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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations revoke and replace the Unfair Terms in Consumer Contracts Regulations 1994 (S.I.1994/3159) which came into force on 1st July 1995.

Those Regulations implemented Council Directive 93/13/EEC on unfair terms in consumer contracts (O.J. No. L95, 21.4.93, p. 29). Regulations 3 to 9 of these Regulations re-enact regulations 2 to 7 of the 1994 Regulations with modifications to reflect more closely the wording of the Directive.

The Regulations apply, with certain exceptions, to unfair terms in contracts concluded between a consumer and a seller or supplier (regulation 4). The Regulations provide that an unfair term is one which has not been individually negotiated and which, contrary to the requirement of good faith, causes a significant imbalance in the parties' rights and obligations under the contract to the detriment of the consumer (regulation 5). Schedule 2 contains an indicative list of terms which may be regarded as unfair.

The assessment of unfairness will take into account all the circumstances attending the conclusion of the contract. However, the assessment is not to relate to the definition of the main subject matter of the contract or the adequacy of the price or remuneration as against the goods or services supplied in exchange as long as the terms concerned are in plain, intelligible language (regulation 6). Unfair contract terms are not binding on the consumer (regulation 8).

The Regulations maintain the obligation on the Director General of Fair Trading (contained in the 1994 Regulations) to consider any complaint made to him about the fairness of any contract term drawn up for general use. He may, if he considers it appropriate to do so, seek an injunction to prevent the continued use of that term or of a term having like effect (regulations 10 and 12).

The Regulations provide for the first time that a qualifying body named in Schedule 1 (statutory regulators, trading standards departments and Consumers' Association) may also apply for an injunction to prevent the continued use of an unfair contract term provided it has notified the Director General of its intention at least 14 days before the application is made (unless the Director General consents to a shorter period) (regulation 12). A qualifying body named in Part One of Schedule 1 (public bodies) shall be under a duty to consider a complaint if it has told the Director General that it will do so (regulation 11).

The Regulations provide a new power for the Director General and the public qualifying bodies to require traders to produce copies of their standard contracts, and give information about their use, in order to facilitate investigation of complaints and ensure compliance with undertakings or court orders (regulation 13).

Qualifying bodies must notify the Director General of undertakings given to them about the continued use of an unfair term and of the outcome of any court proceedings (regulation 14). The Director General is given the power to arrange for the publication of this information in such form and manner as he considers appropriate and to offer information and advice about the operation of these Regulations (regulation 15). In addition the Director General will supply enquirers about particular standard terms with details of any relevant undertakings and court orders.

A Regulatory Impact Assessment of the costs and benefits which will result from these Regulations has been prepared by the Department of Trade and Industry and is available from Consumer Affairs Directorate, Department of Trade and Industry, Room 407, 1 Victoria Street, London SW1H 0ET (Telephone 0171 215 0341). Copies have been placed in the libraries of both Houses of Parliament.