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Create an offence of conduct in trade and commerce that is unconscionable; and for connected purposes.

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1 Overview

- (1) It is an offence for a person (whether natural or legal), in trade or commerce, to engage in conduct that is unconscionable.
- (2) A person guilty of an offence under subsection (1) is liable—
- (a) on summary conviction—
 - (i) in England and Wales, to imprisonment for a term not exceeding 12 months or a fine, or both; 5
 - (ii) in Scotland, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum, or both;
 - (iii) in Northern Ireland, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum, or both; 10
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 7 years or an unlimited fine, or both.
- (3) A court by or before which a person is found guilty under subsection (1), instead of or in addition to dealing with them in any other way under this section, may, on application or otherwise, make a compensation order under—
- (a) sections 130 to 134 of the Powers of Criminal Courts (Sentencing) Act 2000, 15
 - (b) section 249 of the Criminal Procedure (Scotland) Act 1995, or 20
 - (c) article 14 of the Criminal Justice (Northern Ireland) Order 1994 (S.I. 1994/2795 (N.I. 15)),
- requiring them to pay compensation for any loss or damage resulting from that offence or any other offence which is taken into consideration by the court in determining sentence. 25

- (4) Without limiting the generality of subsection (1), this section can apply –
- (a) to a system of conduct or pattern of behaviour, whether or not a person is identified as having been disadvantaged by the conduct or behaviour; and
 - (b) notwithstanding that a transaction or contract is voluntarily entered into. 5

2 Matters to which the court may have regard for the purposes of section 1

- (1) Without limiting the matters to which the court may have regard for the purpose of determining whether a person has committed an offence under section 1(1), the court may have regard to – 10
- (a) conduct engaged in, or circumstances existing, before the commencement of this Act;
 - (b) a system of conduct or pattern of behaviour, whether or not a particular individual is identified as having been disadvantaged by the conduct or behaviour; 15
 - (c) consideration of the terms of a contract;
 - (d) the manner in which and the extent to which a contract is carried out (not limited to consideration of the circumstances relating to formation of the contract);
 - (e) the relative strengths of the bargaining positions of the parties to a contract; 20
 - (f) whether, as a result of conduct engaged in by a supplier, their customer was required to comply with conditions that were not reasonably necessary for the protection of the legitimate interests of the supplier;
 - (g) whether any undue influence or pressure was exerted on or any unfair tactics were used against a customer or a person representing a customer by a supplier or the person representing the supplier, including imposition of unrealistic timescales having regard to circumstances and the reasonable capacity of the customer; 25
 - (h) whether a customer was able to understand any documents relating to the supply or possible supply of goods or services; 30
 - (i) the amount for which, and the circumstances under which, the customer could have acquired identical or equivalent goods or services from a person other than the supplier;
 - (j) the extent to which a supplier's conduct towards a customer was consistent with the supplier's conduct in similar transactions between the supplier and other like customers; 35
 - (k) the requirements of any applicable industry code;
 - (l) the requirements of any other industry code, if a customer acted on the reasonable belief that a supplier would comply with that code; 40
 - (m) the extent to which a supplier unreasonably failed to disclose to the customer –
 - (i) any intended conduct of the supplier that might affect the interests of the customer; and
 - (ii) any risks to the customer arising from the supplier's intended conduct (being risks that the supplier should have foreseen would not be apparent to the customer); 45
 - (n) if there is a contract between the supplier and the customer for the supply of the goods or services –

- (i) the extent to which the supplier was willing to negotiate the terms and conditions of the contract with the customer;
- (ii) the terms and conditions of the contract;
- (iii) the conduct of the supplier and the customer in complying with the terms and conditions of the contract; and 5
- (iv) any conduct that a supplier or the customer engaged in, in connection with their commercial relationship, after they entered into the contract;
- (o) whether the supplier has a contractual right to vary unilaterally a term or condition of a contract between the supplier and the customer for the supply of the goods or services; 10
- (p) the extent to which the supplier and the customer acted in good faith.

3 Extent, commencement and short title

- (1) This Act extends to England and Wales, Scotland and Northern Ireland.
- (2) This Act comes into force at the end of the period of six months beginning with the day on which it is passed. 15
- (3) This Act may be cited as the Unconscionable Conduct in Commerce Act 2020.

Unconscionable Conduct in Commerce Bill [HL]

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To create an offence of conduct in trade and commerce that is unconscionable; and for connected purposes.

Baroness Bowles of Berkhamsted

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