



Joint project by the Law  
Commission and the  
Scottish Law  
Commission



**Embargoed until 0001hrs Thursday 24 February 2005**

<p><b>MAKING THE LAW ON UNFAIR CONTRACT TERMS EASIER TO UNDERSTAND AND INCREASING THE PROTECTION FOR SMALL BUSINESSES</b></p>
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The Law Commission and Scottish Law Commission today published a joint Report and draft Bill which re-writes the law on unfair terms in a clear and accessible way that businesses and consumer advisors will find easier to understand. It also gives greater protection to smaller, more vulnerable businesses by allowing them to challenge a wider range of non-negotiated terms.

***Making the law easier to understand***

The current law is very hard to understand because it is contained in two different but overlapping pieces of legislation: the Unfair Contract Terms Act 1977 and Unfair Terms in Consumer Contracts Regulations 1999. Their language and structure are unnecessarily complicated and sometimes obscure. If enacted, the draft Bill will preserve the existing level of consumer protection in a single, clear and accessible statute.

Professor Hugh Beale QC, Commissioner at the Law Commission said:

This Bill will not only clarify the language and concepts of the law on unfair contract terms but will also make clear what businesses can do to ensure that their consumer contract terms are unlikely to be challenged as unfair.

The new legislation includes guidelines on how to decide whether a contract term is unfair. This will depend on its transparency, its substance and effect, and the circumstances in which the contract was made.

***Protecting small businesses***

Small businesses, such as farmers, manufacturers, publishers or builders, are often subject to unfair contract terms imposed by other businesses. The small business is often unaware of the significance of the other party's 'small print', or for business reasons is unable to avoid signing an unfair contract. The Commissions recommend that the law should be altered to protect vulnerable small businesses.

Professor Joseph Thomson, Commissioner at the Scottish Law Commission said:

Currently, small businesses are not protected against many types of unfair term – for instance, terms which require them to indemnify another business for losses which are not their fault or which allow the other business to terminate the contract for the slightest infringement. Our recommendations will give small businesses more power to challenge unfair standard terms and should encourage fairer contracts.

The new protection will be targeted at businesses that need it most - businesses with nine or fewer staff – in transactions that are not so large that the small business would get legal advice (and which are not already regulated, e.g. by the FSA.)

## NOTES FOR EDITORS

1. A more detailed summary for journalists is available from the Communications Team at the Law Commission.
2. The Department of Trade and Industry invited the Law Commission and the Scottish Law Commission to conduct a review of the law of Unfair Contract Terms.
3. A consultation paper was published 7 August 2002 (LC166, SLC119). It is accessible from: [http://www.scotlawcom.gov.uk/html/discussion\\_papers.html#dp119](http://www.scotlawcom.gov.uk/html/discussion_papers.html#dp119)
4. A summary of the consultation proposals can be found at: <http://www.lawcom.gov.uk/files/cp166sum.pdf>
5. The final report and draft bill will also be accessible from the Law Commission website: [www.lawcom.gov.uk/](http://www.lawcom.gov.uk/) and the Scottish Law Commission site: <http://www.scotlawcom.gov.uk/html/reports.html>

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