

# Unfair contract terms

**CMA37con**

**Consultation on draft revised guidance on the unfair  
contract terms provisions in the Consumer Rights  
Act 2015**

22 January 2026

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## 1. About this consultation

- 1.1 The Competition and Markets Authority (CMA) has produced revised draft guidance (Draft Guidance) on the unfair contract terms provisions in Part 2 of the Consumer Rights Act 2015 (the Act). The Draft Guidance updates and, once finalised, will replace [Unfair contract terms: CMA37](#) (Current CMA37), which was published in 2015. The CMA is inviting comments on the [Draft Guidance](#).
- 1.2 The law on unfair contract terms has not changed since 2015. As such, businesses' obligations under the Act to ensure that contract terms and notices used with consumers are fair and transparent remain unchanged.
- 1.3 However, the CMA considers that parts of the Current CMA37 require updating to make the guidance more accessible in line with the [Government's Strategic Steer](#) to the CMA and the CMA's [2026-2029 strategy](#), and to reflect other relevant developments,<sup>1</sup> including direct enforcement powers for the CMA under the Digital Markets, Competition and Consumers (DMCC) Act 2024. The Draft Guidance aims to make it easier for businesses to understand unfair contract terms law and to help them to comply.

### Scope of this consultation

- 1.4 This consultation primarily covers the simplification, presentation, style and readability of the Draft Guidance. Since the law remains unchanged since 2015, the CMA generally has not revised its interpretation of the law.
- 1.5 The focus of the Draft Guidance is on clear and actionable explanations of what the law means, with detail on legislative background and other related legislation moved to a separate [technical note](#).
- 1.6 The CMA has made the following main changes to the Draft Guidance:
  - **streamlining and restructuring the Draft Guidance**, reducing the document length from around 245 pages across three documents to a main document of around 125 pages, primarily aimed at businesses. This includes summary-at-a-glance boxes in detailed chapters, more

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<sup>1</sup> This includes the UK's exit from the European Union (EU) and additional case law. In addition, while the substantive law remains the same, the powers of enforcement authorities to enforce unfair terms law have been enhanced. The DMCC Act introduced direct enforcement powers for the CMA in relation to some pieces of consumer protection legislation, including Part 2 of the Act; and enhanced the powers of the civil courts to impose monetary penalties for breaches of a range of consumer protection legislation, including Part 2 of the Act.

descriptive subheadings and clickable signposts between sections and chapters to improve the navigability of the content.

- **simplifying technical language**, consolidating or removing duplicative content. This includes organising the content on potentially unfair terms thematically,<sup>2</sup> instead of by reference to individual terms set out in the Grey List,<sup>3</sup> given the overlaps between many Grey List items.
- **reorganising the content on the key requirements of the Act (fairness and transparency) by articulating distinct principles and considerations** embodied in the tests for determining if terms and notices are fair and transparent.
- **reorganising the content on potentially unfair terms<sup>4</sup>** to set out:
  - how a particular type of term could be unfair,
  - how a particular type of term could be used fairly,
  - examples of terms that are unlikely to be fair and more likely to be fair, presenting these contextually and more prominently.
- **redesigning flowcharts explaining how the Act and some of its specific provisions work** to improve their accessibility.
- **updating and adding references to authoritative court decisions** on how various provisions of the Act apply in practice.
- **updating outdated legislative references and the content on means of enforcement** in light of changes made by the DMCC Act.

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<sup>2</sup> Chapter 6 of the Draft Guidance is organised in the following seven thematic sections discussing types of potentially unfair terms:

- binding consumers to hidden terms,
- exclusion and limitation of rights and duties,
- variation terms,
- termination and breach by consumers,
- termination and breach by traders,
- automatic renewal terms, and
- dispute resolution terms.

<sup>3</sup> The 'Grey List' is the illustrative and non-exhaustive list of potentially unfair terms set out in Schedule 2 to the Act.

<sup>4</sup> Potentially unfair terms are terms that are not necessarily unfair, but could be, depending on the circumstances. In practice, whether such terms are unfair, or the only suitable way of achieving fairness is using some or all the alternatives set out in the Draft Guidance, will depend on the facts of each case.

- **moving content on relevant legislative background and other legislation** that overlaps with unfair contract terms to a separate technical note, primarily aimed at legal advisers and enforcement authorities.

1.7 The specific questions on which the CMA is seeking respondents' views are listed in [Chapter 3](#) of this consultation document.

1.8 The Current CMA37 consists of:

- A main guidance document (CMA37) accompanied by:
  - a historical annex of examples of fair and unfair terms reflecting enforcement by the Office of Fair Trading (OFT)<sup>5</sup> predating the Act, and
  - an annex on new elements of unfair contract terms law introduced in 2015.
- Various short-form versions of the main guidance, including fair terms guides which focus on tips for how to write fair contracts.

1.9 This consultation only covers the main guidance consisting of the [Draft Guidance](#) and the accompanying [technical note](#). The CMA is not consulting on the short-form content in this consultation. Appropriate short-form content will be redeveloped and published once the main revised guidance is finalised.

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<sup>5</sup> The OFT was the CMA's predecessor organisation.

## 2. Consultation process

- 2.1 The CMA is consulting for a period of 8 weeks with a **closing date and time of 11:59pm on 19 March 2026**.
- 2.2 Responses should be submitted by email to [consumerguidance@cma.gov.uk](mailto:consumerguidance@cma.gov.uk). Any queries about this consultation should be sent to [consumerguidance@cma.gov.uk](mailto:consumerguidance@cma.gov.uk).
- 2.3 When responding to this consultation, please state whether you are responding as an individual or are representing the views of a group or organisation. If the latter, please make clear who you are representing and their role or interest. The CMA will not accept anonymous responses.
- 2.4 In pursuance of the CMA's policy of openness and transparency, the CMA will publish a non-confidential version of responses on its webpages. If your response contains any information that you regard as sensitive and that you would not wish to be published, please provide a non-confidential version for publication on the CMA's webpages which omits that material. You should at the same time explain why you regard the omitted material as sensitive.

### **Use of information and personal data that is supplied in consultation responses**

- 2.5 Any personal data that you supply in responding to this consultation will be processed by the CMA, as controller, in line with data protection legislation. This legislation is the General Data Protection Regulation 2016 and the Data Protection Act 2018. 'Personal data' is information which relates to a living individual who may be identifiable from it.
- 2.6 The CMA is processing this personal data for the purposes of its work under section 6 of the Enterprise Act 2002 (providing the public with information or advice on matters relating to its functions). This processing is necessary for the performance of the CMA's functions and is carried out in the public interest, in order to take consultation responses into account.
- 2.7 For more information about how the CMA processes personal data, your rights in relation to that personal data, how to contact the CMA, details of the CMA's Data Protection Officer, and how long the CMA retains personal data, see the [CMA's Privacy Notice](#).

- 2.8 The CMA's use of all information, including personal data, that it receives is also subject to Part 9 of the Enterprise Act 2002.<sup>6</sup>
- 2.9 The CMA may wish to refer to comments received in response to this consultation in future publications. In deciding whether to do so, the CMA will have regard to the need for excluding from publication, so far as practicable, any information relating to the private affairs of an individual or any commercial information relating to a business, where the CMA considers that disclosure might significantly harm the interests of that individual or business.
- 2.10 Please note that information, including personal data, provided in response to this consultation may be the subject of requests by members of the public under the Freedom of Information Act 2000. In responding to such requests, the CMA will take fully into consideration representations made by you in support of confidentiality. The CMA will also be mindful of its responsibilities under the data protection legislation referred to above and under the Enterprise Act 2002.
- 2.11 If you are replying by email, this statement overrides any standard confidentiality disclaimer that may be generated by your organisation's IT system.

## **After the consultation**

- 2.12 Following this consultation, the CMA will publish a non-confidential version of responses received during the consultation on its webpages.
- 2.13 Taking into account feedback received as part of this consultation, the CMA will publish its final revised guidance on the unfair contract terms provisions in Part 2 of the Act.

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<sup>6</sup> Part 9 of the Enterprise Act 2002 imposes a general restriction on the disclosure of information which the CMA obtains during the exercise of any of its functions (referred to as 'specified information') to other persons. Guidance on the application of Part 9 of the Enterprise Act 2002 and when disclosure of specified information may be permitted is set out in [Transparency and disclosure - statement of CMA's policy and approach: CMA6 - GOV.UK](#).

### 3. Consultation questions

In responding to these questions, please have regard to the Draft Guidance. Please give your reasons and any relevant supporting information or evidence in relation to your response.

- Q1.** Do you have any comments on the new structure and presentation of the Draft Guidance? If any, please be specific about the areas of the Draft Guidance that you think could be restructured and the changes you feel would improve them.
- Q2.** Does the tone strike the right balance between comprehensive explanation of the legal provisions and readability for non-specialist users of the Draft Guidance? If not, please specify what changes you would like to see.
- Q3.** Do you have any comments on the usefulness, relevance and clarity of the illustrative examples in the Draft Guidance of contract terms that are unlikely to be fair and more likely to be fair?
- Q4.** Are there any areas where you think other examples could be added to the Draft Guidance, particularly for terms which may have arisen since 2015 and were therefore not reflected in the Current CMA37?
- Q5.** Is there anything in the Current CMA37 you wish to retain in the Draft Guidance that has not been included? If yes, please explain your reasoning.
- Q6.** Do you have any comments on the usefulness and clarity of the technical note accompanying the Draft Guidance?
- Q7.** Would you prefer the technical note to be incorporated in the Draft Guidance or to remain separate?
- Q8.** Do you have any other comments on topics not covered by the specific questions above? If so, please structure your responses to separate out your views in relation to each of the Draft Guidance's chapters.