

# CONSUMER RIGHTS ACT 2015

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## EXPLANATORY NOTES

### SUMMARY AND BACKGROUND

#### *Advice and consultations*

15. The University of East Anglia concluded in 2008 that the UK consumer protection regime had two key weaknesses – uneven enforcement and excessively complex law<sup>1</sup>. A call for evidence in the Consumer Law Review in 2008 revealed strong support across the board for consolidating consumer legislation, making it clearer and more accessible<sup>2</sup>. Respondents highlighted a number of benefits that a rewrite would bring – removing discrepancies and inconsistencies, greater use of plain English, greater awareness of rights, remedies and obligations, greater flexibility, future proofing and aiding business growth.
16. A number of consultations and academic research papers over several years have examined proposals that form part of this Act. A single Government response to BIS consultations between March and November 2012 and a report by the Law Commissions of March 2013 (detailed below) was published alongside a draft Bill with accompanying explanatory notes. The draft Bill was scrutinised by the House of Commons Business Innovation and Skills Committee. The Committee published a report in December 2013<sup>3</sup>.

#### Part 1

17. The Davidson report in 2006, which examined the transposition of European Directives into domestic law, concluded that UK law on the sale of goods was unnecessarily complex<sup>4</sup>. The Law Commissions consulted on potential changes to the law on remedies for faulty goods and made recommendations in 2009<sup>5</sup>. Professors G. Howells and C. Twigg-Flesner examined the law on goods and services in 2010 and made recommendations to BIS on how the law could be clarified and simplified<sup>6</sup>. Also in 2010, Professor Bradgate reported to BIS on the uncertainty in current law around consumer rights to quality for digital content products<sup>7</sup>. Following these various reports, BIS consulted from July to October 2012 on proposals to clarify consumer rights in goods, services and digital content<sup>8</sup>.

#### Part 2

18. Legislation on unfair contract terms is contained in the UCTA, which currently applies to contracts between businesses and between consumers but contains some

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<sup>1</sup> Benchmarking the performance of the UK framework supporting consumer empowerment through comparison against relevant international comparator countries, a study for BERR by UEA, 2008  
<sup>2</sup> Consumer Law Review: Summary of Responses, BIS, 2009  
<sup>3</sup> Draft Consumer Rights Bill; sixth report of session 2013-2014  
<sup>4</sup> Davidson Report, HM Treasury, 2006  
<sup>5</sup> The Law Commission No.317/The Scottish Law Commission No.216, 2009  
<sup>6</sup> Consolidation and simplification of UK consumer law, BIS, 2010  
<sup>7</sup> Consumer rights in digital products, BIS, 2010  
<sup>8</sup> Enhancing consumer confidence by clarifying consumer law, BIS, 2012

particular rules about business to consumer contracts. It makes some terms in contracts automatically non-binding and subjects others to a test of reasonableness. The Unfair Terms in Consumer Contract Regulations 1999 (“UTCCRs”) enable consumers to challenge most non-negotiated terms of a contract on the grounds that they are unfair. There are certain terms that cannot be assessed for fairness: terms that relate to the definition of the main subject matter of the contract and those that relate to the adequacy of the price or remuneration as against the goods or services supplied in exchange. These are known as “exempt terms”. In August 2002 the Law Commissions issued a consultation proposing a unified law on unfair contracts terms and, in February 2005, they issued a report setting out detailed recommendations, which was published alongside a draft Bill<sup>9</sup>. These recommendations were not taken forward at the time. However, in May 2012 the Parliamentary Under-Secretary of State for Employment Relations, Consumer and Postal Affairs, Norman Lamb MP, asked the Law Commissions to look again at unifying a regime on unfair terms in consumer contracts, focusing on the exempt terms. From July to October 2012 the Law Commissions sought views on a discussion paper on revised proposals for the exempt terms and made recommendations to BIS in March 2013<sup>10</sup> concerning terms in consumer contracts.

### **Part 3**

19. There are a number of pieces of legislation that set out rights and duties on traders. To ensure effective enforcement of these rights and duties, enforcers such as local weights and measures authorities (known as “Trading Standards”) and other regulators (such as the Competition and Markets Authority (“CMA”)) have powers to investigate compliance. These investigatory powers are usually set out in the individual pieces of legislation creating the rights or duties and whilst largely similar, have some differences between them. In March 2012, BIS published a consultation on consolidating and modernising enforcement officers’ investigatory powers into a generic set. It also consulted on removing the barriers to trading standards operating efficiently<sup>11</sup>. Additionally, views were also sought on reducing burdens on business by introducing certain safeguards on the use of these powers, such as requiring officers to give reasonable notice of routine visits, unless there are good reasons for them to be unannounced.
20. In November 2012, BIS published a consultation paper on extending the range of remedies available to courts when public enforcers apply to them for enforcement orders under Part 8 of the Enterprise Act 2002 (“EA”)<sup>12</sup>.
21. Research by the OFT showed that businesses view the present approach to private actions by consumers and businesses as one of the least effective aspects of the UK competition regime. BIS consulted on measures to make it easier and simpler for businesses and consumers to challenge anti-competitive behaviour in April 2012 and Government published its response in January 2013<sup>13</sup>.

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<sup>9</sup> The Law Commission No.292/The Scottish Law Commission No.199, 2005

<sup>10</sup> Unfair terms in consumer contracts – advice to BIS, The Law Commission & The Scottish Law Commission, 2013

<sup>11</sup> Enhancing consumer confidence through effective enforcement, BIS, March 2012

<sup>12</sup> Civil enforcement remedies – consultation on extending the range of remedies available to public enforcers of consumer law, BIS, November 2012

<sup>13</sup> Private actions in competition law: a consultation on options for reform, BIS, April 2012 and a government response, BIS, January 2013