

# The Trading Standards (Fair Trading) (Guernsey)

## Ordinance, 2023

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# **The Trading Standards (Fair Trading) (Guernsey) Ordinance, 2023**

**THE STATES**, in pursuance of their Resolution of the 18<sup>th</sup> February 2016<sup>a</sup>, and 18<sup>th</sup> October 2017<sup>b</sup>, and in exercise of the powers conferred upon them by section 1 as read with section 3 of the Trading Standards (Enabling Provisions) (Guernsey) Law, 2009<sup>c</sup>, and all other powers enabling them in that behalf, hereby order:-

## **PART I**

### **CONSUMER CONTRACTS FOR SUPPLY OF GOODS, DIGITAL CONTENT AND SERVICES: RIGHTS AND REMEDIES**

#### **Application of Part I.**

1. (1) This Part applies where there is a contract between a trader and a consumer for the trader to supply goods (Chapter I), digital content (Chapter III) or services (Chapter V).

(2) This Part applies –

- (a) whether the contract is written, oral or implied or a combination thereof, and
- (b) to mixed contracts.

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<sup>a</sup> Article XIX of Billet d'État No. III of 2016.

<sup>b</sup> Article III of Billet d'État No. XIX of 2017.

<sup>c</sup> Order in Council No. I of 2011. This enactment has been amended.

- (3) The remedies available for contracts -
- (a) under Chapter I are provided for under Chapter II,
  - (b) under Chapter III are provided for under Chapter IV,  
and
  - (c) under Chapter V are provided for under Chapter VI.

(4) Where there is a mixed contract, the Chapters providing for remedies may apply to any one of those contracts, except where provision is made for particular mixed contracts.

(5) For the purposes of Chapter I (contracts relating to sale and supply of goods) and except to the extent mentioned in subsection (6), a person is not a consumer in relation to a sales contract (within the meaning of section 3) if the goods are second-hand goods sold at public auction.

(6) A person is a consumer in relation to a sales contract in the circumstances mentioned in subsection (5) for the purposes of -

- (a) sections 9(4) and (5), 10, 25 and 26, and
- (b) the other provisions of Chapter I as they apply in relation to those sections.

(7) In this Part, a contract to which this Chapter applies is referred to as a "**contract to supply goods**".

(8) For the purposes of this Part, a trader who claims that an individual was not acting for purposes that are wholly or mainly outside of the individual's trade, business, craft or profession must prove it.

CHAPTER I  
CONTRACTS RELATING TO SALE AND SUPPLY OF GOODS

*Contracts covered by this Chapter*

**Application of Chapter I.**

2. (1) Subject to subsection (2), this Chapter applies to the following –
- (a) a sales contract,
  - (b) a contract for the hire of goods,
  - (c) a hire-purchase agreement,
  - (d) a contract for the transfer of goods,

and in each case it applies if the contract also covers something covered by another Chapter of this part (a "**mixed contract**").

- (2) This Chapter does not apply to –
- (a) a contract for a trader to supply coins or notes to a consumer for use as currency in accordance with the Legal Tender (Guernsey) Ordinance, 1983<sup>d</sup>,
  - (b) a contract for goods to be sold by way of execution or under the authority of the courts or any legislation,
  - (c) a contract which operates or is intended to operate as a mortgage, charge, hypothèque, lien or other security.

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<sup>d</sup> Recueil d'Ordonnances Tome XXII, p. 477. This enactment has been amended.

- (3) A contract to supply goods includes –
- (a) a contract 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
  - (d) contracts that are conditional.

(4) Section 17 sets out the consumer's rights and remedies if there is any breach by the trader of a term that any of sections 7 to 12, and 15, requires to be treated as included in the contract.

**Sales contracts.**

3. (1) Subject to subsection (2), in this Ordinance a sales contract is a contract where –

- (a) a trader transfers or agrees to transfer ownership of goods to a consumer, and
- (b) the consumer pays or agrees to pay a price for those goods.

(2) A contract is a sales contract (regardless of whether 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 supply, the goods will be owned by the consumer, and

(c) the consumer pays or agrees to pay the price.

(3) A sales contract may be conditional, and in this Part "**conditional sales contract**" means a sales contract under which –

(a) the price for the goods or part of the price 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,

regardless of whether or not the consumer possesses the goods.

**Contracts for the hire of goods.**

4. (1) Subject to subsection (2), in this Ordinance a contract is for the hire of goods if, under the contract, a trader gives or agrees to give a 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) A contract is not for the hire of goods if it is a hire-purchase agreement.

**Hire-purchase agreements.**

5. (1) Subject to subsection (2), in this Ordinance a contract is a hire-purchase agreement if it meets the following conditions -

(a) under the contract, goods are hired by a trader in return for periodical payments by the consumer (and "hired" is to be read in accordance with section 4(1)), and

(b) under the contract, ownership of the goods will transfer to the consumer if the terms of the contract are complied with, and –

(i) the consumer exercises an option to buy the goods,

(ii) any party to the contract does an act specified in it, or

(iii) an event specified in the contract occurs.

(2) A contract is not a hire-purchase agreement if it is a conditional sales contract.

**Contracts for transfer of goods.**

6. In this Ordinance a contract is a contract for the transfer of goods if under it a 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 hire-purchase agreement.

*Statutory rights under a goods contract*

**Goods to be of satisfactory quality.**

7. (1) Every contract to supply goods must be treated as including a term that the quality of the goods to be supplied is satisfactory.

(2) The quality of goods is satisfactory if the goods meet the standard that a reasonable person would consider satisfactory, taking into account –

- (a) any description of the goods,
- (b) the price or other consideration for the goods (if relevant), and
- (c) all other relevant circumstances.

(3) The quality of goods includes the goods' state and condition; and aspects of the quality of goods include, but are not limited to –

- (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, and
- (e) durability.

(4) The term mentioned in subsection (1) does not cover anything which makes the quality of the goods unsatisfactory -

- (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 including statements made in advertising or labelling.

(6) For the purposes of subsection (2)(c), a public statement is not a relevant circumstance 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.

(7) In a contract to supply goods a term about the quality of the goods may be treated as included as a matter of custom or as a result of a course of conduct.

(8) Section 17 sets out the consumer's rights and remedies if there is any breach by the trader of a term that this section requires to be treated as included in a contract.

**Goods to be fit for a particular purpose.**

8. (1) Subject to the provisions of this section, a contract to supply goods must be treated as including a term that the goods are reasonably fit for any particular purpose that the consumer made known to the trader (expressly or by implication) before the contract is made.

(2) Subsection (1) applies to a contract to supply goods whether or not that particular purpose is a purpose for which goods of that kind are usually supplied.

(3) Subsections (1) and (2) also apply 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 credit-broker (expressly or by implication) any particular purpose for which the consumer is contracting for the goods.

(4) Subsections (1) and (2) do 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.

**Goods to fit description.**

9. (1) Every contract to supply goods by description must 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 the goods –

(a) are exposed for supply, and

(b) are selected by the consumer.

(4) Any information that is provided by the trader about the goods and is information mentioned in paragraph (a) of Schedule 3 or Schedule 4 must be treated as included as a term of the contract.

(5) A change to the information referred to in subsection (4), made before entering into the contract or later, is not effective unless expressly agreed between the consumer and the trader.

**Other pre-contract information included in contract.**

10. (1) This section applies to any contract to supply goods.

(2) Where there is a requirement under Part III for the trader to provide information to the consumer before the contract becomes binding, any of that information provided by the trader (other than information about the main characteristics of goods) is treated as included as a term of the contract.

(3) A change to any information required under subsection (2) whether made before entering into the contract or later, is not effective unless expressly agreed between the consumer and the trader.

**Goods to match sample as seen or examined.**

11. (1) This section applies to a contract to supply goods by reference to a sample of 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.

**Goods to match model seen or examined.**

12. (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 must 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.

**Incorrect installation of goods.**

13. (1) Goods supplied by a trader do not conform to a contract to supply goods if -

- (a) installation of the goods forms part of the contract,
- (b) the goods are installed by the trader or under the trader's responsibility, and
- (c) the goods are installed incorrectly.

(2) Section 17 applies where the goods do not conform to the contract as described under subsection (1).

**Goods not conforming to contract if digital content does not conform.**

14. (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.

(2) Section 17 applies where the goods do not conform to the contract as described under subsection (1).

**Trader's right to supply goods etc.**

15. (1) Every contract to supply goods, except a contract to which subsection (4) applies, 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, or

- (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) the consumer will enjoy quiet possession of the goods except in 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 the trader and consumer 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 to which subsection (4) applies 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 to which subsection (4) applies 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 to the contract, 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 referred to in that subsection, and
- (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.

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

16. (1) Subject to subsection (2), except as provided for by this Chapter, a contract to supply goods is not to be treated as including any term about the quality of the goods or the goods' 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 made).

CHAPTER II

REMEDIES AVAILABLE FOR BREACHES OF CONTRACTS UNDER CHAPTER I

**Consumer's rights to enforce terms about goods.**

17. (1) In this section and sections 20 to 22 references to goods conforming to a contract are references to -

- (a) the goods conforming to the terms described in sections 7, 8, 9, 11 and 12,
- (b) the goods not failing to conform to the contract under section 13 or 14, and
- (c) the goods conforming to requirements that are stated in the contract.

(2) For purposes of this section and sections 20 to 22, a failure to conform as mentioned in paragraphs (a) to (c) of subsection (1) 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 7, 8, 9, 11 and 12, or if they do not conform to the contract under section 14, the consumer's rights under this Ordinance are -

- (a) the short-term right to reject (sections 18 and 20),
- (b) the right to repair or replacement (section 21), and
- (c) the right to price reduction or the final right to reject (sections 18 and 22).

(4) If the goods do not conform to the contract under section 13 or because of a breach of requirements stated in the contract, the consumer's rights under this Ordinance are -

- (a) the right to repair or replacement (section 21), and
- (b) the right to a price reduction or the final right to reject (sections 18 and 22).

(5) If the trader is in breach of a term that section 10 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 15(1) (trader's right to supply goods etc) requires to be treated as included in the contract, the consumer has a right to reject.

(7) Subsections (3) to (6) are subject to section 23, and subsections (3)(a) and (6) are subject to section 24.

(8) This Chapter does not prevent the consumer seeking other remedies -

- (a) for a breach of a term that Chapter I requires to be treated as included in the contract,

- (b) on the grounds that, under section 13 or 14, goods do not conform to the contract, or
  - (c) for a breach of a requirement stated in the contract.
- (9) The other remedies referred to in subsection (8) may include -
- (a) those in addition to a remedy mentioned in subsections (3) to (6) (but not so as to recover twice for the same loss), or
  - (b) remedies other than such a remedy, or
  - (c) any other remedies where no such remedy is provided for.

(10) 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 13 or 14, goods do not conform to the contract, except as provided by subsections (3), (4) and (6).

(11) In this Part, treating a contract as at an end means treating it as repudiated.

(12) Subject to subsection (13), 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.

- (13) Subsection (12) 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.

**Consumer's right to reject goods.**

- 18. (1) The short-term right to reject is subject to section 20.
- (2) The final right to reject is subject to section 22.
- (3) The right to reject under section 17(6) is not limited by the sections referred to in subsections (1) and (2).
- (4) Subject to subsections (17) and (18), each of the rights referred to in subsections (1) to (3) entitles the consumer to reject the goods and treat the contract as at an end.
- (5) The right to reject 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 referred to in subsection (5) 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 to reject is exercised -
  - (a) the trader has a duty to give the consumer a refund, subject to subsection (15), 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) Regardless of whether 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-

- (a) to the extent that the consumer paid money under the contract, the consumer is entitled to receive back the same amount of money,
- (b) 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 paragraph (c) applies, and
- (c) 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.

(10) 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.

(11) 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.

(12) 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.

(13) 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.

(14) The trader must not impose any fee on the consumer in respect of the refund.

(15) There is no entitlement to receive a refund -

- (a) if none of paragraphs (a) to (c) of subsection (9) applies,
- (b) to the extent that anything to which subsection (9)(c) applies cannot be given back in its original state, or
- (c) where subsection (10) 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.

(16) The consumer may claim damages -

- (a) where there is no entitlement to receive a refund,
- (b) where there are limits on the entitlement, or
- (c) instead of a refund.

(17) Subsection (18) qualifies the application 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 24(3) does not apply.

(18) Where this subsection applies, 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.

**Partial rejection of goods.**

19. (1) If the consumer has any of the rights mentioned in section 18(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) The consumer rejects goods under this section by indicating to the trader that the consumer is rejecting the goods.

(5) The indication under subsection (4) may be something the consumer says or does, but it must be clear enough to be understood by the trader.

(6) From the time when a consumer rejects goods under this section—

- (a) the trader has the 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 the goods) to return them as agreed.

(7) Regardless of whether 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.

(8) Section 18(9)(a) to (14) apply to a consumer's right to receive a refund under this section (and in section 18(10) and (11) references to the contract being treated as at an end are to be read as references to goods being rejected).

(9) The right to receive a refund under this section does not apply -

(a) if none of section 18(9)(a) to (c) applies,

(b) to the extent that anything to which section 18(9)(c) 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.

(10) 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.

(11) References in this section to goods conforming to a contract must be read in accordance with section 17(1) and (2), but they also include the goods conforming to the terms described in section 15.

(12) Where section 18(18)(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.

**Time limit for short-term right to reject.**

20. (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 all of the following have taken place -

- (a) ownership or (in the case of a contract for the hire of goods, a hire-purchase 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 taken place.

(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) seven 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.

**Consumer's right to repair or replacement.**

21. (1) This section applies if the consumer has the right to repair or replacement under, and in the circumstances set out in, section 17(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) A remedy mentioned in subsection (3) 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 reasonable time or significant inconvenience is to be determined taking into account -

(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) A consumer who requires or agrees to a 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 those goods conform.

**Consumer's right to price reduction or final right to reject.**

22. (1) A consumer's 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 18(9)(a) to (14) 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 18(9)(c) 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) as a result of the application of section 21(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 21(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) Subject to subsections (9) and (10), 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.

(9) No deduction under subsection (8) 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 under subsection (8) may be made if the final right to reject is exercised in the first 6 months within the meaning of subsection (11) unless-

- (a) the goods consist of a motor vehicle, or
- (b) the goods are of a description specified by regulations made by the Committee.

(11) In subsection (10) the first six months means six months beginning with the first day after all the following has taken place -

- (a) ownership or (in the case of a contract for the hire of goods, a hire-purchase 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) Regulations made under subsection (10)(b) may be made only if the Committee 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.

*Other remedies relating to contracts or agreements for goods*

**Delivery of wrong quantity.**

23. (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 rate specified in the contract ("**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 under subsection (5) 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.

**Delivery of goods by instalments.**

24. (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) The following subsections 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 (subject to subsection (4)) entitled -

(a) to exercise the short-term right to reject or the right to reject under section 17(6) (as applicable) in respect of the whole contract, or

(b) to reject the goods in an instalment.

(4) Whether paragraph (a) or (b), or neither, of subsection (3) 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 25.

(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,

depending on the terms of the contract and the circumstances of the case.

**Delivery of goods.**

25. (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 agreed 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) 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.

(5) 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, and

- (b) if there is an obligation to deliver the goods at the time the contract is entered into, that time is to be treated as the agreed time.
- (6) If the circumstances are that -
  - (a) the trader has refused to deliver the goods,
  - (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 circumstances other than those specified in subsection (6), 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) the consumer is not prevented 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 for 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) For the avoidance of doubt, this section does not prevent the consumer seeking other remedies where it is open to the consumer to do so.

**Passing of risk.**

26. (1) A sales contract shall be treated as including the terms specified in subsections (2) to (6).

(2) Subject to subsection (3), 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) Subject to subsection (5), in the circumstances set out in  
subsection (3), 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.

**Goods under guarantee.**

27. (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) In this section "**guarantee**" 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) 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 shall take 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 Guernsey, the guarantee is written in English.

(5) The contents of the guarantee to be set out must 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) The TSS may apply to the Royal Court sitting as an Ordinary Court for an injunction against any person who appears to the TSS to be responsible for a failure to comply with this section.

(8) The court on an application under this section may grant an injunction or other order on such terms as it thinks fit to secure compliance with this section.

(9) Paragraphs 4 and 5 of Schedule 1 apply to an application for an injunction under this section as they do to an application for an injunction under paragraph 3 of that Schedule.

*Contracting out of statutory rights and remedies*

**Liability that cannot be excluded or restricted: goods contracts.**

28. (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 7 (goods to be of satisfactory quality),
- (b) section 8 (goods to be fit for a particular purpose),
- (c) section 9 (goods to fit description),
- (d) section 10 (other pre-contract information included in contract),
- (e) section 11 (goods to match sample as seen or examined),
- (f) section 12 (goods to match model seen or examined),
- (g) section 13 (incorrect installation of goods),
- (h) section 14 (goods not conforming to contract if digital content does not conform),
- (i) section 15 (right to supply goods),
- (j) section 25 (delivery of goods), and
- (k) section 26 (passing of risk).

(2) In addition to subsection (1), 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) Subject to subsection (6), subsection (1)(i), and subsection (2) so far as it relates to liability under section 15, do not apply to a term of a contract for the hire of goods.

(6) 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 15 requires to be treated as included in the contract, unless it is inconsistent with that term.

(7) Schedule 1 makes provision in respect of the enforcement of this section.

**Contracts which apply a law other than this Ordinance.**

29. (1) If -
- (a) the law of a country or territory other than Guernsey is chosen by the parties to apply to a sales contract, but
  - (b) the sales contract has a close connection with Guernsey,

this Chapter, except the provisions set out in subsection (2), applies notwithstanding that choice.

- (2) The excepted provisions referred to in subsection (1) are -
- (a) sections 9(4) and (5) (goods to fit description),
  - (b) section 10 (other pre-contract information included in contract),
  - (c) section 26 (passing of risk),
  - (d) section 27 (goods under guarantee), and
  - (e) section 28(1)(d), (j) and (k).

CHAPTER III

CONTRACTS RELATING TO THE SALE OR SUPPLY OF DIGITAL CONTENT

**Application of Chapter III.**

30. (1) This Chapter applies to a contract for a trader to supply digital content to a consumer, if it is supplied or is 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, where -

(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) 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) A contract to which this Chapter and Chapter IV apply is referred to in this Ordinance as a "**contract to supply digital content**".

(6) This section, other than subsection (4), does not limit the application of section 43.

(7) Section 39 sets out the rights and remedies a consumer has if there is a breach of a term that one of the following provisions requires to be treated as included in a contract –

(a) sections 31 to 34,

(b) section 38.

*Statutory rights available under a digital contract*

**Digital content to be of satisfactory quality.**

31. (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) The quality of digital content is satisfactory if it meets the standard that a reasonable person would consider satisfactory, taking into account -

- (a) any description of the digital content,
- (b) the price mentioned in section 30(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 aspects of the quality of digital content include, but are not limited to -

- (a) fitness for all the purposes for which digital content of that kind is usually supplied,
- (b) freedom from minor defects,
- (c) safety, and
- (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 and in particular, any public statement made in advertising or labelling.

(6) Notwithstanding subsection (5), 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.

(7) 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.

**Digital content fit for a particular purpose.**

32. (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 credit-broker (expressly or by implication) any particular purpose for which the consumer is contracting for the digital content.

(3) Where this subsection applies, 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) 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.

**Digital content to be as described.**

33. (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 it is better than) the trial version if the digital content does not 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 mentioned in –

(a) paragraph (a), (j) or (k) of Schedule 3, or

(b) paragraph (a), (v) or (w) of Schedule 4,

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.

**Other pre-contract information included in contract.**

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

(2) There is a requirement for the trader to provide information to the consumer under Part III before the contract becomes binding, any of that information that was provided by the trader is to be treated as included as a term of the contract.

(3) A change to any of the information referred to in subsection (2), whether made before entering into the contract or later, is not effective unless expressly agreed between the consumer and the trader.

**Term on quality or fitness not to be treated as included in contract to supply digital content.**

35. (1) Except as provided by sections 31 and 32, and subject to subsection (2), 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 made).

**Supply by transmission and facilities for continued transmission.**

36. (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) Subsections (5) to (7) apply where -

(a) there is a contract to supply digital content, and

(b) after the trader has supplied the digital content, the consumer is to have access under the contract to a processing facility under arrangements made by the trader.

(4) 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.

(5) For the purposes of this Chapter, a processing facility is a facility by which the trader or another trader will receive digital content from the consumer and transmit digital content to the consumer (regardless of whether other features are to be included under 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 31 (digital content to be of satisfactory quality),
- (b) section 32 (digital content fit for a particular purpose),
- (c) section 33 (digital content to be as described).

(7) Breach of a term treated as included under subsection (4) has the same effect as breach of a term treated as included under the sections listed in subsection (6).

**Quality, fitness and description of content supplied subject to modifications.**

37. (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) section 31 (digital content to be of satisfactory quality),
- (b) section 32 (digital content fit for a particular purpose),
- (c) section 33 (digital content to be as described).

(2) Subsection (1)(c) does not prevent the trader from improving the features of, or adding new features to, the digital content, provided that -

- (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 referred to in section 33(3), subject to any change to that information that has been agreed in accordance with section 33(4).

(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.

**Trader's right to supply digital content.**

38. (1) Every contract to supply digital content is to be treated as including a term that -

- (a) in relation to any digital content which is supplied under the contract and which the consumer has paid for, 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, the trader will have the right to supply it to the consumer at the time when it is to be supplied.

(2) Section 39 sets out the rights and remedies a consumer has if there is any breach of a term that this section requires to be treated as included in a contract.

## CHAPTER IV

### REMEDIES AVAILABLE FOR BREACH OF CONTRACTS UNDER CHAPTER III

#### **Consumer's rights to enforce terms of a contract to supply digital content.**

39. (1) In this section and section 40, references to digital content conforming to a contract are references to the digital content conforming to the terms described in sections 31, 32 and 33.

(2) If the digital content does not conform to the contract, the consumer's rights are –

(a) the right to repair or replacement under section 40, and

(b) the right to a price reduction under section 41,

and section 14 also applies if an item including the digital content is supplied.

(3) If the trader is in breach of a term that section 34 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 30(3) used by the consumer.

(4) If the trader is in breach of the term that section 38(1) requires to be treated as included in the contract, the consumer has the right to a refund conferred under section 42.

(5) 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 mentioned there (but not so as to recover twice for the same loss).

(6) 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.

(7) 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.

(8) Subsection (7) 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.

**Right to repair or replacement.**

40. (1) This section applies where the consumer has the right to repair or replacement within the meaning of this Chapter.

(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 replacement) -

- (a) is impossible, or
- (b) is disproportionate compared to the other of those remedies.

(4) Any of the remedies mentioned under subsection (3) is disproportionate compared to the other if it imposes costs on the trader which, compared to the costs imposed by the other remedy, 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,

(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.

**Right to price reduction.**

41. (1) Subject to subsection (3), for the purposes of this Chapter the right to a price reduction is the right to require the trader to reduce the price 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's right under subsection (1) may only be exercised where -

(a) because of section 40(3)(a) (impossibility), 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 40(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.

**Right to a refund.**

42. (1) Subject to subsection (2), for the purposes of this Chapter the right to a refund is the right to receive a refund from the trader of all money paid by the consumer for the digital content.

(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.

*Compensation for damage to device or to other digital content*

**Remedy for damage to device or other digital content.**

43. (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) In order 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) 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.

**Liability that cannot be excluded or restricted: digital content.**

44. (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 31 (digital content to be of satisfactory quality),
- (b) section 32 (digital content fit for a particular purpose),
- (c) section 33 (digital content to be as described),
- (d) section 34 (other pre-contract information included in contract), or
- (e) section 38 (trader's right to supply digital content).

(2) 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) 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) Schedule 1 makes provision in respect of the enforcement of this section.

CHAPTER V  
CONTRACTS RELATING TO THE SUPPLY OF SERVICES

**Application of Chapter V.**

45. This Chapter applies to a contract for a trader to supply a service to a consumer other than a contract of employment or apprenticeship, and a contract to which this Chapter applies is referred to in this Part as a "**contract to supply a service**".

**Service to be performed with reasonable care and skill.**

46. (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) A consumer has the rights specified under section 51 in respect of any breach of a term that this section requires to be treated as included in a contract.

**Information about the trader or service to be binding.**

47. (1) Subject to subsection (2), 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 which is required to be provided by the trader under Part III relating to on-premises, off-premises or distance contracts is to be treated as included as a term of the contract.

(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) A consumer has the rights specified under section 51 in respect of any breach of a term that this section requires to be treated as included in a contract.

**Reasonable price to be paid for a service.**

48. (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 state how the price is to be fixed, and

(c) nothing that is to be treated as included in the contract under section 47 fixes a price or other consideration.

(2) Where this section applies to a contract to supply a service, that contract is to be treated as including a term that the consumer must pay a reasonable price for the service and not more than that.

(3) What is a reasonable price for the purposes of this section is a question of fact to be determined by reference to the circumstances of the particular case.

**Service to be performed within a reasonable time.**

49. (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 state how it is to be fixed, and
  - (b) information that is to be treated as included in the contract under section 47, does not fix the time.

(2) Where this section applies to a contract to supply a service, that contract is to be treated as including a term that the trader must provide the service within a reasonable time.

(3) What is a reasonable time for the purposes of this section is a question of fact to be determined by reference to the circumstances of the particular case.

(4) A consumer has the rights specified under section 51 in respect of any breach of a term that this section requires to be treated as included in a contract.

**Relation to other law on contract terms.**

50. (1) Nothing in this Chapter affects any enactment or rule of law that imposes a stricter duty on the trader in any particular case.

(2) This Chapter is subject to any other enactment which specifies or restricts the rights, duties or liabilities arising in connection with a service of any description.

## CHAPTER VI

### REMEDIES AVAILABLE FOR BREACH OF CONTRACTS UNDER CHAPTER V

#### **Consumer's rights to enforce terms about services.**

51. (1) The consumer's rights under this section and sections 52 and are without prejudice to any rights afforded by the contract, if those are not inconsistent.

(2) In this section and section 52 a reference to a service conforming to a contract is a reference to -

- (a) the service being performed in accordance with section 46, or
- (b) the service conforming to a term that section 47 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 are -

- (a) the right to require repeat performance conferred under section 52, and
- (b) the right to a price reduction conferred under section 53.

(4) If the trader is in breach of a term that section 47 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 conferred under section 53.

(5) If the trader is in breach of what the contract requires under section 49 (service to be performed within a reasonable time), the consumer has the right to a price reduction conferred under section 53.

(6) This section and sections 52 and 53 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, for the avoidance of doubt, not so as to recover twice for the same loss).

**Right to repeat performance.**

52. (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 a 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, but not limited to, the cost of any labour or materials).

(3) The consumer may not require repeat performance if completing performance of the service in conformity with the contract is impossible.

(4) What is a reasonable time or significant inconvenience for the purposes of this section is a question of fact to be determined by reference to the circumstances of the particular case, taking account of -

(a) the nature of the service, and

(b) the purpose for which the service was to be performed.

**Right to price reduction.**

53. (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 in respect of a trader the right to a price reduction and the right to require repeat performance is only entitled to a price reduction if -

(a) as a result of the application of section 52(3), the consumer cannot require repeat performance, or

(b) the consumer has required the repeat performance but the trader is in breach of the requirement of section 52(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, any in any event within 14 days beginning on the day 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 has expressly agreed otherwise.

(6) The trader must not impose any fee on the consumer in respect of the refund.

*Contracting out of statutory rights and remedies*

**Liability that cannot be excluded or restricted: services contracts.**

54. (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 46 (service to be performed with reasonable care and skill).

(2) Subject to section 47(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 47 (information about the 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 46 and 47 and, where they apply, sections 48 and 49, if it would prevent the consumer in an appropriate case from recovering the price paid or the value of any other consideration.

(4) 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 46 to 49,
- (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) Schedule 1 makes provision in respect of the enforcement of this section.

## PART II

### UNFAIR CONTRACT TERMS AND NOTICES

#### CHAPTER I

##### GENERAL RULES ON FAIRNESS OF CONTRACT TERMS AND NOTICES

#### **Application of Part II.**

55. (1) Subject to the provisions of this section, this Part applies to a contract between a trader and a consumer.

(2) For the avoidance of doubt, this Part does not apply to a contract of employment or apprenticeship.

(3) This Part does not apply to a term of a contract, or to a notice, to the extent that the term or notice (as the case may be) reflects mandatory statutory or regulatory provisions, or the provisions or principles of an international convention which has been extended to Guernsey; and for these purposes "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.

(4) A contract to which this Part applies is referred to in this Part as a "**consumer contract**".

(5) Subject to the provisions of this section, 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,

regardless of whether the notice is expressed to apply to a consumer, provided that it is reasonable to assume it is intended to be seen or heard by a consumer.

(6) For the avoidance of doubt, this Part does not apply to a notice relating to rights, obligations or liabilities as between an employer and an employee.

(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.

(9) Section 1(8) (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 I.

(10) In subsection (3), "**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.

#### **Requirements for contract terms and notices.**

56. (1) An unfair term of a consumer contract is not binding on the consumer, but the consumer may choose to rely on such a term.

(2) An unfair consumer notice is not binding on the consumer, but the consumer may choose to rely on such a notice.

(3) A term of a consumer contract 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.

(4) Whether a term in a consumer contract 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.

(5) A consumer 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.

(6) Whether a consumer 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.

(7) This section does not affect the operation of -

(a) section 28 (liability that cannot be excluded or restricted: goods contracts),

- (b) section 44 (liability that cannot be excluded or restricted: digital content),
- (c) section 54 (liability that cannot be excluded or restricted: services contracts), or
- (d) section 59 (contract term or notice cannot restrict or exclude negligence liability).

**Contract terms which may be regarded as unfair.**

57. (1) Part I 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) Subject to subsection (3), Part I of Schedule 2 is subject to Part II of that Schedule.

(3) A term listed in Part II of Schedule 2 may be assessed for fairness under section 56 unless section 55(10) or 58 applies to it.

**Exclusion of a contract term from assessment for fairness.**

58. (1) Subject to subsection (2), a term of a consumer contract may not be assessed for fairness under section 56 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) Subsection (1) excludes a term from an assessment under section 56 only if it is transparent and prominent within the meanings of subsections (3) and (4).

(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) This section does not apply to a term of a contract listed in Part I of Schedule 2.

**Contract term or notice cannot restrict or exclude negligence liability.**

59. (1) Subsections (2) and (3) are subject to section 60 (scope of section 59).

(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) 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.

(4) Schedule 1 makes provision in respect of the enforcement of this section.

**Scope of section 59.**

60. (1) Section 59 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 59 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 59 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) allowing the person access for those purposes is not within the purposes of the occupier's trade, business, craft or profession.

**Effect of an unfair term on the whole contract.**

61. 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.

**Requirement for transparency.**

62. (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.

**Contract terms with different meanings.**

63. (1) Subject to subsection (2), if a term in a consumer contract or in a consumer notice is capable of having different meanings, the meaning that is most favourable to the consumer will prevail.

(2) Subsection (1) does not apply to the construction of a term or a notice in proceedings on an application for an injunction under paragraph 3 of Schedule 1.

CHAPTER II

ENFORCEMENT OF RULES ON FAIRNESS

**The Trading Standards Service, and enforcement of Parts I and II.**

64. (1) There shall continue to be a trading standards service as a service within the Committee for Home Affairs, which service is referred to in this Ordinance as the Trading Standards Service, or "**the TSS**".

(2) When exercising any function under this Ordinance, the Chief Trading Standards Officer must have regard to international obligations that are relevant to the exercise of the function –

(a) that are binding on the Bailiwick, or any part thereof, or

(b) to which His Majesty's Government in the United Kingdom is a party.

(3) Schedule 1 confers functions on the TSS in relation to the enforcement of Part I and this Part.

**Court's determination of unfairness of a contract term.**

65. (1) Subsection (2) applies to proceedings before a court which relate to a term of a consumer contract.

(2) Subject to subsection (3), 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) Subsection (2) only applies where the court considers that there is sufficient legal and factual material presented to enable it to consider the fairness of the term.

**Application of rules on fairness to secondary contracts.**

66. (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.

PART III

CONSUMER CONTRACTS (INFORMATION, CANCELLATION AND OTHER CHARGES)

**Application Part III.**

67. (1) This Part does not apply to a contract to the extent that is for –

- (a) gambling within the meaning of section 13 of the Gambling (Guernsey) Law, 1971<sup>e</sup>,
  - (b) services in respect of banking, credit, insurance, personal pension, investment or payments,
  - (c) the creation of immovable property, the transfer of immovable property or of rights in immovable property,
  - (d) the supply of foodstuffs, beverages or other goods intended for current consumption in the household and which are supplied by a trader on frequent and regular rounds to the consumer's home, residence or workplace.
- (2) This Part does not apply to contracts -
- (a) concluded by means of automatic vending machines or automated commercial premises,
  - (b) concluded with a telecommunications operator through a public telephone for the use of the telephone,
  - (c) concluded for the use of one single connection, by telephone, internet or fax, established by a consumer,

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<sup>e</sup> Ordres en Conseil Vol. XXIII, p.109. This enactment has been amended

(d) under which goods are sold by way of execution or otherwise by authority of law.

(3) Subsection (1)(b) is subject to sections 95 (effects of withdrawal or cancellation on ancillary contracts) and 96(3) (additional payments under a contract).

(4) The Committee may by regulations make provision to specify further services falling within subsection 1(b).

## CHAPTER I INFORMATION REQUIREMENTS

### **Application of Chapter I.**

68. (1) This Chapter applies to on-premises, off-premises and distance contracts, subject to subsections (2), (3) and (4) and section 1.

(2) This Chapter does not apply to contracts to the extent that the contracts are -

(a) for the supply of a medicinal product by administration by an appropriate practitioner, or under a prescription or directions given by an appropriate practitioner,

(b) for the supply of a product by a registered health professional, under arrangements for the supply of services where the product is one that, at least in some circumstances is available under such arrangements free or on prescription.

(3) This Chapter, except for section 75(1) to (5), does not apply to

contracts to the extent that they are for passenger transport services.

(4) This Chapter does not apply to off-premises contracts under which the payment to be made by the consumer is not more than £50, or such other sum prescribed in regulations made by the Committee.

(5) In subsection (2) -

"**appropriate practitioner**" has the meaning given by section 1 of the Prescription Only Medicines (Human) (Bailiwick of Guernsey) Ordinance, 2009<sup>f</sup>, and

"**registered health professional**" has the meaning given by section 1(2) of the Registered Health Professionals Ordinance, 2006<sup>g</sup>.

#### **Making information etc. available to a consumer.**

69. For the purposes of this Chapter, something is made available to a consumer only if the consumer can reasonably be expected to know how to access it.

#### **Information to be provided before making an on-premises contract.**

70. (1) Before the consumer is bound by an on-premises contract, the trader must give or make available to the consumer the information described in Schedule 3 in a clear and comprehensible manner, if that information is not already apparent from the context.

(2) Subsection (1) does not apply to a contract which involves a day-to-day transaction and is performed immediately at the time when the contract

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<sup>f</sup> Recueil d'Ordonnances Tome XXXIII, p. 555. This enactment has been amended.

<sup>g</sup> Recueil d'Ordonnances Tome XXXI, p. 145. This enactment has been amended.

is entered into.

(3) Any information that the trader gives the consumer as required by this section 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.

**Information to be provided before making an off-premises contract.**

71. (1) Before the consumer is bound by an off-premises contract, the trader -

(a) must give the consumer the information listed in Schedule 4 in a clear and comprehensible manner, and

(b) if a right to cancel under this Ordinance exists, must give the consumer a cancellation form as set out in Part B of Schedule 5.

(2) The information and any cancellation form must be given on paper or, if the consumer agrees, on another durable medium, and must be legible.

(3) The information referred to in paragraphs (l), (m) and (n) of Schedule 4 may be provided by means of the model instructions on cancellation set out in Part A of Schedule 5, and a trader who has supplied those instructions to the consumer, correctly filled in, is to be treated as having complied with subsection (1) in respect of those paragraphs.

(4) If the trader has not complied with subsection (1) in respect of paragraph (g), (h) or (m) of Schedule 4, the consumer is not to bear the charges or costs referred to in those paragraphs.

(5) Any information that the trader gives the consumer as required by this section is to be treated as included as a term of the contract.

(6) A change to any of the information referred to in subsection (5), made before entering into the contract or later, is not effective unless expressly agreed between the consumer and the trader.

(7) This section is subject to section 72.

**Provision of information in connection with repair or maintenance contracts.**

72. (1) If the conditions in subsections (2), (3) and (4) are met, section 71(1) does not apply to an off-premises contract where -

- (a) the contract is a contract to supply a service,
- (b) the consumer has explicitly requested the trader to supply the service for the purpose of carrying out repairs or maintenance,
- (c) the obligations of the trader and the consumer under the contract are to be performed immediately, and
- (d) the payment to be made by the consumer is not more than £200.

(2) The condition in this subsection is that, before the consumer is bound by the contract, the trader gives or makes available to the consumer on paper or, if the consumer expressly agrees, on another durable medium -

- (a) the information referred to in paragraphs (b) to (d), (f) and (g) of Schedule 4,

- (b) an estimate of the total price, where it cannot reasonably be calculated in advance, and
- (c) where a right to cancel exists, a cancellation form as set out in Part B of Schedule 5.

(3) The condition in this subsection is that, before the consumer is bound by the contract, the trader gives or makes available to the consumer the information referred to in paragraphs (a), (l) and (o) of Schedule 4, either on paper or another durable medium or otherwise if the consumer expressly agrees.

(4) The condition in this subsection is that the confirmation of the contract provided in accordance with section 73 contains the information required by section 71(1).

**Provision of copy or confirmation of off-premises contracts.**

73. (1) In the case of an off-premises contract, the trader must give the consumer -

- (a) a copy of the signed contract, or
- (b) confirmation of the contract.

(2) The confirmation must include all the information referred to in Schedule 4 unless the trader has already provided that information to the consumer on a durable medium prior to the conclusion of the off-premises contract.

(3) The copy or confirmation must be provided on paper or, if the consumer agrees, on another durable medium.

(4) The copy or confirmation must be provided within a reasonable time after the conclusion of the contract, but in any event -

- (a) not later than the time of the delivery of any goods supplied under the contract, and
- (b) before performance begins of any service supplied under the contract.

(5) If the contract is for the supply of digital content not on a tangible medium and the consumer has given the consent and acknowledgement referred to in section 94(1)(a) and (b), the copy or confirmation must include confirmation of the consent and acknowledgement.

**Information to be provided before making a distance contract.**

74. (1) Before the consumer is bound by a distance contract, the trader -

- (a) must give or make available to the consumer the information listed in Schedule 4 in a clear and comprehensible manner, and in a way appropriate to the means of distance communication used, and
- (b) if a right to cancel exists, must give or make available to the consumer a cancellation form as set out in Part B of Schedule 5.

(2) In so far as the information is provided on a durable medium, it must be legible.

(3) The information referred to in paragraphs (l), (m) and (n) of Schedule 4 may be provided by means of the model instructions on cancellation set out in Part A of Schedule 5; and a trader who has supplied those instructions to the consumer, correctly filled in, is to be treated as having complied with paragraph (1) in respect of those paragraphs.

(4) Where a distance contract is concluded through a means of distance communication which allows limited space or time to display the information-

- (a) the information listed in paragraphs (a), (b), (f), (g), (h), (l) and (s) of Schedule 4 must be provided on that means of communication in accordance with subsections (1) and (2), but
- (b) the other information required by subsection (1) may be provided in another appropriate way.

(5) Where the trader has not complied with subsection (1) in respect of paragraph (g), (h) or (m) of Schedule 4, the trader must bear the charges or costs referred to in those paragraphs.

(6) Any information that the trader gives the consumer as required by this section is to be treated as included as a term of the contract.

(7) 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.

**Requirements for distance contracts concluded by electronic means.**

75. (1) This section applies where a distance contract is concluded by electronic means.

(2) If the contract places the consumer under an obligation to pay, the trader must make the consumer aware in a clear and prominent manner, and directly before the consumer places the order, of the information listed in paragraphs (a), (f), (g), (h), (s) and (t) of Schedule 4.

(3) The trader must ensure that the consumer, when placing the order, explicitly acknowledges that the order implies an obligation to pay.

(4) For the purposes of subsection (3), if placing an order entails activating a button or a similar function, the trader must ensure that the button or similar function is labelled in an easily legible manner only with the words "order with obligation to pay" or a corresponding unambiguous formulation indicating that placing the order entails an obligation to pay the trader.

(5) If the trader has not complied with subsections (3) and (4), the consumer is not bound by the contract or order.

(6) The trader must ensure that any trading website through which the contract is concluded indicates clearly and legibly, at the latest at the beginning of the ordering process, whether any delivery restrictions apply and which means of payment are accepted.

**Telephone calls to conclude a distance contract.**

76. If the trader makes a telephone call to the consumer with a view to concluding a distance contract, the trader must, at the beginning of the conversation with the consumer, disclose -

- (a) the trader's identity,
- (b) where applicable, the identity of the person on whose behalf the trader makes the call, and
- (c) the commercial purpose of the call.

**Confirmation of distance contracts.**

77. (1) In the case of a distance contract the trader must give the consumer confirmation of the contract on a durable medium.

(2) The confirmation must include all the information referred to in Schedule 4 unless the trader has already provided that information to the consumer on a durable medium prior to the conclusion of the distance contract.

(3) If the contract is for the supply of digital content not on a tangible medium and the consumer has given the consent and acknowledgment referred to in section 94(1)(a) and (b), the confirmation must include confirmation of the consent and acknowledgement.

(4) The confirmation must be provided within a reasonable time after the conclusion of the contract, but in any event -

(a) not later than the time of delivery of any goods supplied under the contract, and

(b) before performance begins of any service supplied under the contract.

(5) For the purposes of subsection (4), the confirmation is treated as provided as soon as the trader has sent it or done what is necessary to make it available to the consumer.

**Burden of proof in relation to off-premises and distance contracts.**

78. (1) Subject to subsection (2), in case of a dispute about the trader's compliance with any provision of sections 71 to 77, it is for the trader to show that the provision was complied with.

(2) Subsection (1) does not apply to proceedings -

(a) for an offence under section 80, or

(b) relating to compliance with an injunction under section 99.

**Effect on contract of failure to provide information.**

79. Every contract to which this Part applies is to be treated as including a term that the trader has complied with the provisions of -

- (a) sections 70 to 75, and
- (b) section 77.

CHAPTER II  
OFFENCES UNDER PART III

**Offence relating to failure to give notice of the right to cancel.**

80. (1) A trader is guilty of an offence if the trader enters into an off-premises contract to which section 71 applies but fails to give the consumer the information listed in paragraph (l), (m) or (n) of Schedule 4 in accordance with that section.

(2) A trader who is guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 4 on the uniform scale.

**Defence of due diligence: offence under section 80.**

81. In any proceedings against a person ("A") for an offence under section 80 it is a defence for A to prove -

- (a) that the commission of the offence was due to -
  - (i) the act or default of another, or
  - (ii) reliance on information given by another, and
- (b) that A took all reasonable precautions and exercised all due diligence to avoid the commission of such an offence by A or any person under A's control.

**Liability of persons other than the principal offender for offence under section 80.**

82. Where the commission by a person of an offence under section 80 is due to the act or default of another person, that other person is guilty of the offence and may be proceeded against and punished whether or not proceedings are taken against the first person.

**Power of investigation in respect of offence under section 80.**

83. (1) If a TSS officer has reasonable grounds for suspecting that an offence has been committed under section 80, the officer may require a person carrying on or employed in a business to produce any document relating to the business, and take copies of it or any entry in it for the purposes of ascertaining whether such an offence has been committed.

(2) If the officer has reasonable grounds for believing that any documents may be required as evidence in proceedings for such an offence, the officer may seize and retain them and shall, if the officer does so, inform the person from whom they are seized.

(3) The reference in subsection (1) to production of documents is, in the case of a document which contains information recorded otherwise than in a legible form, a reference to the production of a copy of the information in a legible form.

(4) An officer seeking to exercise a power under this section must do so only at a reasonable hour and on production of the officer's identification and authority.

CHAPTER III

RIGHT TO CANCEL

**Application of Chapter III.**

84. (1) This Chapter applies to distance and off-premises contracts,

subject to subsections (2) and (3) and sections 67 and 85.

(2) This Chapter does not apply to contracts to the extent that they are -

- (a) for the supply of a medicinal product by administration by an appropriate practitioner, or under a prescription or directions given by an appropriate practitioner,
- (b) for the supply of a product by a registered health professional, under arrangements for the supply of services where the product is one that, at least in some circumstances, is available under such arrangements, whether free or on prescription, or
- (c) for passenger transport services.

(3) This Chapter does not apply to off-premises contracts under which the payment to be made by the consumer is not more than £50 or such other sum not exceeding £200 specified in regulations made by the Committee.

(4) In subsection (2)(a) and (b), expressions defined in section 68(5) have the meaning given there.

**Limits of application: circumstances excluding cancellation.**

85. (1) This Chapter does not apply as regards any of the following -

- (a) the supply of -
  - (i) goods, or
  - (ii) services,

for which the price is dependent on fluctuations in the financial market which cannot be controlled by the trader and which may occur within the cancellation period,

- (b) the supply of goods that are made to the consumer's specifications or are clearly personalised,
- (c) the supply of goods which are liable to deteriorate or expire rapidly,
- (e) the supply of alcoholic beverages, where -
  - (i) their price has been agreed at the time of the conclusion of the sales contract,
  - (ii) delivery of the beverages can only take place after 30 days, and
  - (iii) their value is dependent on fluctuations in the market which cannot be controlled by the trader,
- (f) contracts where the consumer has specifically requested a visit from the trader for the purpose of carrying out urgent repairs or maintenance,
- (g) the supply of a newspaper, periodical or magazine with the exception of subscription contracts for the supply of such publications,
- (h) contracts concluded at a public auction,

- (i) the supply of accommodation, transport of goods, vehicle rental services, catering or services related to leisure activities, if the contract provides for a specific date or period of performance.

(2) Paragraph (f) of subsection (1) does not prevent this Chapter applying to a contract for -

- (a) services in addition to the urgent repairs or maintenance requested, or
- (b) goods other than replacement parts necessarily used in making the repairs or carrying out the maintenance,

if the trader supplies them on the occasion of a visit such as is mentioned in that paragraph.

(3) The rights conferred by this Chapter cease to be available in the following circumstances -

- (a) in the case of a contract for the supply of sealed goods which are not suitable for return due to health protection or hygiene reasons, if they become unsealed after delivery,
- (b) in the case of a contract for the supply of sealed audio or sealed video recordings or sealed computer software, if the goods become unsealed after delivery,
- (c) in the case of any sales contract, if the goods become mixed inseparably (according to their nature) with other items after delivery.

**Right to cancel.**

86. (1) The consumer may cancel a distance or off-premises contract at any time in the cancellation period without giving any reason, and without incurring any liability except under these provisions -

- (a) section 91(3) (where enhanced delivery is chosen by the consumer),
- (b) section 91(9) (where the value of goods are diminished by consumer handling),
- (c) section 92(5) (where goods are returned by the consumer),
- (d) section 93(4) (where the consumer requests early supply of service).

(2) The cancellation period begins when the contract is entered into and ends in accordance with sections 87 or 88 (as the case may be).

(3) Subsection (1) does not affect the consumer's right to withdraw an offer made by the consumer to enter into a distance or off-premises contract at any time before the contract is entered into, without giving any reason and without incurring any liability.

**Normal cancellation period.**

87. (1) Unless section 88 applies, the cancellation period ends in accordance with this section.

(2) If the contract -

- (a) is a contract to supply a service, or

- (b) is a contract for the supply of digital content which is not supplied on a tangible medium,

the cancellation period ends at the end of 14 days after the day on which the contract is entered into.

(3) If the contract is a sales contract and subsections (4) to (6) do not apply, the cancellation period ends at the end of 14 days after the day on which the goods come into the physical possession of -

- (a) the consumer, or
- (b) a person, other than the carrier, identified by the consumer to take possession of them.

(4) If the contract is a sales contract under which multiple goods are ordered by the consumer in one order, but some are delivered on different days, the cancellation period ends at the end of 14 days after the day on which the last of the goods come into the physical possession of -

- (a) the consumer, or
- (b) a person, other than the carrier, identified by the consumer to take possession of them.

(5) If the contract is a sales contract under which goods consisting of multiple lots or pieces of something are delivered on different days, the cancellation period ends at the end of 14 days after the day on which the last of the lots or pieces come into the physical possession of -

- (a) the consumer, or

(b) a person, other than the carrier, identified by the consumer to take possession of them.

(6) If the contract is a sales contract for regular delivery of goods during a defined period of more than one day, the cancellation period ends at the end of 14 days after the day on which the first of the goods come into the physical possession of -

(a) the consumer, or

(b) a person, other than the carrier, identified by the consumer to take possession of them.

**Cancellation period extended for breach of information requirement.**

88. (1) This section applies if the trader does not provide the consumer with the information on the right to cancel required by paragraph (1) of Schedule 4, in accordance with Chapter II of this Part.

(2) If the trader provides the consumer with that information in the period of 12 months beginning with the first day of the 14 days mentioned in section 87(2) to (6), but otherwise in accordance with Chapter II of this Part, the cancellation period ends at the end of 14 days after the consumer receives the information.

(3) In circumstances other than those set out in subsection (2), the cancellation period ends at the end of 12 months after the day on which it would have ended under section 87.

**Exercise of the right to withdraw or cancel.**

89. (1) To withdraw an offer to enter into a distance or off-premises contract, the consumer must inform the trader of the decision to withdraw it.

(2) To cancel a contract under section 86(1), the consumer must

inform the trader of the decision to cancel it.

(3) To inform the trader under subsection (2) the consumer may either -

- (a) use a form following the model cancellation form in Part B of Schedule 5, or
- (b) make any other clear statement setting out the decision to cancel the contract.

(4) If the trader gives the consumer the option of filling in and submitting such a form or other statement on the trader's website -

- (a) the consumer need not use it, but
- (b) if the consumer does, the trader must communicate to the consumer an acknowledgement of receipt of the cancellation on a durable medium without delay.

(5) Where the consumer informs the trader under subsection (2) by sending a communication, the consumer is to be treated as having cancelled the contract in the cancellation period if the communication is sent before the end of the period.

(6) In case of dispute it is for the consumer to show that the contract was cancelled in the cancellation period in accordance with this section.

**Effect of withdrawal or cancellation.**

90. (1) If a contract is cancelled under section 86(1) -

- (a) the cancellation ends the obligations of the parties to perform the contract, and

(b) sections 91 to 95 apply.

(2) Sections 91 and 95 also apply if the consumer withdraws an offer to enter into a distance or off-premises contract.

**Reimbursement by trader in the event of withdrawal or cancellation.**

91. (1) Subject to the provisions of this section, in the circumstances set out in section 90, the trader must reimburse all payments, other than payments for delivery, received from the consumer.

(2) The trader must reimburse any payment for delivery received from the consumer, unless the consumer expressly chose a kind of delivery costing more than the least expensive common and generally acceptable kind of delivery offered by the trader.

(3) In the circumstances set out in subsection (2), the trader must reimburse any payment for delivery received from the consumer up to the amount the consumer would have paid if the consumer had chosen the least expensive common and generally acceptable kind of delivery offered by the trader.

(4) Reimbursement must be made without undue delay, and in any event it must be made not later than the time specified in subsections (5) or (6).

(5) If the contract is a sales contract and the trader has not offered to collect the goods, the time referred to in subsection (4) is the end of 14 days after -

(a) the day on which the trader receives the goods back, or

(b) if earlier, the day on which the consumer supplies evidence of having sent the goods back.

(6) In circumstances where subsection (5) does not apply, the time referred to in subsection (4) is the end of 14 days after the day on which the trader is

informed of the consumer's decision to withdraw the offer or cancel the contract, in accordance with section 89.

(7) The trader must make the reimbursement using the same means of payment as the consumer used for the initial transaction, unless the consumer has expressly agreed otherwise.

(8) The trader must not impose any fee on the consumer in respect of the reimbursement.

(9) If in the case of a sales contract the value of the goods is diminished by any amount as a result of handling of the goods by the consumer beyond what is necessary to establish the nature, characteristics and functioning of the goods, the trader may recover that amount from the consumer, up to the contract price.

(10) An amount that may be recovered under subsection (9) -

(a) may be deducted from the amount to be reimbursed under subsection (1),

(b) otherwise, must be paid by the consumer to the trader.

(11) Subsection (9) does not apply if the trader has failed to provide the consumer with the information on the right to cancel as required under paragraph (l) of Schedule 4.

(12) For the purposes of subsection (9), handling is beyond what is necessary to establish the nature, characteristics and functioning of the goods if it goes beyond the sort of handling that might reasonably be allowed in a shop.

(13) Where the provisions of this section apply to cancellation of a contract, the contract is to be treated as including those provisions as terms.

**Return of goods in the event of cancellation.**

92. (1) Where a sales contract is cancelled under section 86(1), it is the trader's responsibility to collect the goods if -

- (a) the trader has offered to collect them, or
- (b) in the case of an off-premises contract, the goods were delivered to the consumer's home when the contract was entered into and could not, by their nature, normally be returned by post.

(2) Where a sales contract is cancelled under section 86(1) and it is not the trader's responsibility under subsection (1) to collect the goods, the consumer must -

- (a) send the goods back, or
- (b) hand them over to the trader or to a person authorised by the trader to receive them.

(3) The address to which goods must be sent under subsection (2)(a) is -

- (a) any address specified by the trader for sending the goods back,
- (b) if no address is specified for that purpose, any address specified by the trader for the consumer to contact the trader,
- (c) if no address is specified for either of those purposes, any place of business of the trader.

(4) The consumer must send off the goods under subsection (2)(a), or hand them over under subsection (2)(b), without undue delay and in any event not later than 14 days after the day on which the consumer informs the trader as required by section 89(2).

(5) The consumer must bear the direct cost of returning goods under subsection (2), unless -

- (a) the trader has agreed to bear those costs, or
- (b) the trader failed to provide the consumer with the information about the consumer bearing those costs, required by paragraph (m) of Schedule 4.

(6) The contract is to be treated as including a term that the trader must bear the direct cost of the consumer returning goods under subsection (2) where subsection (5)(b) applies.

(7) The consumer is not required to bear any other cost of returning goods under subsection (2).

(8) The consumer shall only bear any cost of collecting goods under subsection (1) if he or she has agreed to bear them.

**Supply of service in cancellation period.**

93. (1) The trader must not begin the supply of a service before the end of the cancellation period provided for in section 87(1) unless the consumer -

- (a) has made an express request, and
- (b) in the case of an off-premises contract, has made the request on a durable medium.

(2) In the case of a service other than supply of water, gas, electricity or district heating, the consumer ceases to have the right to cancel a contract to supply a service under section 86(1) if the service has been fully performed, and performance of the service began -

- (a) after a request by the consumer in accordance with subsection (1), and
- (b) with the acknowledgement that the consumer would lose that right once the contract had been fully performed by the trader.

(3) Subsections (4) to (6) apply where a contract is cancelled under section 95(1) and a service has been supplied in the cancellation period.

(4) Where the service is supplied in response to a request in accordance with subsection (1), the consumer must (subject to subsection (6)) pay to the trader an amount -

- (a) for the supply of the service for the period for which it is supplied, ending with the time when the trader is informed of the consumer's decision to cancel the contract, in accordance with section 89(2), and
- (b) which is in proportion to what has been supplied, in comparison with the full coverage of the contract.

(5) The amount referred to in subsection (5) is to be calculated -

- (a) on the basis of the total price agreed in the contract, or
- (b) if the total price is excessive, on the basis of the market value of the service that has been supplied, calculated

by comparing prices for equivalent services supplied by other traders.

(6) The consumer bears no cost for supply of the service, in full or in part, in the cancellation period, if -

- (a) the trader has failed to provide the consumer with the information on the right to cancel required by paragraph (l) of Schedule 4, or the information on payment of that cost required by paragraph (n) of that Schedule, or
- (b) the service is not supplied in response to a request in accordance with subsection (1).

**Supply of digital content in cancellation period.**

94. (1) Under a contract for the supply of digital content not on a tangible medium, the trader must not begin supply of the digital content before the end of the cancellation period provided for in section 87(1), unless -

- (a) the consumer has given express consent, and
- (b) the consumer has acknowledged that the right to cancel the contract under section 87(1) will be lost.

(2) The consumer ceases to have the right to cancel such a contract under section 87(1) if, before the end of the cancellation period, supply of the digital content has begun after the consumer has given the consent and acknowledgement required by subsection (1).

(3) Subsection (4) applies where a contract is cancelled under section 87(1) and digital content has been supplied, not on a tangible medium, in the

cancellation period.

(4) The consumer bears no cost for supply of the digital content, in full or in part, in the cancellation period, if -

- (a) the consumer has not given prior express consent to the beginning of the performance of the digital content before the end of the 14-day period referred to in section 87,
- (b) the consumer gave that consent but did not acknowledge when giving it that the right to cancel would be lost, or
- (c) the trader failed to provide confirmation required by sections 73(5) or 77(3).

**Effects of withdrawal or cancellation on ancillary contracts.**

95. (1) If a consumer withdraws an offer to enter into a distance or off-premises contract, or cancels such a contract under section 86(1), any ancillary contracts are automatically terminated, without any costs for the consumer, other than any costs arising under these provisions set out in subsection (2).

(2) The provisions referred to in subsection (1) are -

- (a) section 91(3) (where enhanced delivery was chosen by the consumer),
- (b) section 91(9) (where the value of goods was diminished by consumer handling),
- (c) section 92(5) (where goods were returned by the consumer),

(d) section 93(4) (where the consumer requests early supply of service).

(3) When a trader is informed by a consumer under section 89(1) or (2) of a decision to withdraw an offer or cancel a contract, the trader must inform any other trader with whom the consumer has an ancillary contract that it is terminated under subsection (1).

(4) An "**ancillary contract**", in relation to a distance or off-premises contract, means a contract by which the consumer acquires goods or services related to such a contract, where those goods or services are provided -

(a) by the trader, or

(b) by a third party on the basis of an arrangement between the third party and the trader.

(5) Section 67(1)(b) does not limit the contracts that are ancillary contracts for the purposes of this section.

#### CHAPTER IV MISCELLANEOUS

##### **Additional payments under a contract.**

96. (1) Under a contract between a trader and a consumer, no payment is payable in addition to the remuneration agreed for the trader's main obligation unless, before the consumer became bound by the contract, the trader obtained the consumer's express consent; and for the purposes of this section there is no express consent (if there would otherwise be) if consent is inferred from the consumer not changing a default option (such as a pre-ticked box on a website).

(2) This section does not apply if the trader's main obligation is to supply services within section 67(1)(b), but in any other case it applies even if an additional payment is for such services.

(3) Where a trader receives an additional payment which, under this section, is not payable under a contract, the contract is to be treated as providing for the trader to reimburse the payment to the consumer.

**Helpline charges over basic rate.**

97. (1) Where a trader operates a telephone line for the purpose of consumers contacting the trader by telephone in relation to contracts entered into with the trader, a consumer contacting the trader must not be bound to pay more than the basic rate.

(2) In the circumstances set out in subsection (1), if a consumer who contacts a trader in relation to a contract is bound to pay more than the basic rate, the contract is to be treated as providing for the trader to pay to the consumer any amount by which the charge paid by the consumer for the call is more than the basic rate.

(3) This section does not prevent the consumer seeking other remedies where it is open to the consumer to do so.

**Complaints.**

98. It is the duty of the TSS to consider any complaint made to it about a contravention of this Part, unless the complaint appears to the TSS to be frivolous or vexatious.

**Enforcement of Part III: orders to secure compliance.**

99. (1) The TSS may apply to the Royal Court sitting as an Ordinary Court for an injunction against any person who appears to the TSS to be responsible for a contravention of this Part.

(2) The court on an application under this section may grant an injunction or other order on such terms as it thinks fit to secure compliance with this Part.

**Enforcement of Part III: application of Schedule 1.**

100. Paragraphs 4 and 5 of Schedule 1 apply to an application for an injunction under this section as they do to an application for an injunction under paragraph 3 of that Schedule.

PART IV

UNFAIR COMMERCIAL PRACTICES

CHAPTER I

GENERAL

**Effect of commercial practices on the average consumer.**

101. (1) A trader ("T") who demands payment from a consumer ("C") in full or partial settlement of C's liabilities or purported liabilities to T is to be treated for the purposes of this Chapter as offering to supply a product to C, and the product that T offers to supply comprises the full or partial settlement of those liabilities or purported liabilities.

(2) In determining the effect of a commercial practice on the average consumer where the practice reaches or is addressed to a consumer, account shall be taken of the material characteristics of such an average consumer including that consumer's being reasonably well informed, reasonably observant and circumspect.

(3) In determining the effect of a commercial practice on the average consumer where the practice is directed to a particular group of consumers,

a reference to the average consumer shall be read as referring to the average member of that group.

(4) In determining the effect of a commercial practice on the average consumer -

- (a) where a clearly identifiable group of consumers is particularly vulnerable to the practice or the underlying product because of their mental or physical infirmity, age or credulity in a way which the trader could reasonably be expected to foresee, and
- (b) where the practice is likely to materially distort the economic behaviour only of that group,

a reference to the average consumer shall be read as referring to the average member of that group.

(5) Subsection (4) is without prejudice to the common and legitimate advertising practice of making exaggerated statements which are not meant to be taken literally.

**Prohibition of unfair commercial practices.**

102. (1) Unfair commercial practices are prohibited.

(2) A commercial practice is unfair if -

- (a) it contravenes the requirements of professional diligence, and
- (b) it materially distorts or is likely to materially distort the economic behaviour of the average consumer with regard to the product.

- (3) A commercial practice is also unfair if -
- (a) it is a misleading action within the meaning of section 104,
  - (b) it is a misleading omission within the meaning of section 105,
  - (c) it is aggressive within the meaning of section 106, or
  - (d) it is listed in Schedule 6.

(4) In this Part, "**materially distort the economic behaviour**" means in relation to an average consumer, appreciably to impair the average consumer's ability to make an informed decision thereby causing the consumer to take a transactional decision that that consumer would not have taken otherwise.

**Prohibition of the promotion of unfair commercial practices.**

**103.** The promotion of any unfair commercial practice by a code owner in a code of conduct is prohibited.

**Misleading actions.**

**104.** (1) A commercial practice is a misleading action for the purposes of section 102 if it satisfies the conditions in either subsection (2) or (3).

(2) A commercial practice satisfies the conditions of this subsection if -

- (a) it contains false information, and is therefore untruthful in relation to any of the matters in subsection (4), or

- (b) it or its overall presentation in any way deceives or is likely to deceive the average consumer in relation to any of the matters in that subsection, even if the information is factually correct,

and it causes or is likely to cause the average consumer to take a transactional decision that consumer would not have taken otherwise.

(3) A commercial practice satisfies the conditions of this subsection if -

- (a) it concerns any marketing of a product (including comparative advertising) which creates confusion with any products, trade marks, trade names or other distinguishing marks of a competitor, or
- (b) it concerns any failure by a trader to comply with a commitment contained in a code of conduct which the trader has undertaken to comply with, if -
  - (i) the trader indicates in a commercial practice that the trader is bound by that code of conduct, and
  - (ii) the commitment is firm and capable of being verified and is not aspirational,

and it causes or is likely to cause the average consumer to take a transactional decision which that consumer would not have taken otherwise, taking account of its factual context and of all its features and circumstances.

(4) The matters referred to in subsection (2)(a) are -

- (a) the existence or nature of the product,
- (b) the main characteristics of the product (as defined in subsection (5)),
- (c) the extent of the trader's commitments,
- (d) the motives for the commercial practice,
- (e) the nature of the sales process,
- (f) any statement or symbol relating to direct or indirect sponsorship or approval of the trader or the product,
- (g) the price or the manner in which the price is calculated,
- (h) the existence of a specific price advantage,
- (i) the need for a service, part, replacement or repair,
- (j) the nature, attributes and rights of the trader (as defined in subsection (6)),
- (k) the consumer's rights or the risks that consumer may face.

(5) For the purposes of this Chapter, the "**main characteristics of the product**" include-

- (a) availability of the product,
- (b) benefits of the product,
- (c) risks of the product,
- (d) execution of the product,

- (e) composition of the product,
- (f) accessories of the product,
- (g) after-sale customer assistance concerning the product,
- (h) the handling of complaints about the product,
- (i) the method and date of manufacture of the product,
- (j) the method and date of provision of the product,
- (k) delivery of the product,
- (l) fitness for purpose of the product,
- (m) usage of the product,
- (n) quantity of the product,
- (o) specification of the product,
- (p) geographical or commercial origin of the product,
- (q) results to be expected from use of the product, and
- (r) results and material features of tests or checks carried out on the product.

(6) For the purposes of subsection (4)(j), the "**nature, attributes and rights**" of the trader include the trader's -

- (a) identity,
- (b) assets,
- (c) qualifications,

- (d) status,
- (e) approval,
- (f) affiliations or connections,
- (g) ownership of industrial, commercial or intellectual property rights, and
- (h) awards and distinctions.

(7) For the purposes of subsection (4)(k), the "**consumer's rights**" include rights the consumer may have under sections 17, 21 or 22.

**Misleading omissions.**

**105.** (1) A commercial practice is a misleading omission if, in its factual context, taking account of the matters in subsection (2) -

- (a) the commercial practice omits material information,
- (b) the commercial practice hides material information,
- (c) the commercial practice provides material information in a manner which is unclear, unintelligible, ambiguous or untimely, or
- (d) the commercial practice fails to identify its commercial intent, unless this is already apparent from the context,

and as a result it causes or is likely to cause the average consumer to take a transactional decision that consumer would not have taken otherwise.

(2) The matters referred to in subsection (1) are -

- (a) all the features and circumstances of the commercial practice,
- (b) the limitations of the medium used to communicate the commercial practice (including limitations of space or time), and
- (c) where the medium used to communicate the commercial practice imposes limitations of space or time, any measures taken by the trader to make the information available to consumers by other means.

(3) In this section "**material information**" means -

- (a) the information which the average consumer needs, according to the context, to take an informed transactional decision, and
- (b) any information requirement which applies in relation to a commercial communication as a result of any enactment having effect in Guernsey.

(4) Where a commercial practice is an invitation to purchase, the following information will be material if not already apparent from the context in addition to any other information which is material information under subsection (3)-

- (a) the main characteristics of the product, to the extent appropriate to the medium by which the invitation to purchase is communicated and the product,

- (b) the identity of the trader, such as the trader's trading name, and the identity of any other trader on whose behalf the trader is acting,
- (c) the geographical address of the trader and the geographical address of any other trader on whose behalf the trader is acting,
- (d) either -
  - (i) the price, including any taxes, or
  - (ii) where the nature of the product is such that the price cannot reasonably be calculated in advance, the manner in which the price is calculated,
- (e) where appropriate, either -
  - (i) all additional freight, delivery or postal charges, or
  - (ii) where such charges cannot reasonably be calculated in advance, the fact that such charges may be payable,
- (f) the following matters where they depart from the requirements of professional diligence -
  - (i) arrangements for payment,
  - (ii) arrangements for delivery,
  - (iii) arrangements for performance,

- (iv) complaint handling policy, and
- (g) for products and transactions involving a right of withdrawal or cancellation, the existence of such a right.

**Aggressive commercial practices.**

106. (1) A commercial practice is aggressive if, in its factual context, taking account of all of its features and circumstances -

- (a) it significantly impairs or is likely significantly to impair the average consumer's freedom of choice or conduct in relation to the product concerned through the use of harassment, coercion or undue influence, and
- (b) it thereby causes or is likely to cause a consumer to take a transactional decision that consumer would not have taken otherwise.

(2) In determining whether a commercial practice uses harassment, coercion or undue influence account shall be taken of -

- (a) its timing, location, nature or persistence,
- (b) the use of threatening or abusive language or behaviour,
- (c) the exploitation by the trader of any specific misfortune or circumstance of such gravity as to impair the consumer's judgment, of which the trader is

aware, to influence the consumer's decision with regard to the product,

- (d) any onerous or disproportionate non-contractual barrier imposed by the trader where a consumer wishes to exercise rights under the contract, including rights to terminate a contract or to switch to another product or another trader, and
  - (e) any threat to take any action which cannot be taken in law.
- (3) In this section -
- (a) "**coercion**" includes (but is not limited to) the use of physical force, and
  - (b) "**undue influence**" means exploiting a position of power in relation to the consumer so as to apply pressure, even without using or threatening to use physical force, in a way which significantly limits the consumer's ability to make an informed decision.

**Inertia selling.**

107. (1) This section applies where a trader engages in the unfair commercial practice described in paragraph 29 of Schedule 6 (inertia selling).

(2) Where this section applies the consumer is exempted from any obligation to provide consideration for the products supplied by the trader, and the absence of a response from the consumer following the supply does not constitute consent to the provision of consideration for, or the return or safekeeping of, the products.

(3) In the case of an unsolicited supply of goods, the consumer may, as between the consumer and the trader, use, deal with or dispose of the goods as if they were an unconditional gift to the consumer.

## CHAPTER II

### CONSUMER'S RIGHTS TO REDRESS

#### Consumer's rights to redress.

108. (1) The rights for consumers conferred under sections 112 to section 117 ("**rights to redress**") are available if -

- (a) the conditions in this section are met, and
- (b) the conditions (if any) in the following provisions of this Chapter for the availability of the right in question are met.

(2) The first condition is that (subject to subsection (3)) -

- (a) the consumer enters into a contract with a trader for the sale or supply of a product by the trader (in this Chapter, a "**business to consumer contract**"),
- (b) the consumer enters into a contract with a trader for the sale of goods to the trader (in this Chapter, a "**consumer to business contract**"), or
- (c) the consumer makes a payment to a trader for the supply of a product (in this Chapter, a "**consumer payment**").

(3) Subsection (2)(b) does not apply if, under the contract, the trader supplies or agrees to supply a product to the consumer as well as paying or agreeing to pay the consumer.

(4) The second condition is that -

(a) the trader engages in a prohibited practice in relation to the product, or

(b) in a case where a consumer enters into a business to consumer contract for goods or digital content -

(i) a producer engages in a prohibited practice in relation to the goods or digital content, and

(ii) when the contract is entered into, the trader is aware of the commercial practice that constitutes the prohibited practice or could reasonably be expected to be aware of it.

(5) The third condition is that the prohibited practice is a significant factor in the consumer's decision to enter into the contract or make the payment.

**Meaning of "prohibited practice" in this Chapter.**

109. (1) In this Chapter "**prohibited practice**" means a commercial practice that -

(a) is a misleading action under section 104, or

(b) is aggressive under section 106.

(2) Sections 104 and 106 apply for the purposes of this Chapter as if for the definition of "**transactional decision**" in section 204(1) there were substituted-

""**transactional decision**" means any decision taken by a consumer to enter into a contract with a trader for the sale or supply of a product by the trader, or for the sale of goods to the trader, or to make a payment to a trader for the supply of a product.".

**Products to which this Chapter does not apply.**

110. In this Chapter "**product**" does not include immovable property other than a lease of residential property for a term of seven years or less.

**Financial services to which this Chapter does not apply.**

111. In this Chapter "**product**" does not include a service provided in the course of carrying on a regulated business within the meaning of section 3 of the Financial Services Business (Enforcement Powers) (Bailiwick of Guernsey) Law, 2020<sup>h</sup>.

**Application of the right to unwind: business to consumer contract.**

112. (1) A consumer has the right to unwind in respect of a business to consumer contract if the consumer indicates to the trader that the consumer rejects the product, and does so -

- (a) within the relevant period, and
- (b) at a time when the product is capable of being rejected.

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<sup>h</sup> Order in Council No. XVII of 2021. This enactment has been amended.

(2) An indication under subsection (1) may be something that the consumer says or does, but it must be clear.

(3) For the purposes of subsection (1)(a) "**the relevant period**" means the period of 90 days beginning with the later of -

(a) the day on which the consumer enters into the contract, or

(b) the relevant day.

(4) Subject to subsection (5), in this Chapter "**the relevant day**" means the day on which -

(a) the goods are first delivered,

(b) the performance of the service begins,

(c) the digital content is first supplied, or

(d) the right is first exercisable,

(as the case may be).

(5) In the case of a mixed contract, "**the relevant day**" means the latest of the days mentioned in subsection (4) that is relevant to the contract.

(6) For the purposes of this Chapter, where the consumer's access to digital content on a device requires its transmission to the device under arrangements initiated by the trader, the day on which the digital content is first provided is -

(a) the day on which it reaches the device, or

- (b) if earlier, the day on which it reaches another trader chosen by the consumer to supply, under a contract with the consumer, a service by which digital content reaches the device.

(7) For the purposes of subsection (1)(b), a product remains capable of being rejected only if -

- (a) the goods have not been fully consumed,
- (b) the service has not been fully performed,
- (c) the digital content has not been fully consumed, or
- (d) the right has not been fully exercised,

(as the case may be).

(8) For the purposes of subsection (7) -

- (a) goods have been fully consumed only if nothing is left of them, and
- (b) digital content has been fully consumed only if the digital content was available to the consumer for a fixed period and that period has expired.

(9) A consumer does not have the right to unwind in respect of a business to consumer contract if the consumer has exercised the right to a discount in respect of that contract and the same prohibited practice.

**Right to unwind: business to consumer contract.**

113. (1) Where a consumer has the right to unwind in respect of a business to consumer contract under section 112 -

- (a) the contract comes to an end so that the consumer and the trader are released from their obligations under it,
- (b) subject to the provisions of this section, the trader has a duty to give the consumer a refund, and
- (c) if the contract was wholly or partly for the sale or supply of goods the consumer must make the goods available for collection by the trader.

(2) Subject to sections (7) to (9), to the extent that the consumer paid money under the contract, the consumer is entitled to receive back the same amount of money.

(3) Subject to subsection (4), 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.

(4) To the extent that the consumer transferred under the contract something for which the same amount of the same thing cannot be substituted -

- (a) the consumer is entitled to receive back in its original state whatever the consumer transferred, or
- (b) if it cannot be given back in its original state, the consumer is entitled to be paid its market price as at the time when the product was rejected.

(5) There is no entitlement to a refund if none of subsections (2) to (4) applies.

(6) The consumer's entitlement to receive back the same amount of money as the consumer paid is qualified by subsections (7) to (9) if -

- (a) the contract was for the sale or supply of a product on a regular or continuous basis, and
- (b) the period beginning with the relevant day and ending with the day on which the consumer rejected the product exceeds one month.

(7) Where subsection (6) applies, subject to subsection (8) the consumer is only entitled to receive back the amount (if any) found by deducting the market price, when the consumer rejected the product, of the product supplied up to that time from the amount the consumer paid for it.

(8) Subsection (7) does not apply if it is not appropriate to apply that deduction having regard to -

- (a) the behaviour of the person who engaged in the prohibited practice, and
- (b) the impact of the practice on the consumer.

(9) Where the product supplied up to the time when the consumer rejected it consists wholly or partly of goods, their market price is only to be taken into account under subsection (7) to the extent that they have been consumed.

**Right to unwind: consumer to business contract.**

114. (1) A consumer who has a right to redress in accordance with section 110 in respect of a consumer to business contract -

- (a) has the right to treat the contract as at an end so that the trader and the consumer are released from their obligations under it, and
- (b) has the rights and obligations set out subsection (3).

(2) To treat the contract as at an end for these purposes, the consumer must indicate clearly to the trader that the contract is ended.

(3) If the trader is able to return the goods to the consumer in the condition they were in when sold by the consumer -

(a) the consumer has a right to the return of the goods,

(b) the consumer must repay to the trader the amount (if any) that the trader has paid for the goods.

(4) If subsection 3 does not apply, the consumer has a right to a payment from the trader of the amount (if any) by which the market price of the goods when the trader paid for them exceeds what the trader paid for them.

**Right to unwind: payments demanded that are not due.**

115. A consumer who has made a payment to a trader for a product in circumstances where the consumer was not required to make all or part of the payment has the right to receive back from the trader -

(a) the same amount of money as the consumer paid to the trader, or

(b) in a case where the consumer was required to make part of the payment, an amount equal to the part of the payment the consumer was not required to make.

**Right to a discount.**

116. (1) A consumer has the right to a discount in respect of a business to consumer contract if -

(a) the consumer has made one or more payments for the product to the trader or one or more payments under the

contract have not been made, and

- (b) the consumer has not exercised the right to unwind in respect of the contract.

(2) If the consumer has made one or more payments, the consumer has the right to receive back from the trader the relevant percentage of the payment or payments.

(3) If one or more payments have not been made, the consumer has the right -

- (a) to reduce by the relevant percentage as many of those payments as is appropriate having regard to the seriousness of the prohibited practice, or

- (b) in a case within subsection (6), to reduce all of those payments by the relevant percentage within the meaning of subsection (7).

(4) Subject to subsection (6) and (7), the relevant percentage is -

- (a) 25% if the prohibited practice is more than minor but not significant,

- (b) 50% if the prohibited practice is significant but not serious,

- (c) 75% if the prohibited practice is serious but not very serious,

- (d) 100% if the prohibited practice is very serious.

(5) The seriousness of the prohibited practice is to be assessed by reference to -

- (a) the behaviour of the person who engaged in the practice,
- (b) the impact of the practice on the consumer, and
- (c) the time that has elapsed since the prohibited practice took place.

(6) Subsection (4) does not apply if -

- (a) the amount payable for the product under the contract exceeds £5,000,
- (b) the market price of the product, at the time that the consumer entered into the contract, is lower than the amount payable for it under the contract, and
- (c) there is clear evidence of the difference between the market price of the product and the amount payable for it under the contract.

(7) In the circumstances set out in subsection (6), the relevant percentage is the percentage difference between the market price of the product and the amount payable for it under the contract.

(8) The application of this section does not affect any of the other rights and liabilities under the contract.

**Right to damages.**

117. (1) Subject to the provisions of this section, a consumer has the right to damages within the meaning of subsection (2) if the consumer -

- (a) has incurred financial loss which the consumer would not have incurred if the prohibited practice in question had not taken place, or
- (b) has suffered alarm, distress or physical inconvenience or discomfort which the consumer would not have suffered if the prohibited practice in question had not taken place.

(2) Subject to subsections (3) to (5), the right to damages under subsection (1) is the right to be paid damages by the trader for the loss or the alarm, distress or physical inconvenience or discomfort in question.

(3) The right to be paid damages for financial loss does not include the right to be paid damages in respect of the difference between the market price of a product and the amount payable for it under a contract.

(4) The right to be paid damages under this section is a right to be paid only damages in respect of loss that was reasonably foreseeable at the time of the prohibited practice.

(5) A consumer does not have the right to damages if the trader proves that -

- (a) the occurrence of the prohibited practice in question was due to -
  - (i) a mistake,
  - (ii) reliance on information supplied to the trader by another person,

- (iii) the act or default of a person other than the trader,
  - (iv) an accident, or
  - (v) another cause beyond the trader's control, and
- (b) the trader took all reasonable precautions and exercised all due diligence to avoid the occurrence of the prohibited practice.

**Enforcement by consumer of rights to redress.**

118. (1) A consumer with a right to redress under this Chapter may bring a claim in civil proceedings to enforce that right.

(2) A claim falling within subsection (1) shall be treated as falling within Article 1 of Loi relative aux Prescriptions 1889<sup>i</sup>.

**Application of Chapter II to existing law.**

119. (1) Subject to subsection (2), nothing in this Chapter affects the ability of a consumer to make a claim under a rule of law or equity, or under an enactment, in respect of conduct constituting a prohibited practice.

(2) A consumer may not -

- (a) make a claim to be compensated under a rule of law or equity, or under an enactment, in respect of such conduct if the consumer has been compensated under this Chapter in respect of the conduct, or

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<sup>i</sup> Ordres en Conseil Vol. II, p. 326. This enactment has been amended.

- (b) make a claim to be compensated under this Chapter in respect of such conduct if the consumer has been compensated under a rule of law or equity, or under an enactment, in respect of the conduct.

### CHAPTER III

#### OFFENCES UNDER PART IV

##### **Offences relating to unfair commercial practices: section 102.**

120. (1) A trader is guilty of an offence if -

- (a) that trader knowingly or recklessly engages in a commercial practice which contravenes the requirements of professional diligence under section 102(2)(a), and
- (b) the practice materially distorts or is likely to materially distort the economic behaviour of the average consumer with regard to the product under section 102(2)(b).

(2) For the purposes of subsection (1)(a), a trader who engages in a commercial practice without regard to whether the practice contravenes the requirements of professional diligence shall be deemed to engage recklessly in the practice, whether or not the trader has reason for believing that the practice might contravene those requirements.

##### **Offences relating to unfair commercial practices: section 104.**

121. A trader is guilty of an offence if that trader engages in a commercial practice which is a misleading action under section 104 otherwise than by reason of the commercial practice satisfying the condition in section 104(3)(b).

**Offences relating to unfair commercial practices: section 105.**

122. A trader is guilty of an offence if that trader engages in a commercial practice which is a misleading omission under section 105.

**Offences relating to unfair commercial practices: section 106.**

123. A trader is guilty of an offence if that trader engages in a commercial practice which is aggressive under section 106.

**Offences relating to unfair commercial practices: Schedule 5.**

124. A trader is guilty of an offence if that trader engages in a commercial practice set out in any of paragraphs 1 to 10, 12 to 26 and 28 to 30 of Schedule 6.

**Penalty for offences under this Part.**

125. A trader guilty of an offence under section 120, 121, 122, 123 or 124 shall be liable -

- (a) on summary conviction, to a fine not exceeding level 5 on the uniform scale, or
- (b) on conviction on indictment, to a fine or imprisonment for a term not exceeding two years or both.

**Time limit for prosecution of offences under this Part.**

126. No proceedings for an offence under this Part shall be commenced after the end of the period of three years beginning with the date of the commission of the offence.

**Offence under this Part due to the default of another person.**

127. (1) This section applies where a person ("X") -

- (a) commits an offence under section 121, 122, 123 or 124, or

- (b) would have committed an offence under those sections but for a defence under section 128 or 129,

and the commission of the offence, or of what would have been an offence but for X being able to rely on a defence under section 128 or 129, is due to the act or default of some other person ("Y").

(2) Where this section applies Y is guilty of the offence, subject to sections 128 and 129, whether or not Y is a trader and whether or not Y's act or default is a commercial practice.

(3) Y may be charged with and convicted of the offence by virtue of subsection (2) whether or not proceedings are taken against X.

**Due diligence defence: offence under sections 121 - 124.**

**128.** In any proceedings against a person ("A") for an offence under section 121, 122, 123 or 124 it is a defence for A to prove -

- (a) that the commission of the offence was due to -
  - (i) a mistake,
  - (ii) reliance on information supplied to A by another person,
  - (iii) the act or default of another person,
  - (iv) an accident, or
  - (v) another cause beyond A's control, and
- (b) that A took all reasonable precautions and exercised all due diligence to avoid the commission of such an offence by A or by any person under A's control.

**Innocent publication of advertisement defence.**

129. In any proceedings against a person ("A") for an offence under section 121, 122, 123 or 124 committed by the publication of an advertisement it shall be a defence for A to prove that -

- (a) A is a person whose business it is to publish or to arrange for the publication of advertisements,
- (b) A received the advertisement for publication in the ordinary course of business, and
- (c) A did not know and had no reason to suspect that its publication would amount to an offence under the regulation to which the proceedings relate.

PART V

PRODUCT SAFETY

**Application of Part V, and definitions.**

130. (1) Subject to subsection (2) and section 3, where a product is subject to specific provisions in any other enactment concerning product safety this Part applies only to the risks or category of risks not covered by those provisions, and accordingly the definitions of "**safe product**" and "**dangerous product**" in section 204 shall not apply to such a product in so far as concerns the risks or category of risks in respect of which the specific provisions make provision.

(2) This Part does not apply to a second-hand product supplied as a product to be repaired or reconditioned prior to being used, provided that the supplier clearly informs the person to whom the product is supplied of that fact at the time of supply; and this Part shall be construed accordingly.

(3) In this Part, "**product**" means a product intended for consumers

or likely, under reasonably foreseeable conditions, to be used by consumers even if not intended for them and which is supplied or made available, whether for consideration or not, in the course of a commercial activity, and includes a product that is supplied or made available to consumers for their own use in the context of providing a service; but for the avoidance of doubt "**product**" does not include equipment used by service providers themselves to supply a service to consumers, in particular equipment on which consumers ride or travel which is operated by a service provider.

*General safety requirement, and other obligations of producers and distributors*

**General safety requirement.**

131. (1) A producer shall not place a product on the market unless the product is a safe product.

(2) A producer shall not offer or agree to place a product on the market or expose or possess a product for placing on the market unless the product is a safe product.

(3) A producer shall not offer or agree to supply a product or expose or possess a product for supply unless the product is a safe product.

(4) A producer shall not supply a product unless the product is a safe product.

(5) The prohibitions imposed by this section are collectively referred to in this Ordinance as the "**general safety requirement**".

**Presumption of conformity.**

132. (1) Where there is no specific provision in an enactment governing the safety of a product, a product conforming to the relevant provisions of an

enactment prescribing health and safety requirements which the product must satisfy in order to be marketed in Guernsey shall be deemed to be a safe product so far as concerns the risks or categories of risk in respect of which those provisions make provision.

- (2) Where a product conforms to a standard ("S") which -
  - (a) is a voluntary national standard of the United Kingdom or a standard adopted by an international standardising body, and
  - (b) meets the conditions in subsection (3),

the product shall be presumed to be a safe product so far as concerns the risks and categories of risk covered by that national standard (S).

- (3) The conditions referred to in subsection (2) are that -
  - (a) the Committee is satisfied that the relevant authority in the United Kingdom considers S appropriate for the purpose of giving rise to the presumption of conformity, and
  - (b) the Committee has adopted that standard, and has published that fact in such form and in such manner as it considers appropriate.

(4) Where the Committee considers that there are special circumstances which make it unnecessary for a product to conform to a standard adopted under subsection (3), the Committee may exempt the product from that standard subject to compliance with such conditions, if any, as it considers necessary.

(5) In circumstances other than those referred to in subsections (1), (2) and (4), whether a product is a safe product shall be assessed taking into account -

- (a) any voluntary national standard of the United Kingdom giving effect to a European Standard, other than one referred to in subsection (2),
- (b) other national standards drawn up in the United Kingdom,
- (c) recommendations of the European Commission setting guidelines on product safety assessment,
- (d) product safety codes of good practice in the sector concerned,
- (e) the state of the art and technology, and
- (f) reasonable consumer expectations concerning safety.

(6) The fact that a product is deemed or presumed to be a safe product under this section shall not prevent the TSS from exercising its powers in relation to that product where there is evidence that it is a dangerous product.

**Other obligations of producers.**

133. (1) Within the limits of the producer's activities, a producer ("P") shall provide consumers with information necessary to enable them -

- (a) to assess the risks inherent in a product throughout the normal or reasonably foreseeable period of its use, where such risks are not immediately obvious without adequate warnings, and

(b) to take precautions against those risks.

(2) The presence of warnings does not exempt any person from compliance with the other requirements of this Part.

(3) Within the limits of P's activities, P shall adopt measures commensurate with the characteristics of the products which P supplies to enable P to -

(a) be informed of the risks which the products might pose, and

(b) take appropriate action including, where necessary to avoid such risks, withdrawal, adequately and effectively warning consumers as to the risks, and recall.

(4) The measures referred to in subsection (3) include, but are not limited to -

(a) except where it is not reasonable to do so, an indication by means of the product or its packaging of -

(i) the name and address of the producer, and

(ii) the product reference or where applicable the batch of products to which it belongs, and

(b) where and to the extent that it is reasonable to do so —

(i) sample testing of marketed products,

- (ii) investigating and if necessary keeping a register of complaints concerning the safety of the product, and
- (iii) keeping distributors informed of the results of such monitoring where a product presents a risk or may present a risk.

**Obligations of distributors.**

134. (1) A distributor shall act with due care in order to help ensure compliance with the applicable safety requirements, and in particular a distributor -

- (a) shall not expose or possess for supply or offer or agree to supply, or supply, a product to any person which the distributor knows or ought to have known, on the basis of the information in that distributor's possession and as a professional, is a dangerous product, and
- (b) shall, within the limits of the distributor's activities, participate in monitoring the safety of a product placed on the market, in particular by —
  - (i) passing on information on the risks posed by the product,
  - (ii) keeping the documentation necessary for tracing the origin of the product,
  - (iii) producing the documentation necessary for tracing the origin of the product, and cooperating in action taken by a producer or the TSS to avoid the risks.

(2) A distributor shall, within the limits of that distributor's activities, take measures to cooperate efficiently in the action referred to in subsection (1)(b)(iii).

**Obligations of producers and distributors.**

135. (1) Where a producer or a distributor knows that a product placed on the market or supplied by that producer or distributor poses risks to the consumer that are incompatible with the general safety requirement, that producer or distributor shall immediately notify the TSS in writing of that information and -

- (a) the action taken to prevent risk to the consumer, and
- (b) where the product is being or has been marketed or otherwise supplied to consumers outside the Bailiwick, of the identity of each jurisdiction in which, to the best of that producer or distributor's knowledge, it is being or has been so marketed or supplied.

(2) Subsection (1) shall not apply -

- (a) in the case of a second-hand product supplied as an antique or as a product to be repaired or reconditioned prior to being used, provided the supplier clearly informed the person to whom he supplied the product to that effect,
- (b) in conditions concerning isolated circumstances or products.

(3) In the event of a serious risk to the consumer the notification under subsection (1) shall include the following -

- (a) information enabling a precise identification of the product or batch of products in question,
- (b) a full description of the risks that the product presents,
- (c) all available information relevant for tracing the product, and
- (d) a description of the action undertaken to prevent risks to the consumer.

(4) A producer or a distributor shall, within the limits of that producer or distributor's activities, co-operate with the TSS (at the TSS's request) in action taken to avoid the risks posed by a product which that producer or distributor supplies or has supplied.

(5) The TSS shall maintain procedures for such co-operation, including procedures for engagement and information sharing with the producers and distributors concerned on issues related to product safety.

#### *Enforcement*

#### **Enforcement by the TSS.**

136. (1) It shall be the duty of the TSS to enforce this Part.

(2) The TSS shall, in enforcing this Part, act in a manner proportionate to the seriousness of the relevant risk, and shall take due account of the precautionary principle.

(3) In order to give effect to subsection (2), the TSS shall encourage and promote voluntary action by producers and distributors.

(4) Notwithstanding subsection (3), if a product poses a serious risk to the consumer, the TSS may take any action under this Part without first encouraging and promoting voluntary action.

(5) A notice falling within sections 137 to 141 is referred to in this Part as a "**safety notice**".

### **Suspension notices.**

137. (1) Where a TSS officer has reasonable grounds for suspecting that this Ordinance has been contravened in relation to a product, a TSS officer may, for the period needed to organise appropriate safety evaluations, checks and controls, serve a notice ("**a suspension notice**") prohibiting the person on whom it is served from doing any of the following things without the consent of the TSS -

- (a) placing the product on the market, offering to place it on the market, agreeing to place it on the market or exposing it for placing on the market, or
- (b) supplying the product, offering to supply it, agreeing to supply it or exposing it for supply.

(2) A suspension notice served in relation to a product may require the person on whom it is served to keep the TSS informed of the location of any product in which that person has an interest.

(3) A consent given by the TSS for the purposes of subsection (1) may impose such conditions on the doing of anything for which the consent is required as the TSS considers appropriate.

### **Requirements to mark.**

138. (1) Where the Chief Trading Standards Officer has reasonable grounds for believing that a product is a dangerous product in that it could pose risks

in certain conditions, the TSS may serve a notice ("**a requirement to mark**") requiring the person on whom the notice is served at that person's own expense to undertake either or both of the following, as specified in the notice -

- (a) to ensure that the product is marked in accordance with requirements specified in the notice with warnings as to the risks it may present,
- (b) to make the marketing of the product subject to prior conditions as specified in the notice as to ensure the product is a safe product.

(2) The requirements referred to in subsection (1)(a) shall be such as to ensure that the product is marked with a warning which is suitable, clearly worded and easily comprehensible.

**Requirements to warn.**

139. Where the Chief Trading Standards Officer has reasonable grounds for believing that a product is a dangerous product in that it could pose risks for certain persons, the TSS may serve a notice ("**a requirement to warn**") requiring the person on whom the notice is served at that person's own expense to undertake one or more of the following, as specified in the notice -

- (a) where and to the extent it is practicable to do so, to ensure that any person who could be subject to such risks and who has been supplied with the product be given warning of the risks in good time and in a form specified in the notice,
- (b) to publish a warning of the risks in such form and manner as is likely to bring those risks to the attention of any such person,

- (c) to ensure that the product carries a warning of the risks in a form specified in the notice.

**Withdrawal notices.**

140. (1) Where the Chief Trading Standards Officer has reasonable grounds for believing that a product is a dangerous product, the TSS may serve a notice ("a **withdrawal notice**") prohibiting the person on whom it is served from doing any of the following things without the consent of the TSS -

- (a) placing the product on the market, offering to place it on the market, agreeing to place it on the market or exposing it for placing on the market, or
- (b) supplying the product, offering to supply it, agreeing to supply it or exposing it for supply.

(2) A withdrawal notice may require the person on whom it is served to take action to alert consumers to the risks that the product presents.

(3) Subject to subsection (4), in relation to a product that is already on the market, a withdrawal notice may only be served by the TSS where the action being undertaken by the producer or the distributor concerned in fulfilment of that producer or distributor's obligations under this Ordinance is unsatisfactory or insufficient to prevent the risks concerned to the health and safety of persons.

(4) Subsection (3) does not apply in the case of a product posing a serious risk requiring, in the view of the TSS, urgent action.

(5) A withdrawal notice served by the TSS in relation to a product may require the person on whom it is served to keep the TSS informed of the location of any such product in which that person has an interest.

(6) A consent given by the TSS for the purposes of subsection (1) may impose such conditions on the doing of anything for which the consent is required as the TSS considers appropriate.

**Recall notices.**

141. (1) Subject to subsection (4), where the Chief Trading Standards Officer has reasonable grounds for believing that a product is a dangerous product and that it has already been supplied or made available to consumers, the TSS may serve a notice ("a **recall notice**") requiring the person on whom it is served to use that person's reasonable endeavours to organise the return of the product from consumers to that person or to such other person as may be specified in the notice.

- (2) A recall notice may require -
- (a) the recall to be effected in accordance with a code of practice applicable to the product concerned, or
  - (b) the recipient of the recall notice to -
    - (i) contact consumers who have purchased the product in order to inform them of the recall, where and to the extent it is practicable to do so,
    - (ii) publish a notice in such form and such manner as is likely to bring to the attention of purchasers of the product the risk the product poses and the fact of the recall, or
    - (iii) make arrangements for the collection or return of the product from consumers who have purchased it, or for the product's disposal,

and may impose such additional requirements on the recipient of the notice as are reasonable and practicable with a view to achieving the return of the product from consumers to the person specified in the notice or its disposal.

(3) In determining what requirements to include in a recall notice, the TSS shall take into consideration the need to encourage distributors, users and consumers to contribute to its implementation.

(4) Subject to subsection (5), a recall notice may only be issued by the TSS where -

(a) other action which it may require under this Ordinance would not suffice to prevent the risks concerned to the health and safety of persons,

(b) the action being undertaken by the producer or the distributor concerned in fulfilment of their obligations under this Ordinance is unsatisfactory or insufficient to prevent the risks concerned to the health and safety of persons, and

(c) the TSS has given not less than ten business days' notice to the person on whom the recall notice is to be served of its intention to serve such a notice.

(5) Subsections (4)(b) and (c) shall not apply in the case of a product posing a serious risk requiring, in the view of the TSS, urgent action.

(6) A recall notice served by the TSS in relation to a product may require the person on whom it is served to keep the TSS informed of the whereabouts of any such product to which the recall notice relates, so far as the person is able to do so.

(7) Where the conditions in subsection (1) for serving a recall notice are satisfied and either the TSS has been unable to identify any person on whom to serve a recall notice, or the person on whom such a notice has been served has failed to comply with it, then the TSS may itself take such action as could have been required by a recall notice.

(8) Where -

(a) the TSS has complied with the requirements of subsection (4), and

(b) the TSS has exercised its powers under subsection (7) to take action following the failure of the person on whom the recall notice has been served to comply with that notice,

the TSS may recover from the person on whom the notice was served, as a civil debt, any costs or expenses reasonably incurred by it in undertaking the action referred to in paragraph (b).

**Supplementary provisions relating to safety notices.**

142. (1) In circumstances where it is reasonably practicable, prior to serving a safety notice the TSS shall give an opportunity to the person on whom the notice is to be served to submit that person's views to the TSS.

(2) When it is not reasonably practicable for the TSS to give an opportunity to the person on whom the notice is to be served to submit that person's views to the TSS prior to serving a safety notice, the TSS shall give the person an opportunity to submit any such views to the TSS after service of the notice.

(3) A safety notice served by the TSS in respect of a product shall -

- (a) describe the product in a manner sufficient to identify it,
- (b) state the reasons for serving the notice,
- (c) indicate the rights available to the recipient of the notice under this Ordinance and (where applicable) the time limits applying to their exercise, and
- (d) in the case of a suspension notice, state the period of time for which it applies.

(4) In circumstances where the TSS serves a suspension notice in respect of a product, the TSS shall be liable to pay compensation to a person having an interest in the product in respect of any loss or damage suffered by reason of the notice if -

- (a) there has been no contravention of any requirement of this Ordinance in relation to the product, and
- (b) the exercise by the TSS of the power to serve the suspension notice was not attributable to any neglect or default by that person.

(5) In circumstances where the TSS serves a withdrawal notice in respect of a product, the TSS shall be liable to pay compensation to a person having an interest in the product in respect of any loss or damage suffered by reason of the notice if -

- (a) the product was not a dangerous product, and

(b) the exercise by the TSS of the power to serve the withdrawal notice was not attributable to any neglect or default by that person.

(6) In circumstances where the TSS serves a recall notice in respect of a product, the TSS shall be liable to pay compensation to the person on whom the notice was served in respect of any loss or damage suffered by reason of the notice if-

(a) the product was not a dangerous product, and

(b) the exercise by the TSS of the power to serve the recall notice was not attributable to any neglect or default by that person.

(7) The TSS may vary or revoke a safety notice which it has served provided that the notice is not made more restrictive for the person on whom it is served, or more onerous for that person to comply with.

(8) Wherever reasonably practicable, prior to varying a safety notice the TSS shall give an opportunity to the person on whom the original notice was served to submit that person's views to the TSS.

**Appeals against safety notices.**

143. (1) A person on whom a safety notice has been served, and a person who has an interest in a product in respect of which a safety notice (other than a recall notice) has been served may, before the end of the period of 21 days beginning with the day on which the notice was served, apply to the Magistrate's Court for an order to vary or set aside the terms of the notice.

(2) On an application under subsection (1) the court shall make an order setting aside the notice only if satisfied that -

- (a) in the case of a suspension notice, there has been no contravention in relation to the product of any requirement of this Ordinance,
- (b) in the case of a requirement to mark or a requirement to warn, the product is not a dangerous product,
- (c) in the case of a withdrawal notice —
  - (i) the product is not a dangerous product, or
  - (ii) where applicable, section 140(3) has not been complied with,
- (d) in the case of a recall notice —
  - (i) the product is not a dangerous product, or
  - (ii) section 141(4) has not been complied with,
- (e) in any case, the serving of the safety notice concerned was not proportionate to the seriousness of the risk.

(3) On an application concerning the period of time specified in a suspension notice as the period for which it applies, the court may reduce the period to such period as it considers sufficient for organising appropriate safety evaluations, checks and controls.

(4) On an application to vary the terms of a notice, the court may vary the requirements specified in the notice as it considers appropriate.

(5) A person on whom a recall notice has been served and who proposes to make an application under subsection (1) in relation to the notice may, before the end of the period of seven days beginning with the day on which the notice

was served, apply to the court for an order suspending the effect of the notice and the court may, in any case where it considers it appropriate to do so, make an order suspending the effect of the notice.

(6) If the court makes an order suspending the effect of a recall notice under subsection (5) in the absence of the TSS, the TSS may apply for the revocation of such order.

(7) An order under subsection (5) shall take effect from the time it is made until -

- (a) it is revoked on an application being made under subsection (6),
- (b) where no application is made under subsection (1) in respect of the recall notice within the time specified in that subsection, the expiration of that time,
- (c) where such an application is made but is withdrawn or dismissed for want of prosecution, the date of dismissal or withdrawal of the application, or
- (d) where such an application is made and is not withdrawn or dismissed for want of prosecution, the determination of the application.

(8) A person aggrieved by an order made pursuant to an application under subsection (1), or by a decision not to make such an order, may appeal against that order or decision.

**Forfeiture.**

144. (1) The TSS may apply to the Magistrate's Court for an order for

the forfeiture of a product on the grounds that the product is a dangerous product.

(2) When making an application under subsection (1), the TSS shall serve a copy of the application on any person appearing to it to be the owner of, or otherwise to have an interest in, the product to which the application relates, together with a notice giving that person the opportunity to appear at the hearing of the application to show cause why the product should not be forfeited.

(3) A person on whom notice is served under subsection (2) and any other person claiming to be the owner of, or otherwise to have an interest in, the product to which the application relates shall be entitled to appear at the hearing of the application and show cause why the product should not be forfeited.

(4) The court shall not make an order for the forfeiture of a product-

(a) if any person on whom notice is served under subsection (2) does not appear, unless service of the notice on that person is proved, or

(b) if no notice under subsection (2) has been served, unless the court is satisfied that in the circumstances it was reasonable not to serve notice on any person.

(5) The court may make an order for the forfeiture of a product only if it is satisfied that the product is a dangerous product.

(6) Any person aggrieved by an order for the forfeiture of a product, or by a decision of the court not to make such an order, may appeal against that order or decision to the Royal Court sitting as an Ordinary Court.

(7) An appeal under subsection (6) must be brought within the period of 14 days beginning with the day on which the order or decision was made.

(8) An order for the forfeiture of a product shall not take effect until the later of -

- (a) the end of the period referred to in subsection (7), or
- (b) if an appeal or an application is so made, when the appeal or application is determined or abandoned.

(9) Subject to subsection (10), where a product is forfeited it shall be destroyed in accordance with such directions as the court may give.

(10) On making an order for forfeiture of a product the court may, if it considers it appropriate to do so, direct that the product shall (instead of being destroyed in accordance with subsection (9)) be delivered up to such person as the court may specify, on condition that the person —

- (a) does not supply the product to any person otherwise than as mentioned in subsection (11), and
- (b) on condition, if the court considers it appropriate, that that person complies with any order to pay costs or expenses (including any order under section 146) which has been made against that person in the proceedings for the order for forfeiture.

(11) The supplies which may be permitted under subsection (10) are -

- (a) a supply to a person who carries on a business of buying products of the same description as the product concerned and repairing or reconditioning them,

- (b) a supply to a person as scrap (that is to say, for the value of materials included in the product rather than for the value of the product itself),
- (c) a supply to any person, provided that being so supplied the product is repaired by or on behalf of the person to whom the product was delivered up by direction of the court and that following such repair it is not a dangerous product.

**Product safety offences.**

145. (1) A person who contravenes section 131 or 134(1)(a) shall be guilty of an offence and liable on conviction to a term of imprisonment not exceeding 12 months or to a fine or to both.

(2) A person who contravenes section 133 or 134(1)(b) shall be guilty of an offence and liable on conviction to a term of imprisonment not exceeding three months or to a fine not exceeding level 5 on the uniform scale or to both.

(3) A producer or distributor who does not give notice to the TSS under section 135(1) in respect of a product that the producer or distributor has placed on the market or supplied commits an offence where it is proved that the producer or distributor knew, or ought to have known, that the product poses risks to consumers that are incompatible with the general safety requirement; and the producer or distributor (as the case may be) shall be liable on conviction to a term of imprisonment not exceeding three months or to a fine not exceeding level 5 on the uniform scale or to both.

(4) A person who contravenes a safety notice shall be guilty of an offence and liable on conviction to a term of imprisonment not exceeding 12 months or to a fine or to both.

**Recovery of expenses of enforcement.**

146. (1) This section shall apply where a court -

- (a) convicts a person of an offence in respect of a contravention in relation to a product of any requirement imposed by or under this Ordinance, or
- (b) makes an order under section 144 for the forfeiture of a product.

(2) The court may (in addition to any other order it may make as to costs or expenses) order the person convicted or, as the case may be, any person having an interest in the product, to reimburse the TSS for any expenditure which has been or may be incurred by the TSS -

- (a) in connection with any seizure or detention of the product by or on behalf of the TSS, or
- (b) in connection with any compliance by the TSS with directions given by the court for the purposes of any order for the forfeiture of the product.

**Due diligence defence, and defence in relation to antiques.**

147. (1) In proceedings against a person for an offence under this Part it shall be a defence for that person to show that that person took all reasonable steps to avoid committing the offence.

(2) Subject to subsection (4), subsection (3) shall apply in proceedings against any person for an offence under section 145(1) in respect of the supply, offer or agreement to supply or exposure or possession for supply of second hand products supplied as antiques.

(3) It shall be a defence for that person to show that the terms on which he supplied the product or agreed or offered to supply the product or, in the case of a product which he exposed or possessed for supply, the terms on which he intended to supply the product, contemplated the acquisition of an interest in the product by the person supplied or to be supplied.

(4) Subsection (3) applies only if the producer or distributor clearly informed the person to whom he supplied the product, or offered or agreed to supply the product or, in the case of a product which he exposed or possessed for supply, he intended to so inform that person, that the product is an antique.

**Liability of person other than principal offender.**

148. Where the commission of an offence by a person ("A") under this Part is due to an act or default committed by some other person ("B") in the course of a commercial activity of B, B shall be guilty of the offence and may be proceeded against and punished by virtue of this subsection regardless of whether proceedings are taken against A.

*Miscellaneous*

**Duty to notify other jurisdictions.**

149. (1) When the TSS receives a notification under section 135(1) it shall, as soon as possible, pass the same on to -

- (a) the competent authority in the United Kingdom, and
- (b) so far as is practicable, competent authorities in jurisdictions where, to the best of the Chief Trading Standard Officer's knowledge, the product in question is or has been marketed or otherwise supplied to consumers,

(together, "**the notifiable authorities**"; and references in this Ordinance to a duty to notify the notifiable authorities shall be construed to include the qualification in paragraph (b) in respect of notifying the competent authorities referred to there).

(2) Where the TSS takes a measure which restricts the placing on the market of a product, or requires its withdrawal or recall, it shall as soon as possible notify the notifiable authorities, specifying its reasons for taking that action.

(3) The TSS shall as soon as possible notify the notifiable authorities notified under subsection (2) of any modification or lifting of a measure under that subsection.

(4) Where the TSS adopts or decides to adopt, recommend or agree with producers and distributors, whether on a compulsory or voluntary basis, a measure or action to prevent, restrict or impose specific conditions on the possible marketing or use of a product (other than a medicinal product) by reason of a serious risk, it shall as soon as possible notify the notifiable authorities.

(5) The TSS shall as soon as possible notify the notifiable authorities of any modification or withdrawal of any such measure or action mentioned under subsection (4).

**Provisions supplemental to section 149.**

150. (1) A notification by the TSS under section 149 shall be in writing and shall provide all available details including, but not limited to -

- (a) information enabling the product to be identified,
- (b) a description of the risk involved, including a summary of the results of any test or analysis and of their conclusions which are relevant to assessing the level of risk,

- (c) the nature and the duration of the measures or action taken or decided on, if applicable, and
- (d) information on supply chains and distribution of the product, in particular on destination countries.

**Market surveillance.**

151. (1) For the purpose of ensuring a high level of consumer health and safety protection, the TSS shall undertake market surveillance of products employing appropriate means and procedures and co-operating with other enforcement authorities in other jurisdictions which may include –

- (a) establishment, periodical updating and implementation of sectoral surveillance programmes by categories of products or risks and the monitoring of surveillance activities, findings and results,
- (b) follow-up and updating of scientific and technical knowledge concerning the safety of products, and
- (c) the periodical review and assessment of the functioning of the control activities and their effectiveness and, if necessary revision of the surveillance approach and organisation put in place.

(2) The Committee may make regulations to make further provision in respect of market surveillance falling within subsection (1), including but not limited to provision necessary to satisfy requirements under relevant international obligations and agreements having effect in Guernsey.

**Complaints procedures in respect of product safety and market surveillance.**

152. The TSS shall maintain and publish a procedure by which complaints may be submitted by any person on product safety, and market surveillance and control activities.

**Information in respect of product safety.**

153. (1) Subject to subsection (3), the TSS shall make available to the public such information as is available to it on the matters set out in subsection (2) relating to the risks to consumer health and safety posed by a product, and the measures taken in respect of the risk, without prejudice to the need not to disclose information for effective monitoring and investigation activities.

(2) The matters referred to in subsection (1) are –

- (a) the nature of the risk, and
- (b) the product identification.

(3) Subsection (1) shall not apply to any information which is protected by professional secrecy, unless the circumstances require such information to be made public in order to protect the health and safety of consumers.

**Evidence in proceedings for offence relating to section 135(1).**

154. (1) This section applies where a person has given a notification to the TSS pursuant to section 135(1).

(2) No evidence relating to that statement may be adduced and no question relating to it may be asked by the prosecution in any criminal proceedings (other than proceedings in which that person is charged with an offence under section 145(3)), unless evidence relating to it is adduced, or a question relating to it is asked, in the proceedings by or on behalf of that person.

PART VI  
CIVIL ENFORCEMENT: POWERS, AND ASSOCIATED OFFENCES

**Interpretation of this Part and Part VII.**

155. (1) In this Part and Part VII an infringement is an act or omission which -

- (a) is done or made by a person in the course of a business,
- (b) satisfies the condition in subsection (2),
- (c) falls within subsection (3), and
- (d) harms the collective interests of consumers.

(2) An act or omission satisfies the condition referred to in subsection (1) where 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 Guernsey, or
- (b) the goods or services are supplied (or sought to be supplied) to or for a person in Guernsey.

(3) Subject to subsection (4), an act or omission falls within this subsection if it consists of a contravention of a provision of this Ordinance.

(4) Regulations made by the Committee under this section may provide that any description of act or omission falling within subsection (3) is not an infringement.

(5) For the purposes of subsection (3) it is immaterial -

- (a) whether or not any duty, prohibition or restriction exists in relation to consumers as such,
  - (b) whether or not any remedy or sanction is provided for the benefit of consumers as such,
  - (c) whether or not any proceedings have been brought in relation to the act or omission,
  - (d) whether or not any person has been convicted of an offence in respect of the contravention mentioned in subsection (3),
  - (e) whether or not there is a waiver in respect of the breach of contract mentioned in subsection (3).
- (6) A document is not goods for the purpose of this Part.

**Power to require the production of information.**

156. (1) A TSS officer may give notice to a person requiring the person to provide the officer with the information specified in the notice for the purposes of –

- (a) ascertaining whether there has been an infringement in circumstances where the officer reasonably considers that to be the case,
- (b) ascertaining whether a person has complied or is complying with an undertaking given or enforcement order or injunction granted under this Ordinance, or

(c) ascertaining whether to serve a safety notice under Part V or to vary or revoke a safety notice that has been served,

(2) A notice under subsection (1) must be in writing and specify the purpose for which the information is required.

(3) 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.

(4) 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, and

(b) the form in which information must be provided.

(5) 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 officer.

(6) A requirement to provide information or create a document is a requirement to do so in a legible form.

(7) A notice under this section 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 in proceedings in the Royal Court on the grounds of legal professional privilege.

**Enforcement of a notice under section 156.**

157. (1) If a person fails to comply with a notice under section 156, a TSS officer may make an application under this section to the Royal 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 section.

(3) An order under this section 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 section 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 subsection (4) may require an official who is responsible for the failure to meet the costs or expenses; and for these purposes "**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 limited partnership, a general partner,
- (c) in the case of any other partnership, a partner, and

- (d) in the case of an unincorporated association, a person who is concerned in the management or control of its affairs.

**Restriction on use of information provided in response to a notice under section 156.**

158. (1) This section applies if a person provides information in response to a person a notice under section 156.

(2) Subject to subsections (3) and (4), where this section applies, 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.

(3) Subsection (2) 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.

(4) Subsection (2) does not apply if the proceedings are for –

- (a) an offence under section 173 (obstruction), or

- (b) perjury.

**Power to purchase products etc.**

159. (1) For the purposes of –

- (a) ascertaining a trader's compliance with this Ordinance (other than Part II), or
- (b) ascertaining whether a person has complied or is complying with an undertaking given or enforcement order or injunction granted under this Ordinance,

a TSS officer may –

- (i) make a purchase of a product, or
- (ii) enter into an agreement to secure the provision of a product.

(2) For the purposes of exercising the power in subsection (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 subsection (2) may be exercised without first giving notice or obtaining a warrant.

**Power to observe carrying on of business.**

160. (1) For the purposes of –

- (a) ascertaining a trader's compliance with this Ordinance (other than Part II),
- (b) ascertaining whether a person has complied or is complying with an undertaking given or enforcement order or injunction granted under this Ordinance,

a TSS officer 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 subsection (1) may be exercised at any reasonable time (whether or not the public has access at that time) and without first giving notice or obtaining a warrant.

**Power to enter premises without a warrant.**

161. (1) For the purposes of –

- (a) ascertaining a trader's compliance with this Ordinance (other than Part II), or
- (b) ascertaining whether a person has complied or is complying with an undertaking given or enforcement order or injunction granted under this Ordinance,

a TSS officer may enter premises (other than premises used wholly or mainly as a dwelling) at any reasonable time.

(2) In the case of a routine inspection, the power of entry in subsection (1) may only be exercised if a notice has been given to the occupier of the premises in accordance with the requirements in subsection (3), unless subsection (4) applies.

(3) The requirements referred to in subsection (2) are that –

- (a) the notice is in writing and is given by a TSS officer,
- (b) the notice sets out why the entry is necessary and indicates the nature of the offence under section 173 (obstruction), and
- (c) there are at least two working days between the date of receipt of the notice and the date of entry.

(4) A notice need not be given if the occupier has waived the requirement to give notice.

(5) In this section "**routine inspection**" means an exercise of the power in subsection (1) other than where –

- (a) the TSS officer exercising the power reasonably suspects a breach of this Ordinance,
- (b) the officer reasonably considers that to give notice in accordance with subsection (3) would defeat the purpose of the entry, or

(c) it is not reasonably practicable in all the circumstances to give notice in accordance with that subsection, in particular because the officer reasonably suspects that there is an imminent risk to public health or safety.

(6) If a TSS officer enters premises under subsection (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 section 173 (obstruction).

(7) If a TSS officer enters premises under subsection (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.

(8) An officer need not comply with subsection (6) or (7) if it is not reasonably practicable to do so.

(9) Proceedings resulting from the exercise of the power under subsection (1) are not invalid merely because of a failure to comply with subsection (6) or (7).

(10) An officer entering premises under subsection (1) may be accompanied by such persons, and may take onto the premises such equipment, as the officer thinks necessary.

(11) In this section "**working day**" means any day other than a Saturday, Sunday or a non-business day within the meaning of section 1(1) of the Bills of Exchange (Guernsey) Law, 1958<sup>j</sup>.

**Powers to enter premises with a warrant.**

162. (1) If the Bailiff by any written information on oath is satisfied that there are reasonable grounds for believing that -

- (a) Condition A or B is met, and
- (b) Condition C, D or E is met,

the Bailiff may, by warrant, authorise a TSS officer to enter premises at any reasonable time, using reasonable force if necessary.

(2) Condition A is that there are, on any premises, goods which the officer has power to inspect under section 164, or documents which the officer could require a person to produce under section 165.

(3) Condition B is that there has been, or is about to be, an infringement.

(4) Condition C is that the access to the premises has been or is likely to be refused and that notice of intention to apply for a warrant under this section has been given to the occupier.

(5) Condition D is that an application for admission, or the giving of a notice of intention to apply for a warrant, would defeat the object of the entry.

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<sup>j</sup> Ordres en Conseil Vol. XVII, p. 384; this enactment has been amended.

(6) Condition E 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.

(7) A warrant under subsection (1) -

- (a) ceases to have effect at the end of the period of one month beginning with the day it is issued,
- (b) must be produced for inspection to the person (if there is one) who appears to the officer to be the occupier of the premises.

(8) An officer entering any premises under this section may take such other persons and such equipment as may appear to that officer to be necessary.

(9) On leaving any premises which an officer is authorised, by warrant, to enter under this section, the officer shall, if the premises are unoccupied or the occupier is temporarily absent, leave the premises as effectively secured against trespassers as the officer found them.

**Application of sections 164 to 169.**

163. Sections 164 to 169 apply if a TSS officer has entered any premises under section 161 or under a warrant under section 162.

**Power to inspect products.**

164. (1) For the purposes of –

- (a) ascertaining a trader's compliance with this Ordinance (other than Part II),

- (b) ascertaining whether a person has complied or is complying with an undertaking given or enforcement order or injunction granted under this Ordinance, or
- (c) ascertaining whether to serve a safety notice under Part VI or to vary or revoke a safety notice that has been served,

the officer may inspect any product on the premises.

(2) The officer may examine any procedure (including any arrangements for carrying out a test) connected with the production of a product.

**Power to require production of documents.**

165. (1) For the purposes of –

- (a) ascertaining whether there has been an infringement (other than in respect of Part II) in circumstances where the officer reasonably considers that to be the case, or
- (b) ascertaining whether a person has complied or is complying with an undertaking given or enforcement order or injunction granted under this Ordinance,

the officer may, at any reasonable time –

- (i) 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

(ii) take copies of, or of any entry in, any such document.

(2) The power in subsection (1) may also be exercised for the purpose of ascertaining whether the documents in question may be required as evidence in proceedings under this Ordinance.

(3) The power in subsection (1) is available regardless of whether the purpose for which the documents are required relates to the trader or some other person, and includes power to require the person to give an explanation of the documents.

(4) Where a document required to be produced under subsection (1) or (2) contains information recorded electronically, the power in that subsection 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 section does not permit an officer to require a person to create a document other than as described in subsection (4).

(6) This section does not permit an officer to require a person to produce any document which the person would be entitled to refuse to produce in proceedings in the Royal Court on the grounds of legal professional privilege.

**Power to seize and detain goods.**

166. (1) Where the officer reasonably suspects the goods may disclose an infringement, or may be required as evidence in proceedings under this Ordinance, the officer may seize and detain goods other than documents (for which see section 167).

(2) Subject to subsection (3), an officer seizing goods under this section 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 subsection (2) if it is not reasonably practicable to do so.

(4) An officer seizing goods under this section 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 section, an officer seizes any goods from a vending machine, the duty in subsection (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) 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 subsection (4), an officer exercising a power under this section must have regard to any relevant provision about the seizure of property made by a code of practice under section 73

of the Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003<sup>k</sup>.

- (7) Goods seized under this section 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.**

167. (1) Where the officer reasonably suspects documents may be required as evidence in proceedings under this Ordinance, the officer may seize and detain documents.

(2) Subject to subsection (3), an officer seizing documents under this section 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 subsection (2) if it is not reasonably practicable to do so.

(4) An officer seizing documents under this section must take reasonable steps to –

- (a) inform the person from whom they are seized that they

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<sup>k</sup> Ordres en Conseil Vol. XLIII(2), p. 61; this enactment has been amended.

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 subsection (4), an officer exercising a power under this must have regard to any relevant provision about the seizure of property made by a code of practice under section 73 of the Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003.

(6) This section 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 in proceedings in the Royal Court on the grounds of legal professional privilege.

(7) Documents seized under this section may not be detained –

- (a) for a period of more than three 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.

**Power to break open container.**

**168.** (1) The officer may, for the purpose of exercising any of the powers in sections 166 or 167, 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 subsection (1) has not been complied with, the officer may, for the purpose of exercising any of the powers in sections 166 or 167 –

(a) break open the container,

(b) open the vending machine, or

(c) access the electronic device.

(3) Subsection (1) or (2) applies if and to the extent that the exercise of the power in that subsection is reasonably necessary for the purposes for which that power may be exercised.

(4) In this section "**container**" means anything in which goods may be stored.

**Power to require assistance from person on premises.**

169. The officer may require any person on the premises to provide such assistance or information as the officer reasonably considers necessary.

*Miscellaneous provisions in respect of powers*

**Access to seized goods and documents.**

170. (1) This section applies where anything seized by a TSS officer under this Part is detained by the TSS.

(2) If a request for permission to be granted access to that thing is made to the TSS by a person who had custody or control of it immediately before it was seized, the TSS must allow that person access to it under the supervision of a TSS officer.

(3) If a request for a photograph or copy of that thing is made to the TSS by a person who had custody or control of it immediately before it was seized, the TSS must –

- (a) allow that person access to it under the supervision of a TSS officer 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 subsection (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 section does not require access to be granted to, or a photograph or copy to be supplied of, anything if the TSS has reasonable grounds for believing that to do so would prejudice the investigation for the purposes of which it was seized.

(6) The TSS may recover the reasonable costs of complying with a request under this section from the person by whom or on whose behalf it was made.

(7) References in this section to a person who had custody or control of a thing immediately before it was seized include a representative of such a

person.

**Appeals against detention of goods and documents.**

171. (1) This section applies where goods or documents are being detained as the result of the exercise of a power in this Part.

(2) A person with an interest in the goods or documents may apply to the Magistrate's Court for an order requiring them to be released to that or another person.

(3) On an application under this section, the court may make an order requiring goods to be released only if satisfied that condition A or B is met.

(4) 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.

(5) Condition B is that -

(a) proceedings of a kind mentioned in subsection (4)(a) have been brought, and

(b) those proceedings have been concluded without the goods or documents being forfeited.

(6) A person aggrieved by an order made under this section by a magistrates' court, or by the decision of the Magistrate's Court not to make such an order, may appeal against the order or decision to the Royal Court.

(7) An order made under this section by the Magistrate's Court may contain such provision as the court thinks appropriate for delaying its coming into force pending the making and determination of any appeal.

**Compensation.**

172. (1) This section applies where a TSS officer has seized and detained goods under this Part.

(2) Where this section applies, the TSS 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 –

- (a) the goods have not disclosed an infringement, 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.

*Offences associated with enforcement powers*

**Offence of obstruction of TSS officer.**

173. (1) Any person who -

- (a) intentionally obstructs a TSS officer acting in pursuance of this Ordinance,

- (b) intentionally fails to comply with any requirement properly made to that person by such an officer, or
- (c) without reasonable cause fails to give such an officer any other assistance or information which the officer may reasonably require of that person for the purpose of the performance of the officer's functions under this Ordinance,

is guilty of an offence and liable, on summary conviction, to a fine not exceeding level 3 on the uniform scale.

(2) Any person who, in giving any information which is required of that person under subsection (1)(c), makes any statement which the person knows to be false in a material particular is guilty of an offence and liable -

- (a) on summary conviction, to a fine not exceeding the statutory maximum, or
- (b) on conviction on indictment, to a fine or imprisonment for a term not exceeding two years or both.

**Offence of impersonating TSS officer.**

174. A person who is not a TSS officer who purports to -

- (a) be such an officer, and
- (b) exercise powers conferred on such officers under this Ordinance,

commits an offence, and is liable on conviction to a fine not exceeding level 4 on the uniform scale.

**False or misleading information.**

175. (1) If a person to whom subsection (2) applies –

- (a) makes a statement which he or she knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular,
- (b) recklessly makes a statement, dishonestly or otherwise, which is false, deceptive or misleading in a material particular,
- (c) produces or furnishes, or causes or permits to be produced or furnished, any information or document which he or she knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular, or
- (d) recklessly produces or furnishes or recklessly causes or permits to be produced or furnished, dishonestly or otherwise, any information or document which is false, deceptive or misleading in a material particular,

he or she is guilty of an offence.

(2) This subsection applies to a person who –

- (a) makes any statement or provides any information or document to a TSS officer, when acting in the exercise of his or her functions under this Ordinance, or

(b) otherwise than as mentioned in paragraph (a) makes any statement or provides any information or document to a TSS officer in circumstances in which he or she knows or could reasonably be expected to know that the statement, information or document would or might be used by a TSS officer for the purpose of exercising his or her functions under this Ordinance.

(3) A person guilty of an offence under this section is liable on conviction to a fine not exceeding level 5 on the uniform scale, to imprisonment for a term not exceeding 3 months, or to both.

## PART VII

### CIVIL ENFORCEMENT: ENFORCEMENT NOTICES, UNDERTAKINGS AND ENHANCED CONSUMER MEASURES

#### *Enforcement Notices*

#### **Consultation.**

176. (1) The TSS must not make an application for an enforcement order under this Part unless it has engaged with the person against whom the enforcement order would be made for the purpose of -

- (a) achieving the cessation of the infringement in a case where an infringement is occurring,
- (b) ensuring that there will be no repetition of the infringement in a case where the infringement has occurred,

(c) ensuring that there will be no repetition of the infringement in a case where the cessation of the infringement is achieved under paragraph (a),

(d) ensuring that the infringement does not take place in the case of an infringement which the TSS believes is likely to take place.

(2) Subsection (1) ceases to apply -

(a) for the purposes of an application for an enforcement order at the end of the period of 14 days, beginning with the day after the person against whom the enforcement order would be made receives a request for engagement from the TSS, or,

(b) for the purposes of an application for an interim enforcement order at the end of the period of seven days beginning with the day after the person against whom the interim enforcement order would be made receives a request for consultation from the TSS.

(3) The Committee may by regulations make further provision in relation to engagement under this section.

(4) In this section (except subsection (2)) and in section 178 references to an enforcement order mean an order under section 178 and include references to an interim enforcement order within the meaning of section 179.

**Application for an enforcement order.**

177. (1) An application for an enforcement order must name the person the TSS thinks has engaged or is engaging or is likely to engage in conduct which constitutes an infringement.

(2) The TSS may make an application to the Royal Court sitting as an Ordinary Court for an enforcement order in respect of any infringement.

**Enforcement orders.**

178. (1) This section applies if an application for an enforcement order is made under section 177 and the court finds that the person named in the application is engaging, has engaged or is likely to engage in conduct which constitutes an infringement.

(2) If this section applies the court may make an enforcement order against the person.

(3) In considering whether to make an enforcement order the court must have regard to whether the person named in the application -

(a) has given an undertaking under section 181 in respect of conduct such as is mentioned in subsection (3) of that section, and

(b) has failed to comply with the undertaking.

(4) An enforcement order must -

(a) indicate the nature of the conduct to which the finding under subsection (1) or (2) relates, and

(b) direct the person to comply with subsection (5).

- (5) A person complies with this subsection if that person -
- (a) does not continue or repeat the conduct,
  - (b) does not engage in such conduct in the course of business,
  - (c) does not consent to or connive in the carrying out of such conduct by a body corporate with which that person has a special relationship (within the meaning of section 183(3)).

(6) Subsection (5)(a) does not apply in the case of a finding that the person is likely to engage in conduct which constitutes an infringement.

(7) An enforcement order may require a person against whom the order is made to publish in such form and manner and to such extent as the court thinks appropriate for the purpose of eliminating any continuing effects of the infringement -

- (a) the order,
- (b) a corrective statement.

(8) An enforcement order may require the person to take enhanced consumer measures within a period specified in the enforcement order.

(9) If the court makes a finding under subsection (1) it may accept an undertaking by the person -

- (a) to comply with subsection (5), or
- (b) to take steps which the court believes will secure that the person complies with subsection (5).

(10) An undertaking under subsection (9) may include a further undertaking by the person to publish in such form and manner and to such extent as the court thinks appropriate for the purpose of eliminating any continuing effects of the infringement -

(a) the terms of the undertaking,

(b) a corrective statement.

(11) 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.

(12) 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.

(13) If the court -

(a) makes a finding under subsection (1), and

(b) accepts an undertaking under subsection (7),

it shall not make an enforcement order in respect of the infringement to which the undertaking relates.

**Interim enforcement order.**

179. (1) The court may make an interim enforcement order against a person named in the application for the order if it appears to the court -

- (a) that it is alleged that the person is engaged or is likely to engage in conduct which constitutes an infringement,
  - (b) that if the application had been an application for an enforcement order it would be likely to be granted,
  - (c) that it is expedient that the conduct is prohibited or prevented (as the case may be) immediately, and
  - (d) if no notice of the application has been given to the person named in the application, that it is appropriate to make an interim enforcement order without notice.
- (2) An interim enforcement order must -
- (a) indicate the nature of the alleged conduct, and
  - (b) direct the person to comply with subsection (3).
- (3) A person complies with this subsection if that person -
- (a) does not continue or repeat the conduct,
  - (b) does not engage in such conduct in the course of business, and
  - (c) does not consent to or connive in the carrying out of such conduct by a body corporate with which that person has a special relationship (within the meaning of section 183(3)).

(4) An application for an interim enforcement order against a person may be made at any time before an application for an enforcement order against the person in respect of the same conduct is determined.

(5) An application for an interim enforcement order must refer to all matters -

(a) which are known to the applicant, and

(b) which are material to the question whether or not the application is granted.

(6) If an application for an interim enforcement order is made without notice the application must state why no notice has been given.

(7) The court may vary or discharge an interim enforcement order on the application of -

(a) the TSS, or

(b) the person against whom it is made.

(8) An interim enforcement order against a person is discharged on the determination of an application for an enforcement order made against the person in respect of the same conduct.

(9) If it appears to the court as mentioned in subsection (1)(a) to (c) the court may instead of making an interim enforcement order accept an undertaking from the person named in the application -

(a) to comply with subsection (3), or

(b) to take steps which the court believes will secure that the person complies with subsection (3).

**Unfair commercial practices: substantiation of claims.**

180. (1) This section applies where an application for an enforcement order or an interim enforcement order is made in respect of an infringement involving a contravention concerning unfair business-to-consumer commercial practices.

(2) For the purposes of considering the application the court may require the relevant person to provide evidence as to the accuracy of any factual claim made as part of a commercial practice of that person if, taking into account the legitimate interests of that person and any other party to the proceedings, it appears appropriate in the circumstances.

(3) In subsection (2), "**the relevant person**", in relation to an application, means the person named in the application under section 177(1).

(4) If, having been required under subsection (2) to provide evidence as to the accuracy of a factual claim, a person -

(a) fails to provide such evidence, or

(b) provides evidence as to the accuracy of the factual claim that the court considers inadequate,

the court may consider that the factual claim is inaccurate.

**Undertakings.**

181. (1) This section applies in circumstances where the TSS has power to make an application for an enforcement order under section 177.

(2) In such a case the TSS may accept from a person to whom subsection (3) applies, an undertaking that the person will comply with subsection (4).

(3) This subsection applies to a person who the Chief Trading Standards Officer believes -

- (a) has engaged in conduct which constitutes an infringement,
- (b) is engaging in such conduct, or
- (c) is likely to engage in conduct which constitutes an infringement.

(4) Subject to subsection (5), a person complies with this subsection if that person -

- (a) does not continue or repeat the conduct,
- (b) does not engage in such conduct in the course of business,
- (c) does not consent to or connive in the carrying out of such conduct by a body corporate with which that person has a special relationship (within the meaning of section 183(3)).

(5) Subsection (4)(a) does not apply in the case of an undertaking given by a person in so far as subsection (3) applies to the person by virtue of paragraph (c).

(6) An undertaking under subsection (2) may include a further undertaking by the person to take enhanced consumer measures within a period specified in the undertaking.

(7) 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.

(8) If the TSS has accepted an undertaking under this section it may accept a further undertaking from the person concerned to publish the terms of the undertaking or take steps itself to publish the undertaking.

**Further proceedings.**

**182.** (1) This section applies if the court -

- (a) makes an enforcement order under section 178 or makes an interim enforcement order under section 179, or
- (b) accepts an undertaking under either of those sections.

(2) Where this section applies, an application to the court by the TSS in respect of a failure to comply with an undertaking may include an application for an enforcement order or an interim enforcement order.

(3) If the court finds that an undertaking is not being complied with it may make an enforcement order or an interim enforcement order.

(4) For the avoidance of doubt, in the case of an application for an enforcement order or for an interim enforcement order as mentioned in subsection (3), the requirement for consultation under section 176 does not apply.

**Bodies corporate: accessories.**

183. (1) This section applies where the conduct of a body corporate constitutes an infringement.

(2) If the conduct takes place with the consent or connivance of a person ("**an accessory**") who has a special relationship with the body corporate, the consent or connivance is also conduct which constitutes the infringement.

(3) A person has a special relationship with a body corporate if that person is -

- (a) a controller of the body corporate, or
- (b) a director, manager, secretary or other similar officer of the body corporate or a person purporting to act in such a capacity.

(4) A person is a controller of a body corporate if -

- (a) the directors of the body corporate or of another body corporate which is its controller are accustomed to act in accordance with the person's directions or instructions, or
- (b) either alone or with an associate or associates that person is entitled to exercise or control the exercise of one third or more of the voting power at any general meeting of the body corporate or of another body corporate which is its controller.

(5) An enforcement order or an interim enforcement order may be made against an accessory in respect of an infringement whether or not such an order is made against the body corporate.

(6) The court may accept an undertaking under this Part from an accessory in respect of an infringement regardless of whether it accepts such an undertaking from the body corporate.

(7) The TSS may accept an undertaking under this Part from an accessory in respect of an infringement whether or not it accepts such an undertaking from the body corporate.

(8) Subsection (9) applies where -

- (a) an enforcement order or an interim enforcement order is made as mentioned in subsection (5), or
- (b) an undertaking is accepted as mentioned in subsection (6) or (7).

(9) Where this section applies, sections 178, 179 and 181 shall have effect as if for the text at section 178(5), 179(3) and 181(4) there were, in each case, substituted the following text -

"A person complies with this subsection if the person -

- (a) does not continue or repeat the conduct,
- (b) does not, in the course of business, engage in conduct such as that which constitutes the infringement committed by the body corporate mentioned in section 183(1),

(c) does not consent to or connive in the carrying out of such conduct by another body corporate with which that person has a special relationship (within the meaning of section 183(3)).".

(10) A person is an associate of an individual if that person -

- (a) is the spouse or civil partner of the individual,
- (b) is a relative of the individual,
- (c) is a relative of the individual's spouse or civil partner,
- (d) is the spouse or civil partner of a relative of the individual,
- (e) is the spouse or civil partner of a relative of the individual's spouse or civil partner,
- (f) lives in the same household as the individual otherwise than merely because the person or the individual is the other's employer, tenant, lodger or boarder,
- (g) is a relative of a person who is an associate of the individual by virtue of paragraph (f),
- (h) has at some time in the past fallen within any of paragraphs (a) to (g).

(11) A person is also an associate of -

- (a) an individual with whom that person is in partnership,

(b) an individual who is an associate of the individual mentioned in paragraph (a),

(c) a body corporate if the person is a controller of it or an associate of a person who is a controller of the body corporate.

(12) A body corporate is an associate of another body corporate if -

(a) the same person is a controller of both,

(b) a person is a controller of one body corporate and associates of that person are controllers of the other,

(c) a person is a controller of one body corporate as well as being, along with that person's associates, controllers of the other,

(d) a group of two or more persons is a controller of each company and the groups consist of the same persons,

(e) a group of two or more persons is a controller of each company and the groups may be regarded as consisting of the same persons by treating (in one or more cases) a member of either group as replaced by a person of whom that person is an associate.

(13) A relative is a brother, sister, uncle, aunt, nephew, niece, lineal ancestor or lineal descendant.

**Bodies corporate: orders.**

184. (1) This section applies if a court makes an enforcement order or an interim enforcement order against a body corporate and -

- (a) at the time the order is made the body corporate is a member of a group of interconnected bodies corporate,
- (b) at any time when the order is in force the body corporate becomes a member of a group of interconnected bodies corporate, or
- (c) at any time when the order is in force a group of interconnected bodies corporate of which the body corporate is a member is increased by the addition of one or more further members.

(2) Where this section applies, the court may direct that the order referred to in subsection (1) is binding upon all of the members of the group as if each of them were the body corporate against which the order is made.

(3) A group of interconnected bodies corporate is a group consisting of two or more bodies corporate all of whom are interconnected with each other.

(4) Any two bodies corporate are interconnected -

- (a) if one of them is a subsidiary of the other, or
- (b) if both of them are subsidiaries of the same body corporate.

(5) In this section "**subsidiary**" has the meaning given by section 531 of the Companies (Guernsey) Law, 2008<sup>l</sup>.

*Miscellaneous*

**Evidence.**

**185.** (1) Proceedings under sections 177 to 184 are civil proceedings for the purposes of section 11 of the Evidence in Civil Proceedings (Guernsey and Alderney) Law, 2009<sup>m</sup> (convictions as evidence in civil proceedings).

(2) Subject to subsection (3), in proceedings under sections 177 to 184, any finding by a court in civil proceedings that an act or omission mentioned in section 130(5)(b), (c) or (d) has occurred -

- (a) is admissible as evidence that the act or omission occurred,
- (b) unless the contrary is proved, is sufficient evidence that the act or omission occurred.

(3) Subsection (2) does not apply to any finding which -

- (a) has been reversed on appeal,
- (b) has been varied on appeal so as to negative it.

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<sup>l</sup> Order in Council No. VIII of 2008. This enactment has been amended.

<sup>m</sup> Order in Council No. X of 2010. This enactment has been amended.

**Enhanced consumer measures.**

186. (1) For the purposes of this Ordinance, "**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
- (a) 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 which has given rise to the enforcement order or undertaking relates to a contract, measures offering consumers falling within paragraph (a) the option to terminate (but not vary) that contract,
- (c) where consumers falling within paragraph (a) 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) 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 178(7), or
- (b) a publication requirement included in an undertaking accepted by the court as described in section 178(10).

**Inclusion of enhanced consumer measures etc.**

187. (1) An enforcement order or undertaking may include only such enhanced consumer measures as the court or the TSS (as the case may be) considers to be just and reasonable.

(2) For the purposes of subsection (1), the court or the TSS (as the case may be) 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) the reasonable administrative costs associated with taking the measures.

(4) The 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 the TSS (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) Where this subsection applies, 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) -

- (a) in the case of an enforcement order or undertaking under section 178, "a **loss case**" means a case in which
  - 
  - (i) subsection (1) of that section applies (a finding that a person has engaged in conduct which constitutes an infringement), and
  - (ii) consumers have suffered loss as a result of that conduct, and
- (b) in the case of an undertaking under section 181, "a **loss case**" means a case in which -
  - (i) 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
  - (ii) consumers have suffered loss as a result of that conduct.

**References in this Part to goods and services.**

188. (1) References in this Part to goods and services are to be construed in accordance with this section.

- (2) In addition to goods as defined in section 204, goods include-
  - (a) buildings and other structures,
  - (b) ships, aircraft and hovercraft.
- (3) The supply of goods includes -

- (a) supply by way of sale, lease, hire or hire-purchase,
- (b) in relation to buildings and other structures, construction of them by one person for another.

(4) Goods or services which are supplied wholly or partly outside Guernsey must be taken to be supplied to or for a person in Guernsey if they are supplied in accordance with arrangements falling within subsection (5).

(5) Arrangements fall within this subsection if they are made by any means and -

- (a) at the time the arrangements are made the person seeking the supply is in Guernsey, or
- (b) at the time the goods or services are supplied (or ought to be supplied in accordance with the arrangements) the person responsible under the arrangements for effecting the supply is in or has a place of business in Guernsey.

**References in this Part to the supply of goods.**

189. (1) This section has effect for the purpose of references in this Part to a person supplying or seeking to supply goods under -

- (a) a hire-purchase agreement,
- (b) a credit-sale agreement,
- (c) a conditional sale contract.

(2) For the purposes of subsection (1), the references to a person include references to a person who conducts any antecedent negotiations relating to

the agreement.

- (3) For these purposes -
  - (a) "**hire-purchase agreement**" has the meaning given in section 5,
  - (b) "**credit-sale agreement**" means an agreement for the sale of goods, under which the purchase price or part of it is payable by instalments, but which is not a conditional sale agreement, and
  - (c) "**conditional sale contract**" has the meaning given in section 3(3).

(4) For these purposes, "**antecedent negotiations**" shall be taken to begin when the negotiator and the consumer first enter into communication (including communication by advertisement), and include any representations made by the negotiator to the consumer and any other dealings between them; and for the avoidance of doubt, "**the negotiator**" means the person by whom negotiations are so conducted with the consumer.

**References in this Part to the supply of services.**

190. (1) References in this Part to the supply of services must be construed in accordance with this section.

(2) The supply of services does not include the provision of services under a contract of service, employment or apprenticeship whether it is express or implied and (if it is express) whether it is oral or in writing.

(3) The supply of services includes –

- (a) performing for gain or reward any activity other than the supply of goods,
- (b) rendering services to order,
- (c) the provision of services by making them available to potential users.

(4) The supply of services includes making arrangements for the use of computer software or for granting access to data stored in any form which is not readily accessible.

PART VIII  
MISCELLANEOUS AND FINAL PROVISIONS

*Product liability*

**Liability for defective products.**

**191.** (1) Subject to the following provisions of this Part, where any damage is caused wholly or partly by a defect in a product, every person to whom subsection (2) below applies shall be liable for the damage.

- (2) This subsection applies to –
  - (a) the producer of the product,
  - (b) any person who, by putting his name on the product or using a trade mark or other distinguishing mark in relation to the product, has held himself out to be the producer of the product, and

- (c) any person who has imported the product into Guernsey in order, in the course of any business of his, to supply it to another.

(3) Subject as aforesaid, where any damage is caused wholly or partly by a defect in a product, any person who supplied the product (whether to the person who suffered the damage, to the producer of any product in which the product in question is comprised or to any other person) shall be liable for the damage if –

- (a) the person who suffered the damage requests the supplier to identify one or more of the persons (whether still in existence or not) to whom subsection (2) above applies in relation to the product,
- (b) that request is made within a reasonable period after the damage occurs and at a time when it is not reasonably practicable for the person making the request to identify all those persons; and
- (c) the supplier fails, within a reasonable period after receiving the request, either to comply with the request or to identify the person who supplied the product to him.

(4) Where two or more persons are liable by virtue of this Part for the same damage, their liability shall be joint and several.

(5) This section is without prejudice to any liability arising otherwise than by virtue of this Part.

**Meaning of "defect".**

192. (1) Subject to the following provisions of this section, there is a defect in a product for the purposes of this Part if the safety of the product is not such as persons generally are entitled to expect; and for those purposes "safety", in relation to a product, shall include safety with respect to products comprised in that product and safety in the context of risks of damage to property, as well as in the context of risks of death or personal injury.

(2) In determining for the purposes of subsection (1) above what persons generally are entitled to expect in relation to a product all the circumstances shall be taken into account, including –

- (a) the manner in which, and purposes for which, the product has been marketed, its get-up, the use of any mark in relation to the product and any instructions for, or warnings with respect to, doing or refraining from doing anything with or in relation to the product,
- (b) what might reasonably be expected to be done with or in relation to the product, and
- (c) the time when the product was supplied by its producer to another,

and nothing in this section shall require a defect to be inferred from the fact alone that the safety of a product which is supplied after that time is greater than the safety of the product in question.

**Product liability: defences.**

193. (1) In any civil proceedings by virtue of this Part against any person (D) in respect of a defect in a product, it shall be a defence for D to show-

- (a) that the defect is attributable to compliance with any requirement imposed by or under any enactment or with any obligation in Preserved EU law,
- (b) that D did not at any time supply the product to another,
- (c) that the following conditions are satisfied –
  - (i) that the only supply of the product to another by D was otherwise than in the course of D's business, and
  - (ii) that section 191(2) above does not apply to that person or applies to him by virtue only of things done otherwise than with a view to profit,
- (d) that the defect did not exist in the product at the relevant time,
- (e) that the state of scientific and technical knowledge at the relevant time was not such that a producer (P) of products of the same description as the product in question might be expected to have discovered the defect if it had existed in P's products while they were under P's control, or
- (f) that the defect –
  - (i) constituted a defect in a product ("**the subsequent product**") in which the product in

question had been comprised, and

- (ii) was wholly attributable to the design of the subsequent product or to compliance by the producer of the product in question with instructions given by the producer of the subsequent product.

(2) In this section "**the relevant time**", in relation to electricity, means the time at which it was generated, being a time before it was transmitted or distributed, and in relation to any other product, means –

- (a) if D is a person to whom section 191(2) applies in relation to the product, the time when D supplied the product to another,
- (b) in any other case, the time when the product was last supplied by a person to whom section 191(2) applies in relation to the product.

**Damage giving rise to liability.**

194. (1) Subject to the following provisions of this section, in this Part "**damage**" means death or personal injury or any loss of or damage to any property (including land).

(2) A person shall not be liable under section 191 in respect of any defect in a product for the loss of or any damage to the product itself or for the loss of or any damage to the whole or any part of any product which has been supplied with the product in question comprised in it.

(3) A person shall not be liable under section 191 above for any loss of or damage to any property which, at the time it is lost or damaged, is not –

- (a) of a description of property ordinarily intended for private use, occupation or consumption, and
- (b) intended by the person suffering the loss or damage mainly for the person's own private use, occupation or consumption.

(4) No damages shall be awarded to any person by virtue of this Part in respect of any loss of or damage to any property if the amount which would fall to be so awarded to that person, apart from this subsection and any liability for interest, does not exceed £275.

(5) In determining for the purposes of this Part who has suffered any loss of or damage to property and when any such loss or damage occurred, the loss or damage shall be regarded as having occurred at the earliest time at which a person with an interest in the property had knowledge of the material facts about the loss or damage.

(6) For the purposes of subsection (5) the material facts about any loss of or damage to any property are such facts about the loss or damage as would lead a reasonable person with an interest in the property to consider the loss or damage sufficiently serious to justify his instituting proceedings for damages against a defendant who did not dispute liability and was able to satisfy a judgment.

(7) For the purposes of subsection (5) the knowledge of a person (P) includes knowledge which P might reasonably have been expected to acquire -

- (a) from facts observable or ascertainable by P, or
- (b) from facts ascertainable by P with the help of appropriate expert advice which it is reasonable for P to seek,

but P shall not be taken by virtue of this subsection to have knowledge of a fact ascertainable by P only with the help of expert advice unless P has failed to take all reasonable steps to obtain (and, where appropriate, to act on) that advice.

**Application to certain enactments.**

195. (1) Any damage for which a person is liable under section 191 shall be deemed to have been caused for the purposes of the Law entitled "Loi relative à la Compensation qui pourra être accordée aux Familles de Personnes dont la Mort aura été causée par Accident"<sup>n</sup>, by that person's wrongful act, neglect or default.

(2) Where any damage is caused partly by a defect in a product and partly by the fault of the person suffering the damage, section 1 of the Law reform (Tort) (Guernsey) Law, 1979<sup>o</sup> (apportionment of liability in case of contributory negligence) shall have effect as if the defect were the fault of every person liable by virtue of this Part for the damage caused by the defect.

(3) Liability by virtue of this Part is to be treated as liability in tort for the purposes of any enactment conferring jurisdiction on any court with respect to any matter.

**Construction of sections 191 to 195.**

196. (1) For the purposes of sections 191 to 195 –

- (a) "**producer**", in relation to a product, means -
  - (i) the person who manufactured it,

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<sup>n</sup> Ordres en Conseil Vol. III, p. 235. This enactment has been amended.

<sup>o</sup> Ordres en Conseil Vol. XXVII, p. 50. This enactment has been amended.

- (ii) in the case of a substance which has not been manufactured but has been won or abstracted, the person who won or abstracted it, and
- (iii) in the case of a product which has not been manufactured, won or abstracted but essential characteristics of which are attributable to an industrial or other process having been carried out (for example, in relation to agricultural produce), the person who carried out that process, and

(b) "**product**" means any goods or electricity and (subject to subsection (2)) includes a product which is comprised in another product, whether by virtue of being a component part or raw material or otherwise.

(2) For the purposes of sections 191 to 195, a person who supplies any product in which products are comprised, whether by virtue of being component parts or raw materials or otherwise, shall not be treated by reason only of his supply of that product as supplying any of the products so comprised.

*Miscellaneous*

**Information and guidance.**

197. (1) The TSS shall prepare and publish information and guidance with a view to -

- (a) explaining the provisions of this Ordinance to persons who are likely to be affected by them, and

(b) indicating how the TSS expects such provisions to operate.

(2) Information and guidance published in accordance with subsection (1)(b) may include advice or information about the factors which the TSS may take into account in considering how to exercise the functions conferred on it by this Ordinance.

(3) Information and guidance published by the TSS under this section is to be published in such form and in such manner as the TSS considers appropriate.

**Annual report.**

198. The TSS shall, as soon as practicable each year, make a report to the Committee on its activities during the preceding year; and the President of the Committee shall, as soon as practicable, submit that report for consideration by the States.

**Freedom from self-incrimination, and legal professional privilege.**

199. For the avoidance of doubt, nothing in this Ordinance is to be construed as requiring a person -

(a) to answer any question or give any information if to do so might incriminate that person.

(b) to produce or provide, or authorises a person to inspect or take possession of, anything in respect of which a claim to legal professional privilege could be maintained in legal proceedings.

**Offences committed by bodies corporate.**

200. (1) Where an offence committed by a body corporate is proved -
- (a) to have been committed with the consent or connivance of an officer of the body corporate, or
  - (b) to be attributable to any neglect on the part of an officer of the body corporate,

the officer, as well as the body corporate, is guilty of the offence and liable to be proceeded against and punished accordingly.

(2) In subsection (1) a reference to an officer of a body corporate includes a reference to -

- (a) a director, manager, secretary or other similar officer, and
- (b) a person purporting to act as a director, manager, secretary or other similar officer.

**Service of documents.**

201. (1) A document required or authorised by virtue of this Ordinance to be served on a person may be so served —

- (a) on an individual by delivering it to the person, or by leaving it at or by sending it by post to the person's proper address,
- (b) on a body corporate other than a limited liability partnership, by serving it in accordance with paragraph (a) on the secretary of the body,

- (c) on a limited liability partnership, by serving it in accordance with paragraph (a) on a member of the partnership,
- (d) on a limited partnership, by serving it in accordance with paragraph (a) on a general partner,
- (e) on a partnership, by serving it in accordance with paragraph (a) on a partner or a person having the control or management of the partnership business,
- (f) on any other person by leaving it at or by sending it by post to that person's proper address.

(2) For the purposes of subsection (1), the proper address of a person on whom a document is to be served by virtue of this Ordinance shall be that person's last known address except that —

- (a) in the case of a body corporate (other than a limited liability partnership) or its secretary, it shall be the address of the registered or principal office of the body,
- (b) in the case of a limited liability partnership or a member of the partnership, it shall be the address of the registered or principal office of the partnership,
- (c) in the case of a partnership or a partner or a person having the control or management of a partnership business, it shall be the address of the principal office of the partnership,

and for the purposes of this subsection the principal officer of a company constituted under the law of a country or territory outside the Bailiwick of Guernsey or of a partnership carrying on business outside the Bailiwick of Guernsey is its principal office within the Bailiwick of Guernsey.

**Powers of the GCRA under the Competition Ordinance unaffected.**

202. For the avoidance of doubt, the provisions of this Ordinance are without prejudice to the powers of the Guernsey Competition and Regulatory Authority under the Competition (Guernsey) Ordinance, 2012<sup>P</sup>, and shall be construed accordingly.

**Regulations.**

203. Regulations under this Ordinance shall be laid before a meeting of the States as soon as possible after being made; and, if at that or the next meeting the States resolve that the regulations be annulled, then they shall cease to have effect, but without prejudice to anything done under them or to the making of new regulations.

**Interpretation.**

204. (1) In this Ordinance, except where the context otherwise requires, or contrary or qualifying provision is made -

"**advertisement**" includes a catalogue, a circular and a price list,

"**average consumer**" means a consumer who is reasonably well-informed, observant and circumspect, and see also subsections (5) – (8),

"**business**" includes a trade, craft or profession, the trading activities of any committee of the States of Guernsey, and any other undertaking carried

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<sup>P</sup> Ordinance No. XXXI of 2012. This enactment has been amended.

on for gain or reward,

**"business premises"** means -

- (a) any immovable retail premises where the activity of the trader is carried out on a permanent basis, or
- (b) any moveable retail premises where the activity of the trader is carried out on a usual basis,

**"Chief Trading Standards Officer"** means the Chief Trading Standards Officer of the States of Guernsey, and includes any deputy Chief Trading Standards Officer and (in the absence of the Chief Trading Standards Officer) any acting Chief Trading Standards Officer,

**"code of conduct"** means an agreement or set of rules (which is not imposed by legal or administrative requirements), which defines the behaviour of traders who undertake to be bound by it in relation to one or more commercial practices or business sectors,

**"code owner"** means a trader or a body responsible for -

- (a) the formulation and revision of a code of conduct, or
- (b) monitoring compliance with the code by those who have undertaken to be bound by it,

**"commercial guarantee"**, in relation to a contract, means any undertaking by the trader or producer to the consumer (in addition to the trader's duty to supply goods that are in conformity with the contract) to reimburse the price paid or to replace, repair or service goods in any way if they do not meet the specifications or any other requirements not related to

conformity set out in the guarantee statement or in the relevant advertising available at the time of the contract or before it is entered into,

"**commercial practice**" means any act, omission, course of conduct, representation or commercial communication (including advertising and marketing) by a trader, which is directly connected with the promotion, sale or supply of a product to or from consumers, whether occurring before, during or after a commercial transaction (if any) in relation to a product,

"**commercial unit**" means a unit the division of which would materially impair the value of the goods or the character of the unit,

the "**Committee**" means the Committee for Home Affairs,

"**conditional sales contract**": see section 3(3),

"**consumer**" means an individual acting for purposes that are wholly or mainly outside of the individual's trade, business, craft or profession, and references to "**the consumer**" shall be construed accordingly,

"**dangerous product**" means a product other than a safe product, and the feasibility of obtaining higher levels of safety or the availability of other products presenting a lesser degree of risk shall not constitute grounds for considering a product to be a dangerous product,

"**delivery**" means voluntary transfer of possession from one person to another,

"**digital content**" means data which is produced or supplied in digital form,

"**director**", in relation to a body, includes any person who occupies the position of, or fulfils the role of, director, by whatever name called, and also

includes the chief executive and any member of the committee or other similar governing body,

**"distance contract"** means a contract concluded between a trader and a consumer under an organised distance sales or service-provision scheme without the simultaneous physical presence of the trader and the consumer, with the exclusive use of one or more means of distance communication up to and including the time at which the contract is concluded, and **"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,

**"distributor"** means a professional in the supply chain whose activity does not affect the safety properties of a product,

**"district heating"** means the supply of heat (in the form of steam or hot water or otherwise) from a central source of production through a transmission and distribution system to heat more than one building,

**"durable medium"** means paper or email, or any other medium that -

- (a) allows information to be addressed personally to the recipient,
- (b) enables the recipient to store the information in a way accessible for future reference for a period that is long enough for the purposes of the information, and
- (c) allows the unchanged reproduction of the information stored,

**"enhanced consumer measures"**: see section 186,

"**functionality**" in relation to digital content includes region coding, restrictions incorporated for the purposes of digital rights management, and other technical restrictions,

the "**general safety requirement**": see section 131(5),

"**goods**" means any tangible moveable items, including water, gas and electricity if they are put up for supply in a limited volume or set quantity,

"**hire-purchase agreement**": see section 5,

"**invitation to purchase**" means a commercial communication which indicates characteristics of the product and the price in a way appropriate to the means of that commercial communication and thereby enables the consumer to make a purchase,

"**medicinal product**" has the meaning given by section 133(1) of the Medicines (Human and Veterinary) (Bailiwick of Guernsey) Law, 2008<sup>q</sup>,

"**mixed contract**" means a contract relating to a product which consists of any two or more of goods, a service, digital content, immovable property or rights,

"**motor vehicle**" has the same meaning as in section 14(1) of the Road Traffic (Guernsey) Ordinance, 2019<sup>r</sup>, subject to the proviso that a vehicle is not a motor vehicle if it is constructed or adapted -

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<sup>q</sup> Order in Council No. V of 2009. This enactment has been amended.

<sup>r</sup> Ordinance No. IX of 2019.

- (a) for the use of a person with a physical impairment or disability, and
- (b) so that it may only be used by one such person at any one time,

**"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, or
- (b) a customary law or common law duty to take reasonable care or exercise reasonable skill,

and it is immaterial whether breach of duty or obligation was inadvertent or intentional, or whether liability for it arises directly or vicariously.

**"notice"** means a notice in writing,

**"officer"**, in relation to the TSS, means a person appointed or otherwise authorised in writing by the Committee to assist the TSS in carrying out its functions, or to undertake specified functions under this Ordinance, and **"TSS officer"** and cognisant expressions shall be construed accordingly,

**"off-premises contract"** means a contract between a trader and a consumer which is -

- (a) a contract concluded in the simultaneous physical presence of the trader and the consumer, in a place which is not the business premises of the trader,

- (b) a contract for which an offer was made by the consumer in the simultaneous physical presence of the trader and the consumer, in a place which is not the business premises of the trader,
- (c) a contract concluded on the business premises of the trader or through any means of distance communication immediately after the consumer was personally and individually addressed in a place which is not the business premises of the trader in the simultaneous physical presence of the trader and the consumer, or
- (d) a contract concluded during an excursion organised by the trader with the aim or effect of promoting and selling goods or services to the consumer,

**"on-premises contract"** means a contract between a trader and a consumer which is neither a distance contract nor an off-premises contract,

**"personal injury"** includes any disease and any impairment of physical or mental condition,

**"premises"** includes any place and any stall, vehicle, ship or aircraft,

**"producer"** means -

- (a) the manufacturer of a product, when that person is established in Guernsey, and any other person presenting themselves as the manufacturer by affixing to the product that person's name, trademark or other

distinctive mark, or the person who reconditions the product,

- (b) when the manufacturer is not established in Guernsey -
  - (i) if the person has a representative established in Guernsey, the representative,
  - (ii) in any other case, the importer of the product from a jurisdiction outside Guernsey,
- (c) any other professional in the supply chain, in so far as the activities of that professional may affect the safety properties of a product,

and includes a producer acting personally or through another person acting in the producer's name or on the producer's behalf,

**"product"** means -

- (a) goods,
- (b) a service,
- (c) digital content,
- (d) immovable property (but see section 110 as regards Chapter II of Part IV),
- (e) rights or obligations, and
- (f) a product of the kind mentioned in subsections (3) and (4),

**"professional diligence"** means the standard of special skill and care which a trader may reasonably be expected to exercise towards consumers which is commensurate with either -

- (a) honest market practice in the trader's field of activity,  
or
- (b) the general principle of good faith in the trader's field of activity,

**"public auction"** means a method of sale where -

- (a) goods or services are offered by a trader to consumers through a transparent, competitive bidding procedure run by an auctioneer,
- (b) the consumers attend or are given the possibility to attend in person, and
- (c) the successful bidder is bound to purchase the goods or services,

**"recall"** means any measure aimed at achieving the return of a dangerous product that has already been supplied or made available to consumers,

**"recall notice"**: see section 141,

**"requirement to mark"**: see section 138,

**"requirement to warn"**: see section 139,

**"record"** includes any book or document and any record in any form,

"**safe product**": see subsection (2),

"**safety notice**": see section 136(5),

"**sales contract**": see section 3,

"**ship**" includes any boat and any other description of vessel used in navigation,

"**supply**" in relation to a product includes making it available, in the context of providing service, for use by consumers,

"**suspension notice**": see section 137,

"**trader**" means a person acting for purposes related to that person's trade, business, craft or profession whether the person is acting personally or through another person acting on the trader's behalf or in the trader's name, and references to "**the trader**" shall be construed accordingly,

"**transactional decision**" means any decision taken by a consumer, whether it is to act or to refrain from acting, concerning -

- (a) whether, how and on what terms to purchase, make payment in whole or in part for, retain or dispose of a product, or
- (b) whether, how and on what terms to exercise a contractual right in relation to a product,

"**transparent**": see sections 58(3) and 62(2),

"**the TSS**": see section 64,

"**withdrawal**" means any measure aimed at preventing the

distribution, display or offer of a dangerous product to a consumer, and

"**withdrawal notice**": see section 140.

(2) In this Ordinance, a "**safe product**" means a product which, under normal or reasonably foreseeable conditions of use including duration and, where applicable, putting into service, installation and maintenance requirements, does not present any risk or only the minimum risks compatible with the product's use, considered to be acceptable and consistent with a high level of protection for the safety and health of persons; and in determining the foregoing, the following shall be taken into account in particular -

- (a) the characteristics of the product, including its composition, packaging, instructions for assembly and, where applicable, instructions for installation and maintenance,
- (b) the effect of the product on other products, where it is reasonably foreseeable that it will be used with other products,
- (c) the presentation of the product, the labelling, any warnings and instructions for its use and disposal and any other indication or information regarding the product, and
- (d) the categories of consumers at risk when using the product, in particular children and the elderly.

(3) A trader ("T") who demands payment from a consumer ("C") in full or partial settlement of C's liabilities or purported liabilities to T is to be treated for the purposes of this Ordinance as offering to supply a product to C.

(4) In a case falling within subsection (3), the product that T offers to supply comprises the full or partial settlement of those liabilities or purported liabilities.

**Citation.**

205. This Ordinance may be cited as the Trading Standards (Fair Trading) (Guernsey) Ordinance, 2023.

**Commencement, and transitional provision.**

206. (1) This Ordinance shall come into force on the date appointed by regulations of the Committee; and different dates may be appointed for different purposes.

(2) Regulations made under subsection (1) may make such transitional provision as the Committee thinks fit in relation to the coming into force of the Ordinance and specified provisions thereof.

## SCHEDULE 1

Sections 28, 44, 54, 59, and 64.

### ENFORCEMENT OF THE LAW ON UNFAIR CONTRACT TERMS

#### **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) The TSS may consider a complaint about a term of a contract or a consumer notice to which this Schedule applies ("**a relevant complaint**").
  - (2) If the TSS 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.**

3. (1) The TSS may apply for an injunction against a person if it 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 falls within any one or more of sub-paragraphs (2), (3) or (5).

(2) A term falls within this sub-paragraph if it purports to exclude or restrict liability of the kind mentioned in -

- (a) section 28(1) (liability that cannot be excluded or restricted: goods contracts),
- (b) section 44(1) (liability that cannot be excluded or restricted: digital content contracts),
- (c) section 54 (liability that cannot be excluded or restricted: services contracts), or
- (d) section 59(1) (contract term or notice cannot restrict or exclude negligence liability).

(3) A term or notice falls within this sub-paragraph if it is unfair to any extent.

(4) A term within paragraph 1(b) or (c) (but not within paragraph 1(a)) is to be treated for the purposes of section 56(3) and (4) (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 62 (requirement for transparency).

(6) The TSS may apply for an injunction under this paragraph in relation to a term or notice whether or not it has received a relevant complaint about the term or notice.

**Determination of application.**

4. (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) The injunction 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.

(3) 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.

**Undertakings.**

5. (1) The TSS may accept an undertaking from a person against whom it has applied, or thinks it is entitled to apply, for an injunction under paragraph 3.

(2) The undertaking may provide that the person will comply with the conditions that are agreed between the person and the TSS about the use of terms or notices, or terms or notices of a kind, specified in the undertaking.

## SCHEDULE 2

Section 57.

### CONSUMER CONTRACT TERMS WHICH MAY BE REGARDED AS UNFAIR

#### PART I

##### 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.
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. 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 that consumer's 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.
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.
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.

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.
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.
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. 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 II

### SCOPE OF PART I

#### *Financial services*

1. 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.
2. 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.

*Contracts which last indefinitely*

3. 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*

4. 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*

5. 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.

## SCHEDULE 3

Section 70.

### INFORMATION RELATING TO ON-PREMISES CONTRACTS

The information referred to in section 70(1) is -

- (a) the main characteristics of the goods, services or digital content, to the extent appropriate to the medium of communication and to the goods or services,
- (b) the identity of the trader (such as the trader's trading name), the geographical address at which the trader is established and the trader's telephone number,
- (c) the total price of the goods, services or digital content inclusive of taxes, or where the nature of the goods, services or digital content is such that the price cannot reasonably be calculated in advance, the manner in which the price is to be calculated,
- (d) where applicable, all additional delivery charges or, where those charges cannot reasonably be calculated in advance, the fact that such additional charges may be payable,
- (e) where applicable, the arrangements for payment, delivery, performance, and the time by which the trader undertakes to deliver the goods, to perform the service or to supply the digital content,
- (f) where applicable, the trader's complaint handling policy,

- (g) in the case of a sales contract, a reminder that the trader is under a legal duty to supply goods that are in conformity with the contract,
- (h) where applicable, the existence and the conditions of after-sales services and commercial guarantees,
- (i) the duration of the contract, where applicable, or, if the contract is of indeterminate duration or is to be extended automatically, the conditions for terminating the contract,
- (j) where applicable, the functionality, including applicable technical protection measures, of digital content, and
- (k) where applicable, any relevant compatibility of digital content with hardware and software that the trader is aware of or can reasonably be expected to have been aware of.

## SCHEDULE 4

Sections 73 and 74.

### INFORMATION RELATING TO DISTANCE AND OFF-PREMISES CONTRACTS

The information referred to in sections 73(2) and 74(1) is (subject to the note at the end of this Schedule) -

- (a) the main characteristics of the goods, services or digital content, to the extent appropriate to the medium of communication and to the goods, services or digital content,
- (b) the identity of the trader (such as the trader's trading name),
- (c) the geographical address at which the trader is established and, where available, the trader's telephone number, fax number and e-mail address, to enable the consumer to contact the trader quickly and communicate efficiently,
- (d) where the trader is acting on behalf of another trader, the geographical address and identity of that other trader,
- (e) if different from the address provided in accordance with paragraph (c), the geographical address of the place of business of the trader, and, where the trader acts on behalf of another trader, the geographical address of the place of business of that other trader, where the consumer can address any complaints,
- (f) the total price of the goods, services or digital content inclusive of taxes, or where the nature of the goods, services or digital content is such that the price cannot reasonably be calculated in advance, the manner in which the price is to be calculated,

- (g) where applicable, all additional delivery charges and any other costs or, where those charges cannot reasonably be calculated in advance, the fact that such additional charges may be payable,
- (h) in the case of a contract of indeterminate duration or a contract containing a subscription, the total costs per billing period or (where such contracts are charged at a fixed rate) the total monthly costs,
- (i) the cost of using the means of distance communication for the conclusion of the contract where that cost is calculated other than at the basic rate,
- (j) the arrangements for payment, delivery, performance, and the time by which the trader undertakes to deliver the goods, to perform the services or to supply the digital content,
- (k) where applicable, the trader's complaints-handling policy,
- (l) where a right to cancel exists, the conditions, time limit and procedures for exercising that right in accordance with Part III,
- (m) where applicable, that the consumer will have to bear the cost of returning the goods in case of cancellation and, for distance contracts, if the goods, by their nature, cannot normally be returned by post, the cost of returning the goods,
- (n) that, if the consumer exercises the right to cancel after having made a request in accordance with section 93(1), the consumer is to be liable to pay the trader reasonable costs in accordance with section 93(4),
- (o) where under sections 85, 93 or 94 there is no right to cancel or the right to cancel may be lost, the information that the consumer will not benefit

from a right to cancel, or the circumstances under which the consumer loses the right to cancel,

- (p) in the case of a sales contract, a reminder that the trader is under a legal duty to supply goods that are in conformity with the contract,
- (q) where applicable, the existence and the conditions of after-sale customer assistance, after-sales services and commercial guarantees,
- (r) the existence of relevant codes of conduct, and how copies of them can be obtained, where applicable,
- (s) the duration of the contract, where applicable, or, if the contract is of indeterminate duration or is to be extended automatically, the conditions for terminating the contract,
- (t) where applicable, the minimum duration of the consumer's obligations under the contract,
- (u) where applicable, the existence and the conditions of deposits or other financial guarantees to be paid or provided by the consumer at the request of the trader,
- (v) where applicable, the functionality, including applicable technical protection measures, of digital content,
- (w) where applicable, any relevant compatibility of digital content with hardware and software that the trader is aware of or can reasonably be expected to have been aware of, and
- (x) where applicable, 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.

**Note:** In the case of a public auction, the information listed in paragraphs (b) to (e) may be replaced with the equivalent details for the auctioneer.

## SCHEDULE 5

Sections 71, 72, 74 and 75.

### INFORMATION ABOUT THE EXERCISE OF THE RIGHT TO CANCEL

#### PART A MODEL INSTRUCTIONS FOR CANCELLATION

##### **1. Right to cancel.**

(1) You have the right to cancel this contract within 14 days without giving any reason.

(2) The cancellation period will expire after 14 days from the day [*see Note 1*].

(3) To exercise the right to cancel, you must inform us [*see Note 2*] of your decision to cancel this contract by a clear statement (e.g. a letter sent by post, fax or e-mail). You may use the attached model cancellation form, but it is not obligatory. [*see Note 3*]

(4) To meet the cancellation deadline, it is sufficient for you to send your communication concerning your exercise of the right to cancel before the cancellation period has expired.

##### **2. Effects of cancellation.**

(1) If you cancel this contract, we will reimburse to you all payments received from you, including the costs of delivery (except for the supplementary costs arising if you chose a type of delivery other than the least expensive type of standard delivery offered by us).

(2) We may make a deduction from the reimbursement for loss in value of any goods supplied, if the loss is the result of unnecessary handling by you.

(3) We will make the reimbursement without undue delay, and not later than -

(a) 14 days after the day we receive back from you any goods supplied, or

(b) (if earlier) 14 days after the day you provide evidence that you have returned the goods, or

(c) if there were no goods supplied, 14 days after the day on which we are informed about your decision to cancel this contract.

(4) We will make the reimbursement using the same means of payment as you used for the initial transaction, unless you have expressly agreed otherwise; in any event, you will not incur any fees as a result of the reimbursement. [*see Note 4*].

**3. Notes on instructions for completion:**

(1) Insert one of the following texts between inverted commas -

(a) in the case of a service contract or a contract for the supply of digital content which is not supplied on a tangible medium: "of the conclusion of the contract.",

(b) in the case of a sales contract or a contract for the supply of digital content which is not supplied on a tangible medium: "of the conclusion of the contract.",

- (c) in the case of a contract relating to multiple goods ordered by the consumer in one order and delivered separately: "on which you acquire, or a third party other than the carrier and indicated by you acquires, physical possession of the last good.",
- (d) in the case of a contract relating to delivery of a good consisting of multiple lots or pieces: "on which you acquire, or a third party other than the carrier and indicated by you acquires, physical possession of the last lot or piece.",
- (e) in the case of a contract for regular delivery of goods during a defined period of time: "on which you acquire, or a third party other than the carrier and indicated by you acquires, physical possession of the first good."

(2) Insert your name, geographical address and, where available, your telephone number, fax number and e-mail address.

(3) If you give the option to the consumer to electronically fill in and submit information about the consumer's cancellation from the contract on your website, insert the following: "You can also electronically fill in and submit the model cancellation form or any other clear statement on our website [insert Internet address]. If you use this option, we will communicate to you an acknowledgement of receipt of such a cancellation on a durable medium (e.g. by e-mail) without delay."

(4) In the case of sales contracts in which you have not offered to collect the goods in the event of cancellation insert the following: "We may withhold reimbursement until we have received the goods back or you have supplied evidence of having sent back the goods, whichever is the earliest."

(5) If the consumer has received goods in connection with the contract -

(a) insert -

(i) "We will collect the goods.", or

(ii) "You shall send back the goods or hand them over to us or [insert the name and geographical address, where applicable, of the person authorised by you to receive the goods], without undue delay and in any event not later than 14 days from the day on which you communicate your cancellation from this contract to us. The deadline is met if you send back the goods before the period of 14 days has expired.",

(b) insert -

(i) "We will bear the cost of returning the goods.",

(ii) "You will have to bear the direct cost of returning the goods.",

(iii) if, in a distance contract, you do not offer to bear the cost of returning the goods and the goods, by their nature, cannot normally be returned by post: "You will have to bear the direct costs of returning the goods, ... GBP [insert the amount]"; or if the cost of returning the goods cannot reasonably be calculated in advance: "You will have to bear the direct costs of returning the goods. The cost is estimated at a maximum of approximately ... GBP [insert the amount].", or

(iv) if, in an off-premises contract, the goods, by their nature, cannot normally be returned by post and have

been delivered to the consumer's home at the time of the conclusion of the contract: "We will collect the goods at our own expense.", and

- (c) insert "You are only liable for any diminished value of the goods resulting from the handling other than what is necessary to establish the nature, characteristics and functioning of the goods."

(6) In the case of a service contract insert the following: "If you requested to begin the performance of services during the cancellation period, you shall pay us an amount which is in proportion to what has been performed until you have communicated us your cancellation from this contract, in comparison with the full coverage of the contract."

## PART B

### MODEL CANCELLATION FORM

To [*the trader's name, geographical address and, where available, fax number and e-mail address are to be inserted by the trader*]:

I/We [\*] hereby give notice that I/We [\*] cancel my/our [\*] contract of sale of the following goods [\*/for the supply of the following service [\*],

Ordered on [\*/received on [\*],

Name of consumer(s),

Address of consumers(s),

Signature of consumer(s) (only if this form is notified on paper),

Date

[\*] *Delete as appropriate.*

## SCHEDULE 6

Sections 102 and 107.

### COMMERCIAL PRACTICES WHICH ARE IN ALL CIRCUMSTANCES CONSIDERED UNFAIR

1. Claiming to be a signatory to a code of conduct to which the trader is not a signatory.
2. Displaying a trust mark, quality mark or equivalent without having obtained the necessary authorisation.
3. Claiming that a code of conduct has an endorsement from a public or other body which it does not have.
4. Claiming that a trader (including that trader's commercial practices) or a product has been approved, endorsed or authorised by a public or private body when the trader, the commercial practices or the product have not or making such a claim without complying with the terms of the approval, endorsement or authorisation.
5. Making an invitation to purchase products at a specified price without disclosing the existence of any reasonable grounds the trader may have for believing that the trader will not be able to offer for supply, or to procure another trader to supply, those products or equivalent products at that price for a period that is, and in quantities that are, reasonable having regard to the product, the scale of advertising of the product and the price offered (bait advertising).
6. Making an invitation to purchase products at a specified price and then -
  - (a) refusing to show the advertised item to consumers,

(b) refusing to take orders for it or deliver it within a reasonable time, or

(c) demonstrating a defective sample of it,

with the intention of promoting a different product (bait and switch).

7. Falsely stating that a product will only be available for a very limited time, or that it will only be available on particular terms for a very limited time, in order to elicit an immediate decision and deprive consumers of sufficient opportunity or time to make an informed choice.
8. Undertaking to provide after-sales service to consumers with whom the trader has communicated prior to a transaction in a language other than English and then making such service available only in another language without clearly disclosing this to the consumer before the consumer is committed to the transaction.
9. Stating or otherwise creating the impression that a product can legally be sold when it cannot legally be sold.
10. Presenting rights given to consumers in law as a distinctive feature of the trader's offer.
11. Using editorial content in the media to promote a product where a trader has paid for the promotion without making that clear in the content or by images or sounds clearly identifiable by the consumer (advertorial).
12. Making a materially inaccurate claim concerning the nature and extent of the risk to the personal security of the consumer or the consumer's family if the consumer does not purchase the product.

13. Promoting a product similar to a product made by a particular manufacturer in such a manner as to deliberately mislead the consumer into believing that the product is made by that same manufacturer when it is not.
14. Establishing, operating or promoting a pyramid promotional scheme where a consumer gives consideration for the opportunity to receive compensation that is derived primarily from the introduction of other consumers into the scheme rather than from the sale or consumption of products.
15. Claiming that the trader is about to cease trading or move premises when that trader is not intending to cease trading or move premises.
16. Claiming that products are able to facilitate winning in games of chance.
17. Falsely claiming that a product is able to cure illnesses, dysfunctions or malformations.
18. Passing on materially inaccurate information on market conditions or on the possibility of finding the product with the intention of inducing the consumer to acquire the product at conditions less favourable than normal market conditions.
19. Claiming in a commercial practice to offer a competition or prize promotion without awarding the prizes described or a reasonable equivalent.
20. Describing a product as "gratis", "free", "without charge" or similar if the consumer has to pay anything other than the unavoidable cost of responding to the commercial practice and collecting or paying for delivery of the item.
21. Including in marketing material an invoice or similar document seeking payment which gives the consumer the impression that the consumer has already ordered the marketed product when that consumer has not done so.

22. Falsely claiming or creating the impression that the trader is not acting for purposes relating to that person's trade, business, craft or profession, or falsely representing oneself as a consumer.
23. Creating the false impression that after-sales service in relation to a product is available in a place other than Guernsey.
24. Creating the impression that the consumer cannot leave the premises until a contract is formed.
25. Conducting personal visits to the consumer's home ignoring the consumer's request to leave or not to return, except in circumstances and to the extent justified to enforce a contractual obligation.
26. Making persistent and unwanted solicitations by telephone, fax, e-mail or other remote media except in circumstances and to the extent justified to enforce a contractual obligation.
27. Requiring a consumer who wishes to claim on an insurance policy to produce documents which could not reasonably be considered relevant as to whether the claim was valid, or failing systematically to respond to pertinent correspondence, in order to dissuade a consumer from exercising that consumer's contractual rights.
28. Including in an advertisement a direct exhortation to children to buy advertised products or persuade their parents or other adults to buy advertised products for them.
29. Demanding immediate or deferred payment for or the return or safekeeping of products supplied by the trader, but not solicited by the consumer.

30. Explicitly informing a consumer that if the consumer does not buy the product or service, the trader's job or livelihood will be in jeopardy.
31. Creating the false impression that the consumer has already won, will win, or, on doing a particular act, will win, a prize or other equivalent benefit, when in fact either -
  - (a) there is no prize or other equivalent benefit, or
  - (b) taking any action in relation to claiming the prize or other equivalent benefit is subject to the consumer paying money or incurring a cost.