰判決源自錯誤事實，
 - (b) 判決適用法律錯誤，
 - (c) 財務處罰之額度不合理，或
 - (d) 判決因其他理由不合理。

- (3) The final notice must require the penalty to be paid within the period of 28 days beginning with the day after that on which the notice was sent.
- (4) The final notice must set out—
 - (a) the amount of the financial penalty,
 - (b) the reasons for imposing the penalty,
 - (c) information about how to pay the penalty,
 - (d) the period for payment of the penalty,
 - (e) information about rights of appeal, and
 - (f) the consequences of failure to comply with the notice.

Withdrawal or amendment of notice

4. (1) The enforcement authority may at any time—
 - (a) withdraw a notice of intent or final notice, or
 - (b) reduce the amount specified in a notice of intent or final notice.
- (2) The power in sub-paragraph (1) is to be exercised by giving notice in writing to the person on whom the notice was served.

Appeals

5. (1) A person on whom a final notice is served may appeal against that notice—
 - (a) in England and Wales and Scotland, to the First-tier Tribunal;
 - (b) in Northern Ireland, to a county court.
- (2) The grounds for an appeal under this paragraph are that—
 - (a) the decision to impose a financial penalty was based on an error of fact,
 - (b) the decision was wrong in law,
 - (c) the amount of the financial penalty is unreasonable, or
 - (d) the decision was unreasonable for any other reason.

- (3) 若自然人基於本條上訴，最後通知將暫停，直到判決確定或撤回上訴。
- (4) 依本條上訴，初級法院或法院得撤回，確認或變更最後通知。
- (5) 當財務處罰多於 5000 英鎊者，本條第 4 項最後通知不得變更。

財務處罰之補償

6. (1) 本條適用自然人應有責任支付，但未支付全部或部分本附件之財務處罰時。
- (2) 課予財務處罰之英格蘭或威爾斯地方度量衡主管機關得於該法院之命令可支付時回復處罰或郡法院命令之部分。
- (3) 在蘇格蘭處罰得以執行搜索令之仲裁相同方式執行，該搜索令由任何蘇格蘭司法轄區之郡法院核發。
- (4) 在北愛爾蘭企業貿易和投資部，得補償處罰或法院部分命令，如同法院命令下仲裁可支付。
- (5) 在財務處罰或部分財務處罰之補償程序開始前，證明將—
- (a) 由施以財務處罰之地方度量衡主要財務官員簽名，以及
 - (b) 載明應支付總額於特定期日前尚未收到。
- 為事實的決定性證據。

- (3) If a person appeals under this paragraph, the final notice is suspended until the appeal is finally determined or withdrawn.
- (4) On an appeal under this paragraph the First-tier Tribunal or the court may quash, confirm or vary the final notice.
- (5) The final notice may not be varied under sub-paragraph (4) so as to make it impose a financial penalty of more than £5,000.

Recovery of financial penalty

6. (1) This paragraph applies if a person does not pay the whole or any part of a financial penalty which, in accordance with this Schedule, the person is liable to pay.
- (2) In England and Wales the local weights and measures authority which imposed the financial penalty may recover the penalty or part on the order of the county court as if it were payable under an order of that court.
- (3) In Scotland the penalty may be enforced in the same manner as an extract registered decree arbitral bearing a warrant for execution issued by the sheriff court of any sheriffdom in Scotland.
- (4) In Northern Ireland the Department of Enterprise, Trade and Investment may recover the penalty or part on the order of a county court as if it were payable under an order of that court.
- (5) In proceedings before the court for the recovery of a financial penalty or part of a financial penalty, a certificate which is—
 - (a) signed by the chief finance officer of the local weights and measures authority which imposed the penalty or (as the case may be) issued by the Department of Enterprise, Trade and Investment, and
 - (b) states that the amount due has not been received by a date specified in the certificate,is conclusive evidence of that fact.

- (6) 除有反證提出，證明的效力應根據其所簽名之內容。

- (7) 地方度量衡主管機關得為其職權之目的依職權行使財務處罰程序（無論該職權是否明確指出地方度量衡主管機關職權）。

- (8) 本條之「主要財務官員」與 1989 年地方治理和房屋法第 5 條定義相同。

- (6) A certificate to that effect and purporting to be so signed or issued is to be treated as being so signed or issued unless the contrary is proved.
- (7) A local weights and measures authority may use the proceeds of a financial penalty for the purposes of any of its functions (whether or not the function is expressed to be a function of a local weights and measures authority).
- (8) In this paragraph “chief finance officer” has the same meaning as in section 5 of the Local Government and Housing Act 1989.

外國消費者保護法規翻譯叢書索引

（第 1 輯至第 23 輯）

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