

CONSUMER RIGHTS ACT 2015

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2: Unfair Terms

How are the general rules enforced?

Section 70: Enforcement of the law on unfair contract terms

333. If traders do use (or propose to use or recommend the use of) unfair, void and/or non-transparent terms in consumer contracts or consumer notices, there are a number of means of enforcing this Part.
334. This section introduces Schedule 3 which sets out how this Part can be enforced. Schedule 3 explains that the Competition and Markets Authority (“CMA”) and other Regulators (coordinated by the CMA) can investigate and apply for injunctions to prevent the use of certain terms. These are terms which the CMA or other Regulator considers might be unfair, not transparent or void (for example if they purport to exclude liability for death or personal injury through negligence). The CMA or other Regulator may take action if it thinks that a term or notice falls into one or more of those three categories.
335. [Schedule 3](#) includes provisions for the CMA to collate and if appropriate make public information about actions taken against certain terms and notices. It also provides that the CMA may issue guidance if it considers it appropriate to do so.
336. There are other means of enforcement available, for example private action by the consumer through the courts or enforcement by a public body through Part 8 of the EA.
337. [Schedule 5](#) also includes one additional power made available to Unfair Terms enforcers. This is the power to require the production of information (Part 3 of Schedule 5). As set out in paragraph 6 of Schedule 5, this power is only available to those enforcers listed in Schedule 3 which are also public authorities (within the meaning of the Human Rights Act 1998). So, for example, this power is not available to the Consumers’ Association (known as Which?).
338. This section reflects regulations 10 to 15 of the UTCCRs, which implement Article 7 of the UTCCD.