

Isle of Man Legislation relevant to E-commerce

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FAIR TRADING (AMENDMENT) BILL

NOTE: only the provisions of the Bill relevant to e-commerce are reproduced here.

Arrangement of sections

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Schedule 1 New Schedule inserted in Consumer Protection Act 1991

A BILL

To make provision with respect to pyramid selling and similar trading schemes; to make further provision with respect to anti-competitive practices, unfair contract terms and contracts concluded away from business premises; to make provision with respect to distance selling; to provide for the resolution of disputes with respect to the supply of financial services; and for connected purposes

WE, your Majesty's most dutiful and loyal subjects, the Council and Keys of the said Isle, do humbly beseech your Majesty that it may be enacted, and be it enacted, by the Queen's Most Excellent Majesty, by and with the advice and consent of the Council and Keys in Tynwald assembled, and by the authority of the same, as follows (that is to say):—

Unfair contract terms in consumer contracts

4. Unfair contract terms in consumer contracts

- (1) For the heading to Part V of the Consumer Protection Act 1991 substitute —

"PART V
UNFAIR CONTRACT TERMS IN CONSUMER CONTRACTS".

- (2) For sections 38 to 40 of that Act substitute —

"38. Contracts to which this Part applies

SI99/2083/4, 9

(1) Subject to subsection (2), this Part applies to contracts concluded between a seller or supplier and a consumer.

(2) The Board may by order exclude from the application of this Part contracts of a description specified in the order.

(3) This Part applies to a contract notwithstanding any contract term which applies or purports to apply the law of a country or territory outside the Island, unless the contract has a close connection with that country or territory.

39. Unfair terms

SI99/2083/5, P1996/23/91

(1) A contract term which has not been individually negotiated shall be regarded as unfair if it causes a significant imbalance in the parties' rights and obligations arising under the contract, which is to the detriment of the consumer and cannot be justified.

(2) A term shall always be regarded as not having been individually negotiated where it has been drafted in advance and the consumer has therefore not been able to influence the substance of the term.

(3) Even though a specific term or certain aspects of it in a contract has been individually negotiated, this Part applies to the rest of the contract if, taken as a whole, it is a pre-formulated standard contract.

(4) It shall be for any seller or supplier who claims that a term was individually negotiated to show that it was.

(5) Schedule 2A contains an indicative and non-exhaustive list of the terms which may be regarded as unfair.

(6) Without prejudice to subsections (1) to (5), a contract term which constitutes an arbitration agreement shall be regarded as unfair so far as it relates to a claim for a pecuniary remedy which does not exceed £5,000.

(7) The Board may by order vary the amount specified in subsection (6) (or the amount substituted for it by a previous order under this subsection).

40. Assessment of unfair terms

SI99/2083/6

(1) Without prejudice to section 40C, the unfairness of a contract term shall be assessed having regard to the following matters (as at the time the contract was concluded) —

(a) the nature of the goods or services to be supplied;

(b) all the circumstances attending the conclusion of the contract;
and

(c) all the other terms of the contract and of any other contract on which it is dependent.

(2) In so far as it is in plain intelligible language, the assessment of fairness of a term shall not have regard to —

(a) the definition of the main subject matter of the contract, or

(b) the adequacy of the price or remuneration, as against the goods or services supplied in exchange.

(3) Except in proceedings under section 40C, if there is doubt about the meaning of a written term of a contract, it shall be interpreted in such a way as is most favourable to the consumer."

(2) After Schedule 2 to that Act insert (as Schedule 2A) the provisions set out in [Schedule 1](#) to this Act.

5. Effect of unfair term

After section 40 of the Consumer Protection Act 1991 insert —

"40A. Effect of unfair term

SI99/2083/8

(1) Subject to subsection (2), an unfair term in a contract to which this Part applies shall not be binding on the consumer.

(2) Subsection (1) does not apply to contract terms which —

(a) are required by any statutory provision to be included in the contract; or

(b) reflect any provision or principle of an international convention which extends to the Island.

(3) The contract shall continue to bind the parties if it is capable of continuing in existence without the unfair term."

6. Enforcement

After section 40A of the Consumer Protection Act 1991 insert —

"40B. Complaints — consideration by Board

SI99/2083/10

(1) It shall be the duty of the Board to consider any complaint made to it that any contract term drawn up for general use is unfair, unless the complaint appears to the Board to be frivolous or vexatious.

(2) The Board shall notify a person who makes a complaint to it under subsection (1)

—
(a) what action (if any) it proposes to take under this Part with regard to the subject matter of the complaint; and

(b) if it proposes not to take any action, its reasons for not doing so.

(3) In deciding whether or not to take action under this Part in respect of a term which the Board considers to be unfair, it may, if it considers it appropriate to do so, have regard to any undertakings given to it by or on behalf of any person as to the continued use of such a term in contracts concluded with consumers.

40C. Injunctions to prevent continued use of unfair terms

SI99/2083/12

(1) The Attorney General, at the request of the Board, may apply to the High Court for an injunction (including an interim injunction) against any person appearing to him to

be using, or recommending use of, an unfair term drawn up for general use in contracts concluded with consumers.

(2) The High Court on an application under this section may grant an injunction on such terms as it thinks fit.

(3) An injunction may relate not only to use of a particular contract term drawn up for general use but to any similar term, or a term having like effect, used or recommended for use by any person.

40D. Powers to obtain documents and information

SI99/2083/13

(1) The Board may exercise the power conferred by this section for the purpose of —

(a) facilitating its consideration of a complaint that a contract term drawn up for general use is unfair; or

(b) ascertaining whether a person has complied with an undertaking or court order as to the continued use, or recommendation for use, of a term in contracts concluded with consumers.

(2) The Board may require any person to supply to it —

(a) a copy of any document which that person has used or recommended for use, at the time the notice referred to in subsection (3) is given, as a pre-formulated standard contract in dealings with consumers;

(b) information about the use, or recommendation for use, by that person of that document or any other such document in dealings with consumers.

(3) The power conferred by this section is to be exercised by a notice in writing which may —

(a) specify the way in which and the time within which it is to be complied with; and

(b) be varied or revoked by a subsequent notice.

(4) Nothing in this section compels a person to supply any document or information which he would be entitled to refuse to produce or give in civil proceedings before the High Court.

(5) If a person makes default in complying with a notice under this section, the High Court may, on the application of the Attorney General, make such order as the court thinks fit for requiring the default to be made good, and any such order may provide that all the costs or expenses of and incidental to the application shall be borne by the person in default or by any officers of a company or other body who are responsible for its default.

7. Supplemental provisions

After section 40D of the Consumer Protection Act 1991 insert —

"40E. Publication, information and advice

SI99/2083/15

(1) The Board shall arrange for the publication, in such form and manner as it considers appropriate, of details of —

(a) any undertaking given to it by or on behalf of any person as to the continued use of a term which the Board considers to be unfair in contracts concluded with consumers;

(b) any application made under section 40C, and the terms of any undertaking given to, or order made by, the High Court;

(c) any application made by the Attorney General under section 40D(5) to enforce a previous order of the High Court.

(2) The Board shall inform any person on request whether a particular term to which this Part applies has been —

(a) the subject of an undertaking given to the Board; or

(b) the subject of an order of the High Court under section 40C;

and shall give that person details of the undertaking or a copy of the order, as the case may be, together with a copy of any amendments which the person giving the undertaking has agreed to make to the term in question.

(3) The Board may arrange for the dissemination in such form and manner as it considers appropriate of such information and advice concerning the operation of this Part as may appear to it to be expedient to give to the public and to all persons likely to be affected by this Part.

40F. Interpretation etc.

SI99/2083/3

(1) In this Part —

"arbitration agreement" means an agreement to submit to arbitration present or future disputes or differences (whether or not contractual);

"consumer" means any person who, in contracts to which this Part applies, is acting for purposes which are outside his trade, business or profession;

"notified" means notified in writing;

"seller or supplier" means any person who, in contracts to which this Part applies, is acting for purposes relating to his trade, business or profession, whether publicly or privately owned;

"unfair", in relation to contract terms, has the meaning given by section 39.

(2) If it appears to the Department of Trade and Industry that, in relation to contracts of any description, the functions of the Board under sections 40B to 40E would more appropriately exercised by another public authority, it may, after consulting the Board and with the consent of that authority, by order —

(a) provide that those functions shall be exercised by that authority in relation to contracts of that description;

(b) provide that references to the Board in those sections shall, in relation to such contracts, be construed as references to that authority; and

(c) make such consequential, incidental, supplemental and transitional provisions as appear to that Department to be necessary or expedient for the purposes of the order."

Distance selling

11. Distance selling — application

After Part VIII of the Consumer Protection Act 1991 insert —

"PART VIIIA
DISTANCE SELLING

57A. Contracts to which this Part applies

(1) In this Part "distance contract" means any contract concerning goods or services concluded between a supplier and a consumer under an organised distance sales or service provision scheme run by the supplier who, for the purpose of the contract, makes exclusive use of one or more means of distance communication up to and including the moment at which the contract is concluded.

(2) This Part applies to any distance contract other than a contract —

(a) for the sale or other disposition of an interest in land, except a tenancy for a term greater than one year;

(b) for the construction of a building where the contract also provides for a sale or other disposition of an interest in land on which the building is constructed, except a tenancy for a term greater than one year;

(c) relating to financial services;

(d) concluded by means of an automated vending machine or automated commercial premises;

(e) concluded with a telecommunications operator through the use of a public pay-phone;

(f) concluded at an auction.

(3) Sections 57B to 57L do not apply to a contract which is a timeshare agreement within the meaning of the Timeshare Act 1996 and to which Chapter I of Part 1 of that Act applies. (4) Sections 57B to 57K and 57L(1) do not apply to — (a) contracts for the supply of food, beverages or other goods intended for everyday consumption supplied to the consumer's residence or to his workplace by regular roundsmen; or (b) contracts for the provision of accommodation, transport, catering or leisure services, where the supplier undertakes, when the contract is concluded, to provide these services on a specific date or within a specific period.

12. Information to be given to consumer

After section 57A of the Consumer Protection Act 1991 insert —

"57B. Prior information

(1) Subject to subsection (4), in good time before the conclusion of a contract to which this Part applies the supplier shall —

(a) provide to the consumer the following information —

- (i) the identity of the supplier and, where the contract requires payment in advance, the supplier's address;
- (ii) a description of the main characteristics of the goods or services;
- (iii) the price of the goods or services including all taxes;
- (iv) delivery costs where appropriate;
- (v) the arrangements for payment, delivery or performance;
- (vi) the existence of a right of cancellation except in the cases referred to in section 57G;
- (vii) the cost of using the means of distance communication where it is calculated otherwise than at the basic rate;
- (viii) the period for which the offer or the price remains valid; and
- (ix) where appropriate, the minimum duration of the contract, in the case of contracts for the supply of goods or services to be performed permanently or recurrently;

(b) inform the consumer if he proposes, in the event of the goods or services ordered by the consumer being unavailable, to provide substitute goods or services (as the case may be) of equivalent quality and price; and

(c) inform the consumer that the cost of returning any such substitute goods to the supplier in the event of cancellation by the consumer would be met by the supplier.

(2) The supplier shall ensure that the information required by subsection (1) is provided in a clear and comprehensible manner appropriate to the means of distance communication used, with due regard in particular to the principles of good faith in commercial transactions and the principles governing the protection of those who are unable to give their consent such as minors.

(3) Subject to subsection (4), the supplier shall ensure that his commercial purpose is made clear when providing the information required by subsection (1).

(4) In the case of a telephone communication, the identity of the supplier and the commercial purpose of the call shall be made clear at the beginning of the conversation with the consumer.

57C. Written and additional information

(1) Subject to subsection (4), the supplier shall provide to the consumer in writing, or in another durable medium which is available and accessible to the consumer, the information referred to in subsection (2), either —

(a) prior to the conclusion of the contract, or

(b) thereafter, in good time and in any event —

(i) during the performance of the contract, in the case of services; and

(ii) at the latest at the time of delivery where goods not for delivery to third parties are concerned.

(2) The information required to be provided by subsection (1) is —

(a) the information set out in sub-paragraphs (i) to (vi) of section 57B(1)(a);

(b) information about the conditions and procedures for exercising the right to cancel under section 57D, including —

(i) where a term of the contract requires (or the supplier intends that it will require) that the consumer shall return the goods to the supplier in the event of cancellation, notification of that requirement; and

(ii) information as to whether the consumer or the supplier would be responsible under this Part for the cost of returning any goods to the supplier, or the cost of his recovering them, if the consumer cancels the contract under section 57D;

(c) the geographical address of the place of business of the supplier to which the consumer may address any complaints;

(d) information about any after-sales services and guarantees; and

(e) the conditions for exercising any contractual right to cancel the contract, where the contract is of an unspecified duration or a duration exceeding one year.

(3) Subject to subsection (4), before the conclusion of a contract for the supply of services, the supplier shall inform the consumer in writing or in another durable medium which is available and accessible to the consumer that, unless the parties agree otherwise, he will not be able to cancel the contract under section 57D once the performance of the services has begun with his agreement.

(4) In the case of a contract for the supply of services which are performed through the use of a means of distance communication, where those services are supplied on only one occasion and are invoiced by the operator of the means of distance communication —

(a) subsections (1) to (3) do not apply, but

(b) the supplier shall take all necessary steps to ensure that a consumer who is a party to such a contract is able to obtain the supplier's geographical address and the place of business to which the consumer may address any complaints.

(5) In subsection (4) "operator", in relation to a means of distance communication, means any person whose business involves making one or more means of distance communication available to suppliers."

13. Right to cancel

After section 57C of the Consumer Protection Act 1991 insert —

"57D. Right to cancel

(1) Subject to section 57G, if within the cancellation period set out in sections 57E and 57F, the consumer gives a notice of cancellation to the supplier, or any other person previously notified by the supplier to the consumer as a person to whom notice of cancellation may be given, the notice of cancellation shall operate to cancel the contract.

(2) Except as otherwise provided by this Part, the effect of a notice of cancellation is that the contract shall be treated as if it had not been made.

(3) For the purposes of this Part, a notice of cancellation is a notice in writing or in another durable medium available and accessible to the supplier (or to the other person to whom it is given) which, however expressed, indicates the intention of the consumer to cancel the contract.

(4) A notice of cancellation given under this section by a consumer to a supplier or other person is to be treated as having been properly given if the consumer —

(a) leaves it at the address last known to the consumer and addressed to the supplier or other person by name (in which case it is to be taken to have been given on the day on which it was left);

(b) sends it by post to the address last known to the consumer and addressed to the supplier or other person by name (in which case, it is to be taken to have been given on the day on which it was posted);

(c) sends it by facsimile to the business facsimile number last known to the consumer (in which case it is to be taken to have been given on the day on which it is sent); or

(d) sends it by electronic mail, to the business electronic mail address last known to the consumer (in which case it is to be taken to have been given on the day on which it is sent).

(5) Where a consumer gives a notice in accordance with subsection (4)(a) or (b) to a supplier who is a body corporate or a partnership, the notice is to be treated as having been properly given if —

(a) in the case of a body corporate, it is left at the address of, or sent to, the secretary or clerk of that body; or

(b) in the case of a partnership, it is left with or sent to a partner or a person having control or management of the partnership business.

57E. Cancellation period: contracts for the supply of goods

(1) For the purposes of section 10, the cancellation period in the case of contracts for the supply of goods begins with the day on which the contract is concluded and ends as provided in subsections (2) to (5).

(2) Where the supplier complies with section 57C(1) and (2), the cancellation period ends on the expiry of the period of 7 working days beginning with the day after the day on which the consumer receives the goods.

(3) Where a supplier who has not complied with section 57C(1) to (3) provides to the consumer the information referred to in section 57C(2), and does so in writing or in another durable medium available and accessible to the consumer, within the period of 3 months beginning with the day after the day on which the consumer receives the goods, the cancellation period ends on the expiry of the period of 7 working days beginning with the day after the day on which the consumer receives the information.

(4) Where neither subsection (2) nor subsection (3) applies, the cancellation period ends on the expiry of the period of 3 months and 7 working days beginning with the day after the day on which the consumer receives the goods.

(5) In the case of contracts for goods for delivery to third parties, subsections (2) to (4) apply as if the consumer had received the goods on the day on which they were received by the third party.

57F. Cancellation period: contracts for the supply of services

(1) For the purposes of section 57D, the cancellation period in the case of contracts for the supply of services begins with the day on which the contract is concluded and ends as provided in paragraphs (2) to (4).

(2) Where the supplier complies with section 57C(1) to (3) on or before the day on which the contract is concluded, the cancellation period ends on the expiry of the period of 7 working days beginning with the day after the day on which the contract is concluded.

(3) Where a supplier who has not complied with section 57C(1) to (3) on or before the day on which the contract is concluded provides to the consumer the information referred to in section 57C(2) and (3), and does so in writing or in another durable medium available and accessible to the consumer, within the period of 3 months beginning with the day after the day on which the contract is concluded, the cancellation period ends on the expiry of the period of 7 working days beginning with the day after the day on which the consumer receives the information.

(4) Where neither subsection (2) nor (3) applies, the cancellation period ends on the expiry of the period of 3 months and 7 working days beginning with the day after the day on which the contract is concluded.

57G. Exceptions to the right to cancel

Unless the parties have agreed otherwise, the consumer will not have the right to cancel the contract by giving notice of cancellation pursuant to section 57D in respect of contracts —

(a) for the supply of services if the supplier has complied with section 57C(3) and performance of the contract has begun with the consumer's agreement before the end of the cancellation period applicable under section 57F;

(b) for the supply of goods or services the price of which is dependent on fluctuations in the financial market which cannot be controlled by the supplier;

(c) for the supply of goods made to the consumer's specifications or clearly personalised or which by reason of their nature cannot be returned or are liable to deteriorate or expire rapidly;

(d) for the supply of audio or video recordings or computer software if they are unsealed by the consumer;

(e) for the supply of newspapers, periodicals or magazines; or

(f) for gaming, betting or lottery services.

57H. Recovery of sums and return of security

(1) On the cancellation of a contract under section 57D, the supplier shall reimburse any sum paid by or on behalf of the consumer under or in relation to the contract to

the person by whom it was made free of any charge, less any charge made in accordance with subsection (5).

(2) The reference in subsection (1) to any sum paid on behalf of the consumer includes any sum paid by a creditor who is not the same person as the supplier under a personal credit agreement with the consumer.

(3) The supplier shall make the reimbursement referred to in subsection (1) as soon as possible and in any case within a period not exceeding 30 days beginning with the day on which the notice of cancellation was given.

(4) Where any security has been provided in relation to the contract, the security (so far as it is so provided) shall, on cancellation under section 57D, be treated as never having had effect and any property lodged with the supplier solely for the purposes of the security as so provided shall be returned by him forthwith.

(5) Subject to paragraphs (6) and (7), the supplier may make a charge, not exceeding the direct costs of recovering any goods supplied under the contract, where a term of the contract provides that the consumer must return any goods supplied if he cancels the contract under section 57D but the consumer does not comply with this provision or returns the goods at the expense of the supplier.

(6) Subsection (5) does not apply where —

(a) the consumer cancels in circumstances where he has the right to reject the goods under a term of the contract, including a term implied by virtue of any statutory provision, or

(b) the term requiring the consumer to return any goods supplied if he cancels the contract is an unfair term for the purposes of Part V.

(7) Subsection (5) does not apply to the cost of recovering any goods which were supplied as substitutes for the goods ordered by the consumer.

57I. Cancellation of related credit agreement

(1) Where a notice of cancellation is given under section 57D which has the effect of cancelling the contract, the giving of the notice shall also have the effect of cancelling any related credit agreement.

(2) Where a related credit agreement is cancelled by virtue of subsection (1), the supplier shall, if he is not the same person as the creditor under that agreement, forthwith on receipt of the notice of cancellation inform the creditor that the notice has been given.

(3) Where a related credit agreement is cancelled by virtue of subsection (1) —

(a) any sum paid by or on behalf of the consumer under, or in relation to, the credit agreement which the supplier is not obliged to reimburse under section 57H(1) shall be reimbursed, except for any sum which, if it had not already been paid, would have to be paid under paragraph (b);

(b) the agreement shall continue in force so far as it relates to repayment of the credit and payment of interest, subject to subsections (5) to (7); and

(c) subject to paragraph (b), the agreement shall cease to be enforceable.

(4) Where any security has been provided under a related credit agreement, the security, so far as it is so provided, shall be treated as never having had effect and any property lodged with the creditor solely for the purposes of the security as so provided shall be returned by him forthwith.

(5) If, following the cancellation of a related credit agreement by virtue of subsection (1), the consumer repays the whole or a portion of the credit —

(a) before the expiry of one month following the cancellation of the credit agreement, or

(b) in the case of a credit repayable by instalments, before the date on which the first instalment is due,

no interest shall be payable on the amount repaid.

(6) If, following the cancellation of a related credit agreement by virtue of subsection (1), the whole of a credit repayable by instalments is not repaid on or before the date referred to in subsection (5)(b), the consumer shall not be liable to repay any of the credit except on receipt of a request in writing, signed by the creditor, stating the amounts of the remaining instalments (recalculated by the creditor as nearly as may be in accordance with the agreement and without extending the repayment period), but excluding any sum other than principal and interest.

(7) Where any security has been provided under a related credit agreement the duty imposed on the consumer to repay credit and to pay interest shall not be enforceable before the creditor has discharged any duty imposed on him by subsection (4) to return any property lodged with him as security on cancellation.

(8) For the purposes of this section —

(a) "creditor" is a person who grants credit under a related credit agreement;

(b) "fixed sum credit" means credit available otherwise than on a current or running account;

(c) a "related credit agreement" means an agreement under which fixed sum credit which fully or partly covers the price under a contract cancelled under section 57D is granted —

(i) by the supplier, or

(ii) by another person, under an arrangement between that person and the supplier;

(d) "repayment", in relation to credit, means repayment of money received by the consumer, and cognate expressions shall be construed accordingly; and

(e) "interest" means interest on money so received."

14. Return of goods etc.

After section 57I of the Consumer Protection Act 1991 insert —

"57J. Restoration of goods after cancellation

(1) This section applies where a contract is cancelled under section 57D after the consumer has acquired possession of any goods under the contract other than any goods mentioned in section 57G(b) to (e).

(2) The consumer shall be treated as having been under a duty throughout the period before cancellation —

(a) to retain possession of the goods, and

(b) to take reasonable care of them.

(3) On cancellation, the consumer shall be under a duty to restore the goods to the supplier in accordance with this section, and in the meanwhile to retain possession of the goods and take reasonable care of them.

(4) The consumer shall not be under any duty to deliver the goods except at his own premises and in pursuance of a request in writing, or in another durable medium available and accessible to the consumer, from the supplier and given to the consumer either before, or at the time when, the goods are collected from those premises.

(5) If the consumer —

(a) delivers the goods (whether at his own premises or elsewhere) to any person to whom, under section 57D(1), a notice of cancellation could have been given; or

(b) sends the goods at his own expense to such a person,

he shall be discharged from any duty to retain possession of the goods or restore them to the supplier.

(6) Where the consumer delivers the goods in accordance with subsection (5)(a), his obligation to take care of the goods shall cease; and if he sends the goods in accordance with subsection (5)(b), he shall be under a duty to take reasonable care to see that they are received by the supplier and not damaged in transit, but in other respects his duty to take care of the goods shall cease when he sends them.

(7) Where, at any time during the period of 21 days beginning with the day notice of cancellation was given, the consumer —

(a) receives such a request as is mentioned in subsection (4), and

(b) unreasonably refuses or unreasonably fails to comply with it,

his duty to retain possession and take reasonable care of the goods shall continue until he delivers or sends the goods as mentioned in subsection (5), but if within that period he does not receive such a request his duty to take reasonable care of the goods shall cease at the end of that period.

(8) Where —

(a) a term of the contract provides that if the consumer cancels the contract, he must return the goods to the supplier, and

(b) the consumer is not otherwise entitled to reject the goods under the terms of the contract or by virtue of any statutory provision,

subsection (7) applies as if for the period of 21 days there were substituted the period of 6 months.

(9) Where any security has been provided in relation to the cancelled contract, the duty to restore goods imposed on the consumer by this section shall not be enforceable before the supplier has discharged any duty imposed on him by section 57H(4) to return any property lodged with him as security on cancellation.

(10) Breach of a duty imposed by this section on a consumer is actionable as a breach of statutory duty.

57K. Goods given in part-exchange

(1) This section applies on the cancellation of a contract under section 57D where the supplier agreed to take goods in part-exchange (the "part-exchange goods") and those goods have been delivered to him.

(2) Unless, before the end of the period of 10 days beginning with the date of cancellation, the part-exchange goods are returned to the consumer in a condition substantially as good as when they were delivered to the supplier, the consumer shall be entitled to recover from the supplier a sum equal to the part-exchange allowance.

(3) In this section the part-exchange allowance means the sum agreed as such in the cancelled contract, or if no such sum was agreed, such sum as it would have been reasonable to allow in respect of the part-exchange goods if no notice of cancellation had been served.

(4) Where the consumer recovers from the supplier a sum equal to the part-exchange allowance, the title of the consumer to the part-exchange goods shall vest in the supplier (if it has not already done so) on recovery of that sum."

15. Performance of contract etc.

After section 57K of the Consumer Protection Act 1991 insert —

"57L. Performance

(1) Unless the parties agree otherwise, the supplier shall perform the contract within a maximum of 30 days beginning with the day after the day the consumer sent his order to the supplier.

(2) Subject to paragraphs (7) and (8), where the supplier is unable to perform the contract because the goods or services ordered are not available, within the period for performance referred to in subsection (1) or such other period as the parties agree ("the period for performance"), he shall —

(a) inform the consumer; and

(b) reimburse any sum paid by or on behalf of the consumer under or in relation to the contract to the person by whom it was made.

(3) The reference in subsection (2)(b) to any sum paid on behalf of the consumer includes any sum paid by a creditor who is not the same person as the supplier under a personal credit agreement with the consumer.

(4) The supplier shall make the reimbursement referred to in subsection (2)(b) as soon as possible and in any event within a period of 30 days beginning with the day after the day on which the period for performance expired.

(5) A contract which has not been performed within the period for performance shall be treated as if it had not been made, save for any rights or remedies which the consumer has under it as a result of the non-performance.

(6) Where any security has been provided in relation to the contract, the security (so far as it is so provided) shall, where the supplier is unable to perform the contract within the period for performance, be treated as never having had any effect and any property lodged with the supplier solely for the purposes of the security as so provided shall be returned by him forthwith.

(7) Where the supplier is unable to supply the goods or services ordered by the consumer, the supplier may perform the contract for the purposes of this Part by providing substitute goods or services (as the case may be) of equivalent quality and price provided that —

(a) this possibility was provided for in the contract;

(b) before the conclusion of the contract the supplier gave the consumer the information required by section 57B(1)(b) and (c) in the manner required by section 57B(2).

(8) In the case of outdoor leisure events which by their nature cannot be rescheduled, subsection 2(b) does not apply where the consumer and the supplier so agree.

(9) Where a supplier is unable to perform the contract within the period for performance —

(a) section 57I applies to any related credit agreement as if the consumer had given a valid notice of cancellation under section 57D on the expiry of the period for performance; and

(b) the reference in section 57I(3)(a) to section 57H(1) shall be read, for the purposes of this subsection, as a reference to subsection (2).

57M. No contracting-out

(1) A term contained in any contract to which this Part applies is void if, and to the extent that, it is inconsistent with a provision for the protection of the consumer contained in this Part.

(2) Where a provision of this Part specifies a duty or liability of the consumer in certain circumstances, a term contained in a contract to which this Part applies, other than a term to which subsection (3) applies, is inconsistent with that provision if it purports to impose, directly or indirectly, an additional duty or liability on him in those circumstances.

(3) A term which requires the consumer to return any goods supplied to him under the contract if he cancels it under section 57D has effect, in the event of cancellation by the consumer under section 57D, only for the purposes of sections 57H(5) and 57J(8).

(4) This Part applies notwithstanding any contract term which applies or purports to apply the law of a country outside the Island if the contract has a close connection with the Island.

57N. Supplemental

(1) In this Part —

"consumer" means any natural person who, in contracts to which this Part applies, is acting for purposes which are outside his business;

"credit" includes a cash loan and any other form of financial accommodation, and for this purpose "cash" includes money in any form;

"distance contract" has the meaning given by section 57A(1);

"financial services" means services which consist of, include or relate to—

- (a) a collective investment scheme;
- (b) investment business within the meaning of the Investment Business Act 1991;
- (c) banking business within the meaning of the Banking Act 1998;
- (d) insurance business within the meaning of the Insurance Act 1986;
- (e) credit business within the meaning of Part II of the Moneylenders Act 1991;
- (f) a business which would be a credit business if the person carrying it on were not an exempt person (expressions in this paragraph having the same meaning as in Part II of the Moneylenders Act 1991);
- (g) a pension scheme within the meaning of section 1 of the Pension Schemes Act 1995.

"means of distance communication" means any means which, without the simultaneous physical presence of the supplier and the consumer, may be used for the conclusion of a contract between those parties;

"personal credit agreement" means an agreement between a consumer and any other person ("the creditor") by which the creditor provides the consumer with credit of any amount;

"related credit agreement" has the meaning given by section 57I(8);

"supplier" means any person who, in contracts to which this Part applies, is acting in his commercial or professional capacity; and

"working day" means any day other than a Saturday, Sunday or bank holiday.

(2) Sections 40B to 40E (complaints and injunctions) apply, with any necessary modifications, to any contravention by a supplier of a prohibition in, or failure to comply with a requirement of, this Part as they apply to the use of unfair contract terms drawn up for general use."

Miscellaneous and supplemental

20. Short title and commencement

(1) This Act may be cited as the Fair Trading (Amendment) Act 2001.

(2) This Act shall come into operation on such day or days as the Department of Trade and Industry may by order appoint.

Section 4(2).

SCHEDULE 1 NEW SCHEDULE INSERTED IN CONSUMER PROTECTION ACT 1991

"Section 39(5).

SCHEDULE 2A
LIST OF TERMS WHICH MAY BE REGARDED AS UNFAIR

1. Terms which have the object or effect of —

- (a) excluding or limiting the legal liability of a seller or supplier in the event of the death of a consumer or personal injury to the latter resulting from an act or omission of that seller or supplier;
- (b) unreasonably excluding or limiting the legal rights of the consumer vis-à-vis the seller or supplier or another party in the event of total or partial non-performance or inadequate performance by the seller or supplier of any of the contractual obligations, including the option of offsetting a debt owed to the seller or supplier against any claim which the consumer may have against him;
- (c) making an agreement binding on the consumer whereas provision of services by the seller or supplier is subject to a condition whose realisation depends on his own will;
- (d) permitting the seller or supplier to retain sums paid by the consumer where the latter decides not to conclude or perform the contract, without providing for the consumer to receive compensation of an equivalent amount from the seller or supplier where the latter is the party cancelling the contract;
- (e) requiring any consumer who fails to fulfil his obligation to pay a disproportionately high sum in compensation;
- (f) authorising the seller or supplier to dissolve the contract on a discretionary basis where the same facility is not granted to the consumer, or permitting the seller or supplier to retain the sums paid for services not yet supplied by him where it is the seller or supplier himself who dissolves the contract;
- (g) enabling the seller or supplier to terminate a contract of indeterminate duration without reasonable notice except where there are serious grounds for doing so;
- (h) automatically extending a contract of fixed duration where the consumer does not indicate otherwise, where the deadline fixed for the consumer to express his desire not to extend the contract is unreasonably early;
- (i) irrevocably binding the consumer to terms with which he had no real opportunity of becoming acquainted before the conclusion of the contract;
- (j) enabling the seller or supplier to alter the terms of the contract unilaterally without a valid reason which is specified in the contract;
- (k) enabling the seller or supplier to alter unilaterally without a valid reason any characteristics of the product or service to be provided;
- (l) providing for the price of goods to be determined at the time of delivery or allowing a seller of goods or supplier of services to increase their price without in both cases giving the consumer the corresponding right to cancel the contract if the final price is too high in relation to the price agreed when the contract was concluded;

(m) giving the seller or supplier the right to determine whether the goods or services supplied are in conformity with the contract, or giving him the exclusive right to interpret any term of the contract;

(n) limiting the seller's or supplier's obligation to respect commitments undertaken by his agents or making his commitments subject to compliance with a particular formality;

(o) obliging the consumer to fulfil all his obligations where the seller or supplier does not perform his;

(p) giving the seller or supplier the possibility of transferring his rights and obligations under the contract, where this may serve to reduce the guarantees for the consumer, without the latter's agreement;

(q) excluding or hindering the consumer's right to take legal action or exercise any other legal remedy, particularly by requiring the consumer to take disputes exclusively to arbitration which is not legally binding, unduly restricting the evidence available to him or imposing on him a burden of proof which, according to the applicable law, should lie with another party to the contract.

2. (1) Paragraph 1(g) is without prejudice to terms 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, provided that the supplier is required to inform the other contracting party or parties thereof immediately.

(2) Paragraph 1(j) is without prejudice to terms under which a supplier of financial services reserves the right to alter the rate of interest payable by the consumer or due to the latter, or the amount of other charges for financial services without notice where there is a valid reason, provided that the supplier is required to inform the other contracting party or parties thereof at the earliest opportunity and that the latter are free to dissolve the contract immediately.

(3) Paragraph 1(j) is also without prejudice to terms under which a seller or supplier reserves the right to alter unilaterally the conditions of a contract of indeterminate duration, provided that he is required to inform the consumer with reasonable notice and that the consumer is free to dissolve the contract.

(4) Paragraphs 1(g), (j) and (l) 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 seller or supplier does not control;

(b) contracts for the purchase or sale of foreign currency, traveller's cheques or international money orders denominated in foreign currency.

(4) Paragraph 1(l) is without prejudice to price indexation clauses, where lawful, provided that the method by which prices vary is explicitly described."