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INNOVATION & EMPLOYMENT**
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PĀREMATA



Contract and Commercial Law Bill

Exposure Draft

Explanatory Material

and

Request for Submissions

REQUEST FOR SUBMISSIONS

We are seeking written submissions on the exposure draft Contract and Commercial Law Bill. This is the first revision Bill on the Government's revision programme for the 51st Parliament.

The Bill contains questions about specific provisions and some general questions are also set out in this explanatory material. We welcome any other comments relating to the Bill.

Your comments will help with preparing the Bill for introduction to Parliament.

The closing date for submissions is **Monday 7 December 2015**.

How to send us your submission

Please [use the questionnaire](#) to provide your feedback, emailing your response to:

- revisionbill@mbie.govt.nz

Although we prefer to receive responses through the questionnaire, responses received in other formats will also be taken into account.

We ask for your name and address (including a telephone number or email address) so that we can contact you if we need to clarify anything in your comments.

Publication of comments, Official Information Act and Privacy Act

This work is undertaken in conjunction with the Ministry of Business, Innovation, and Employment. We intend to publish all submissions on the Parliamentary Counsel Office website, other than submissions that may be defamatory. We will not publish the content of your submission if you state that you object to its publication when you provide it. However, your submission will be subject to the Official Information Act 1982 and may, therefore, be released in part or full. The Privacy Act 1993 also applies.

When making your submission, please state if you have any objections to the release of any information contained in your submission. If you do have objections, please identify which parts of your submission you request to be withheld and the grounds under the Official Information Act that you believe apply.

Disclaimer

The opinions and options contained in this document and the exposure draft Contract and Commercial Law Bill are for consultation purposes only and do not reflect final Government policy. Please seek specific legal advice from a qualified professional person before undertaking any action based on the contents of this document.

The contents of this document and the Bill must not be construed as legal advice.

The Government does not accept any responsibility or liability whatsoever for an action taken as a result of reading, or for reliance placed because of having read, all or any part of the information contained in this document or the Bill, or for any error, inadequacy, deficiency, or flaw in, or omission from, this document or the Bill.

INTRODUCTION

This paper is a companion document to the exposure draft of the Contract and Commercial Law Bill. In late 2014, the Government approved the first revision programme under the Legislation Act 2012 for the 51st Parliament. The Bill will be the first revision Bill to be prepared under the revision powers in the Legislation Act 2012. Their purpose is to revise statutes to make them more accessible, readable, and easier to understand.

Work on this revision Bill is being led by the Parliamentary Counsel Office (PCO), in conjunction with the Ministry of Business, Innovation, and Employment (MBIE).

A revision Bill will not make policy changes because it can only make minor changes to the effect of the law as allowed under section 31(2)(i) and (j) of the Legislation Act 2012.

Section 31(2)(i), in particular, allows a revision Bill to:

“make minor amendments to clarify Parliament’s intent, or reconcile inconsistencies between provisions”.

Revision can change the form of the legislation but not its substantive legal effect.

The Contract and Commercial Law Bill revises the following statutes:

- Carriage of Goods Act 1979*
- Contracts (Privity) Act 1982
- Contractual Mistakes Act 1977
- Contractual Remedies Act 1979
- Electronic Transactions Act 2002*
- Frustrated Contracts Act 1944
- Illegal Contracts Act 1970
- Mercantile Law Act 1908*
- Minors’ Contracts Act 1969
- Sale of Goods Act 1908*
- Sale of Goods (United Nations Convention) Act 1994*

These are largely older Acts that are expressed in language that is out of date and many provisions have been repealed or are spent. It is intended that by consolidating these Acts in a modern form they will be more accessible and regulatory costs for business and other users will be reduced.

The Acts marked with an asterisk are administered by MBIE. The remaining statutes are administered by the Ministry of Justice.

This paper

This paper has four Parts.

Part 1 describes the revision process.

Part 2 provides context for some of the changes being made in this Bill. It also asks some questions on which feedback is particularly sought.

Part 3 records where the provisions of each Act can be found in the Bill and the nature of the drafting change that has been made in each case. Drafting changes are recorded using one of the following descriptions:

- No change
- Textual change (minor grammatical)

- Textual change
- Textual change and structural change
- Structural change.

A small number of provisions with minor changes to legal effect are also identified (see page 7 of this explanatory material for further information).

The Part is intended to assist readers in reading and providing feedback on the Bill.

Part 4 notes matters arising within the statutes that may possibly warrant reform or amendment, but which require a level of reform that falls outside the revision powers.

Our purpose in setting these out is to alert the reader to the fact that we are aware of them. We do not seek substantive comment on them at this time. However, the revision process presents an opportunity to identify and record these issues. The record set out in *Part 4* is not complete and we invite comment on other issues in the statutes that may need reform and should be recorded in this manner.

Parts 3 and 4 deal with the Acts in the order in which they appear in the Bill.

PART 1 – THE REVISION PROCESS

The Legislation Act 2012 introduced a mechanism for systematically revising the presentation of some New Zealand statutes to make them more accessible. After these statutes have been revised, they will be introduced as revision Bills into Parliament for re-enactment.

The revision powers that can be applied, and the revision process, are set out in subpart 3 of Part 2 of the Legislation Act 2012.

A revision programme is required to be presented to the House of Representatives for each new Parliament. Each revision programme sets out the statutes that will be revised over the corresponding three-year Parliamentary term.

Revision: purpose and powers

Revision will update selected New Zealand statutes to make them more accessible, readable, and easier to understand. Revision can change the form of the legislation but not its substantive legal effect.

The revision powers are set out in section 31(2) of the Legislation Act 2012. Revision Bills may be used to:

- combine or divide Acts or parts of Acts
- adopt a new Title
- omit redundant and spent provisions
- renumber and rearrange provisions
- change the current drafting style and format, and generally express better the spirit and meaning of the law
- include new purpose or overview provisions and examples, diagrams, and other devices to aid accessibility and readability
- correct typographical, punctuation, and grammatical errors.

A revision Bill will not make policy changes because it can only make minor changes to the effect of the law as allowed under section 31(2)(i) and (j) of the Legislation Act 2012. This section does allow a revision Bill to:

- make minor amendments to clarify Parliament's intent, or reconcile inconsistencies between provisions
- update monetary amounts for Consumers Price Index changes (other than jurisdiction amounts, or offences or penalties) or provide for amounts to be prescribed by Order in Council.

Revision programme and consultation

The PCO is responsible for preparing the revision programme in consultation with the government departments that administer the legislation.

Current revision programme

The revision programme for the 51st Parliament was published for comment in July/August 2014 and was presented to the House of Representatives on 8 December 2014. It can be viewed at <http://www.pco.parliament.govt.nz/revision-programme/>

Next steps

After the consultation period has closed and submissions have been analysed, the Bill will be finalised for presentation to the revision Bill Certifiers under section 33 of the Legislation Act

2012. The Certifiers are the President of the Law Commission (the Honourable Sir Grant Hammond KNZM), the Solicitor-General (Michael Heron QC), a retired High Court Judge (the Honourable John Priestley CNZM QC), and the Chief Parliamentary Counsel (David Noble). They must be satisfied that:

- the revision powers set out in section 31 of the Legislation Act 2012 have been exercised appropriately; and
- the revision Bill does not change the effect of the law except as authorised by section 31(2)(i) or (j) of the Legislation Act 2012.

The Certifiers may require the Bill to be changed before certifying it for the Attorney-General as ready for introduction into Parliament. The Bill will be introduced in 2016.

There is a streamlined parliamentary process for revision Bills, because they will not contain any element of new policy, and they will not make substantive changes to the law. The process is set out in the Standing Orders of the House of Representatives, see Standing Order 271.¹

The Bill is expected to be enacted during the current parliamentary term, as indicated in the revision programme.

¹ See <http://www.parliament.nz/en-nz/pb/rules/standing-orders/00HOHPBReferenceStOrders4/standing-orders-of-the-house-of-representatives-2014>

PART 2 – THE DRAFT BILL

The exposure draft is being released for public consultation to obtain feedback on the specific drafting changes made and on whether the Bill contains any inadvertent changes to the law.

Part 3 of this document will assist in navigation between the existing statutes and the new provisions.

In some cases no change has been made. However most of the provisions have had both structural and textual amendments made to align them with best practice in modern drafting. The language has been modernised wherever it has been considered that this can be done without risking a change to the law. Lengthy clauses have been broken up into paragraphs and subparagraphs to assist with readability.

Notes appear in the Bill itself to explain why a particular approach has been taken, or why a particular change has not been made. We seek feedback on any of the provisions in the Bill and, particularly, on those for which notes have been added.

Minor changes to legal effect

Section 31(3) of the Legislation Act 2012 states that “[a] revision Bill must not change the effect of the law, except as authorised by subsection (2)(i) or (j).” Subsection (2)(j) is not relevant to this revision Bill, but subsection (2)(i) allows minor amendments to be made to clarify Parliament’s intent, or reconcile inconsistencies between provisions.

This Bill contains 21 clauses which PCO and MBIE consider make amendments which fall within section 31(2)(i) and (3). They are identified with notes in the Bill. The minor amendments feature in the following clauses, and are also described in Schedule 2 of the Bill:

9, 16, 24, 25, 26, 28, 76, 95, 123, 178, 194, 314, 318 (information technology), 327, 331, 332, 333, 339, 342, 347, and 355.

These are also identified in Part 3 of this paper. Not all of the possible minor amendments identified in Notes to the Bill have been included in Schedule 2. We will update Schedule 2 following consultation.

Question 1: Do the changes made in those provisions amount only to “minor amendments to clarify Parliament’s intent, or reconcile inconsistencies between provisions” within the meaning of section 31(2)(i)?

Question 2: If the Bill does make “minor amendments” to the effect of the law, is there any reason why the amendments should not be made?

Question 3: Are there any other “minor amendments” within the meaning of section 31(2)(i) of the Legislation Act 2012 that should be made? If so, please provide a detailed explanation of any proposed amendment and why it is justified.

Question 4: Are there any other changes that should be made to improve the Bill as a revision Bill? Proposed changes should fall within the powers contained in section 31(2) of the Legislation Act 2012, such as changes to language, format, or punctuation.

Question 5: Would accessibility and readability be aided if more legislative examples were given?

Should the entire Act bind the Crown?

Most of the revised Acts contain an “Act binds the Crown” provision. The exceptions are the Sale of Goods Act 1908, the Mercantile Law Act 1908, and the Frustrated Contracts Act 1944.

In relation to the Frustrated Contracts Act 1944, see the note above clause 67 in the Bill (relating to section 4(2) of the Act). Schedule 1 of the Crown Proceedings Act 1950 provides for various enactments to bind the Crown, including the Sale of Goods Act 1908 and Part 2 of the Mercantile Law Act 1908 (bills of lading).

There is an issue relating to whether or not the other Parts of the Mercantile Law Act (Parts 1, 4, and 5) bind the Crown. Under section 27 of the Interpretation Act 1999 “No enactment binds the Crown unless the enactment expressly provides that the Crown is bound by the enactment.” Under section 4 of that Act, that Act applies unless “ the context of the enactment requires a different interpretation.”

See the Law Commission Study Paper 6 “To Bind Their Kings in Chains” (NZLC SP6, 2000). Paragraphs 3 and 4 of that paper note that an intention to bind the Crown may be implied from the terms of a statute. The Paper cites *Province of Bombay v Municipal Corporation of Bombay* [1947] AC 58 (PC) at 63:

“If it can be affirmed that, at the time when the statute was passed and received the royal sanction, it was apparent from its terms that its beneficent purpose must be wholly frustrated unless the Crown were bound, then it may be inferred that the Crown has agreed to be bound. Their Lordships will add that when the court is asked to draw this inference, it must always be remembered that, if it be the intention of the legislature that the Crown shall be bound, nothing is easier than to say so in plain words.”

Chapter 10 of the Legislation Advisory Committee Guidelines (2014 edition) states that “Legislation must state whether or not it binds the Crown” and “Legislation should apply to the Crown unless there are good reasons for it not to do so.”

We seek your feedback on the following questions.

Question 6: Is an intention to bind the Crown implied from the terms of any of Parts 1, 4, and 5 of the Mercantile Law Act? Does Schedule 1 of the Crown Proceedings Act 1950 indicate a clear intention that only Part 2 of the Mercantile Law Act binds the Crown?

Question 7: Is it desirable that any of Parts 1, 4, and 5 of the Mercantile Law Act should bind the Crown? Would expressly providing for these Parts to bind the Crown be a minor amendment within the powers of s 31(2)(i) of the Legislation Act 2012 (ie, the power to “make minor amendments to clarify Parliament’s intent, or reconcile inconsistencies between provisions”)?

Part 5 of the Mercantile Law Act 1908

It is questionable whether Part 5 of the Mercantile Law Act has any continuing relevance.

There is, therefore, a question as to whether the Part should be revised at all. It is possible that the whole Part is so outdated that it should either:

(a) be left as the only remaining in-force part of the Mercantile Law Act 1908 and be repealed or substantially amended at a later date; or

(b) be modernised to the extent that it can be within the revision powers (as has been done in the Bill) and be substantially amended at a later date.

The Part sets out the rights of unpaid vendors of goods when the goods are held in what are now classified as “Customs controlled areas” under the Customs and Excise Act 1996. However, many of the terms used and practices described in the Part are now of no or little continued relevance.

In particular, “bonded” warehousing no longer exists. Typically “bonded” storage allowed for goods to be kept subject to the supervision of the New Zealand Customs Service (Customs), without payment of duty, in return for security of some form. The practical advantage of this was that it allowed a person to effectively defer payment of import duties.

This sort of arrangement no longer exists, as the concept of bonded storage – while still used overseas – was removed from the New Zealand context as part of the economic reforms of the mid-1980s. At that time, it was decided that the basic principle should be that duty on imported goods should be paid at the earliest opportunity, and not deferred (except in limited cases). Modern duty-free stores at international airports, and duty-free warehouses for transit goods or ship’s providers, which are required to be licensed as Customs controlled areas, are the only remnant. In each case it is likely that the licensee of the area and the owner of the goods will be one and the same.

There is also nothing analogous to a “free warehouse”. Customs has no interest in goods for which duty has already been paid and Customs does not intend to take further enforcement action relating to them. Neither the Minister nor Chief Executive of Customs has any power to compel such goods to be held in a specified place once goods have been entered for home consumption. The nearest comparison would be where goods are held in a licensed Customs-controlled area where these have been entered (and duty paid), but have not been collected by the owner.

As a person can no longer “bond” goods, so to speak, these terms and practices are of limited or no practical effect.

Question 8: Should we revise Part 5 of the Mercantile Law Act 1908 or leave it for subsequent reform or repeal?

Transitional and savings issue: should the new Act apply to all contracts and arrangements or only to new contracts and arrangements?

There is a question as to how the new Act and repealed statutes should apply to contracts, transactions, and other arrangements entered into or made before or after the new Act comes into force. In considering the issue, it is important to be clear that the Bill will repeal, and replace, the existing statutes.

- The new Act could apply to all arrangements, including contracts, regardless of whether they are entered into before or after it comes into force. That is, the new Act would apply, in place of the existing Acts, to existing transactions and contracts entered into during the period while those Acts were in force. This would not affect the validity or effect of anything that had already happened or the bringing or completion of proceedings that relate to an existing right, interest, or duty (see sections 17 to 22 of the Interpretation Act 1999).

This approach may be considered appropriate in the case of a revision Bill because the Bill will have been certified as resulting in no change to the effect of the law (other than minor amendments to clarify Parliament’s intent, or reconcile inconsistencies between provisions). It may also be favoured as the most accessible approach since users would not be required to continue to refer to the repealed Acts in the future. In addition, the minor amendments identified in Schedule 2 of the Bill would not apply to the existing arrangements.

- Alternatively, the former Acts could continue to apply to arrangements, including contracts, entered into before commencement of the new Act, while the new Act could only apply to arrangements and contracts entered into after its commencement.

It may be that this approach should be taken because of practical concerns. For example, it may be that existing legal or transactional documentation refers to or adopts consistently the terms, language, and cross-references of the existing Acts. Not taking this approach could, therefore, result in accessibility or interpretational issues. People might have concerns that the basis on which they have structured their affairs has changed.

This approach is also a low-risk one that has the advantage of continuity. Existing arrangements would continue under exactly the same law so as to avoid confusion. This approach is also more conventional – the usual approach is to apply new law to new contracts.

The provisions dealing with these transitional and savings arrangements can be found in Schedule 1 of the Bill.

The Ministry of Business, Innovation, and Employment and the Parliamentary Counsel Office prefer the approach set out in the first bullet point above because it extends the advantages of revision to contracts or arrangements entered into or made before the new Act comes into force.

That approach is consistent with and reflects:

- the revision powers under the Legislation Act 2012
- the revision Bill Certification process
- the new fast-track parliamentary process under Standing Orders of the House of Representatives (because there would be no substantive law change).

The transitional approach taken during the last revision and consolidation of statutes in 1908 is in some cases also similar to that approach. See, for example, section 1(3) of the Sale of Goods Act 1908 and section 1(3) of the Mercantile Law Act 1908. Both those subsections provide that matters and proceedings commenced under the consolidated enactments could be completed under the new law.

We are particularly keen for views on this point.

Question 9: How should the Bill approach transitional arrangements?

Other Questions

Question 10: Are there other issues in the statutes that may need reform that we have not identified in Part 4 of the Explanatory Material?

Question 11: Do you have any other comments relating to the Bill?

PART 3 – NATURE OF DRAFTING CHANGE

This Part records where the provisions of each Act can be found in the Bill and the nature of the drafting change that has been made in each case. Drafting changes are recorded using one of the following descriptions:

- No change
- Textual change (minor grammatical)
- Textual change
- Textual change and structural change
- Structural change.

A small number of provisions with minor amendments to legal effect are also identified (see page 7 of this explanatory material for further information).

New provision	Title of new provision	Old provision	Nature of change
Contracts Privity Act 1982			
10	Purpose	Long Title	Textual change
11	Interpretation (beneficiary)	2	Textual change and structural change
11	Interpretation (benefit)	2	No change
11	Interpretation (contract)	2	Structural change
9	Interpretation (court)	2	Structural change
11	Interpretation (promisee)	2	No change
11	Interpretation (promisor)	2	No change
12	Deed or contract for benefit of person who is not party to deed or contract	4	Textual change and structural change
13	Section 12 does not apply if no intention to create obligation enforceable by beneficiary	4	Textual change and structural change
14	Variation or discharge of promise may require beneficiary's consent	5	Textual change and structural change
15	Variation or discharge by agreement or in accordance with express provision	6	Textual change (minor grammatical)
16	Court may authorise variation or discharge	7	Textual change and structural change This provision contains a minor amendment (see Schedule 2 of the Bill)
17	Enforcement by beneficiary	8	Textual change and

New provision	Title of new provision	Old provision	Nature of change
			structural change
18	Availability of defences	9	Structural change
19	This subpart does not apply to promises, contracts, or deeds governed by foreign law	13A	Textual change
20	Savings	14(1)	Textual change and structural change
Contractual Mistakes Act 1977			
21	Purpose of this Subpart	4	Textual change and structural change
22	This subpart to be code	5	Textual change and structural change
23	Interpretation (mistake)	2	Textual change and structural change
9	Interpretation (court)	2	Structural change
9	Interpretation (disposition)	8	This provision contains a minor amendment (see Schedule 2 of the Bill)
24	Relief may be granted if mistake by one party is known to another party or is common or mutual	6	Textual change and structural change This provision contains a minor amendment (see Schedule 2 of the Bill)
25	Mistake does not include mistake in interpretation of contract	6(2)(a)	Textual change and structural change This provision contains a minor amendment (see Schedule 2 of the Bill)
26	Decision to enter into contract not influenced by mistake if party aware of it	6(2)(b)	Textual change and structural change This provision contains a minor amendment (see Schedule 2 of the Bill)
27	Mistake caused by party seeking relief	7(2)	Textual change and structural change
28	Nature of relief	7(3)	Textual change and structural change This provision contains a minor amendment (see Schedule 2 of the Bill)
29	Court may grant relief to person claiming	7(1)	Textual change and

New provision	Title of new provision	Old provision	Nature of change
	through or under party		structural change
30	Persons who may apply	7(4)	Textual change and structural change
31	Rights of third persons not affected	8	Textual change and structural change
9	Interpretation	8(3)	Textual change and structural change
32	This subpart does not apply to contracts governed by foreign law	11A	Textual change
Contractual Remedies Act 1979			
33	Meaning of cancel	2	Textual change and structural change
34	Remedy provided in contract	5	Textual change (minor grammatical)
35(1)	Damages for misrepresentation	6(1)	Textual change (minor grammatical)
35(2)	Damages for misrepresentation	6(2)	Textual change
36	Party may cancel contract if another party repudiates it	7(2)	Textual change and structural change
37(1), (2)	Party may cancel contract if induced to enter into it by misrepresentation or if term is or will be breached	7(3), (4)	Textual change (minor grammatical)
37(3)	Party may cancel contract if induced to enter into it by misrepresentation or if term is or will be breached	7(3), (4)	Textual change and structural change
38	No cancellation if contract is affirmed	7(5)	Structural change
39(1)	Parties with substantially same interest	7(6)	Structural change
39(2)	Parties with substantially same interest	7(7)	Structural change
40	Sections 36 to 39 have effect in place of rules of common law and of equity	7(1)	Textual change and structural change
41	When cancellation may take effect	8(1), (2)	Textual change (minor grammatical)
42(1)	Effect of cancellation	8(3)	No change
42(2)	Effect of cancellation	8(3)	Structural change

New provision	Title of new provision	Old provision	Nature of change
42(3)	Effect of cancellation	8(4)	Textual change (minor grammatical)
43(1)	Power of court to grant relief	9(1)	Structural change
43(2)–(4)	Power of court to grant relief	9(1), (2)	Textual change and structural change
44	Order for relief may be subject to terms and conditions	9(3)	Textual change and structural change
45	Matters court must have regard to	9(4)	Textual change (minor grammatical)
46	Protection of purchaser of property in good faith and for valuable consideration	9(5)	Textual change (minor grammatical)
47	Party who has altered position	9(6)	Textual change and structural change
48	Persons who may apply	9(7)	Textual change (minor grammatical)
49	Recovery of damages	10	Textual change and structural change
50	Statement, promise, or undertaking during negotiations	4(1)	Textual change and structural change
51	Authority for making or giving statement, promise, or undertaking	4(2)	Textual change and structural change
52	Contracts for sale of goods	4(3)	Textual change and structural change
53	Proceeding before Disputes Tribunal	4(4)	Textual change and structural change
54	Remedies enforceable by or against assignee	11(1)	Textual change and structural change
55	Damages may not exceed value of performance of assigned contract	11(2)	Textual change and structural change
56	Assignee indemnified by assignor	11(3)	Textual change and structural change
57	Other provisions relating to assignees	11(4), (5)	Textual change and structural change
58	This subpart does not apply to contracts governed by foreign law	14A	Textual change (minor grammatical)

New provision	Title of new provision	Old provision	Nature of change
59(1)	Savings	15	Textual change (minor grammatical)
59(2)	Savings	15	Textual change and structural change
Frustrated Contracts Act 1944			
60	Application	3(1)	Textual change and structural change
61	Money paid may be recovered and money payable ceases to be payable	3(2)	Textual change and structural change
62	Court may allow party who has incurred expenses to retain or recover money	3(2)	Textual change and structural change
63	Sum may be recovered if party has obtained valuable benefit	3(3)	Textual change and structural change
64	Benefit may be treated as being obtained	3(6)	Textual change and structural change
65	Estimates of expenses	3(4)	Textual change and structural change
66	Money payable under contract of insurance	3(5)	Textual change and structural change
8	Act binds the Crown	4(2)	Textual change and structural change
67	Court must give effect to provision in contract	4(3)	Textual change and structural change
68	Court must treat performed part of contract that can be properly severed as separate contract	4(4)	Textual change and structural change
69(a)	This subpart does not apply in certain circumstances	4(5)(a),	Textual change and structural change
69(b)	This subpart does not apply in certain circumstances	4(5)(b)	Textual change and structural change
69(c)	This subpart does not apply in certain circumstances	4(5)(c)	Textual change and structural change
Illegal Contracts Act 1970			
9	Interpretation	6	This provision contains a minor amendment (see Schedule 2 of the Bill).

New provision	Title of new provision	Old provision	Nature of change
70	Interpretation (enactment)	2	Textual change and structural change
70	Interpretation (property)	2	Textual change (minor grammatical)
71	Illegal contract defined	3	Textual change and structural change
8	Act binds the Crown	4	Textual change
72	Breach of enactment	5	Textual change (minor grammatical)
73	Illegal contracts have no effect	6(1)	Textual change and structural change
74	Protection of persons who acquire property in good faith and without notice	6(1)	Textual change and structural change
75	Who may be granted relief	7(1)	Textual change and structural change
76	Court may grant relief	7(1), (5)	Textual change and structural change This provision contains a minor amendment (see Schedule 2 of the Bill)
77	Order may be subject to terms and conditions	7(6)	Textual change and structural change
78	Matters court must have regard to	7(3)	Textual change and structural change
79	Court must not grant relief if not in public interest	7(3)	Textual change and structural change
80	Person acting with knowledge of facts or law giving rise to illegality	7(4)	Textual change and structural change
81	Persons who may apply	7(2)	Textual change and structural change
82	Restriction on granting relief otherwise than in accordance with this subpart	7(7)	Textual change and structural change
83	Restraints of trade	8	Textual change (minor grammatical)
84	Law relating to restraint of trade and to ouster of jurisdiction not affected	11(1)	Textual change and structural change

Minors' Contracts Act 1969

New provision	Title of new provision	Old provision	Nature of change
85	Interpretation	2	Textual change and structural change
86(1), (2)	Contracts unenforceable against minors but otherwise have effect	6(1)	Textual change and structural change
86(3)	Contracts unenforceable against minors but otherwise have effect	5(2)	Textual change and structural change
87(1)	Court may inquire into fairness and reasonableness of contract	6(2)	Structural change
87(2)	Court may inquire into fairness and reasonableness of contract	6(2)(a) and (b)	Textual change and structural change
88	Court orders where contract was fair and reasonable	6(2)(a)	Structural change
89	Court orders where contract was not fair and reasonable	6(2)(b)	Structural change
90	Matters court must have regard to	6(3)	Structural change
91	Further provisions relating to application of sections 86 to 90	6(4), (5)	Textual change (minor grammatical)
92(1)	Employment agreements and life insurance contracts have effect as if minor were of full age	5(1)	Textual change (minor grammatical)
92(2)	Employment agreements and life insurance contracts have effect as if minor were of full age	5(2),(5)	Textual change and structural change
93(1), (2)	Court may make orders about unconscionable, harsh, or oppressive employment agreement or life insurance contract	5(2)	Textual change (minor grammatical)
93(3)	Court may make orders about unconscionable, harsh, or oppressive employment agreement or life insurance contract	5(3)	Textual change
94(1)	Sections 92 and 93 do not apply in certain circumstances	5(5)	Textual change and structural change
94(2)	Sections 92 and 93 do not apply in certain circumstances	5(4)(d)	Textual change and structural change
95(1), (2)	Compensation or restitution	7(1)	Textual change and structural change
95(3)	Compensation or restitution	7(2)	Textual change

New provision	Title of new provision	Old provision	Nature of change
			This provision contains a minor amendment (see Schedule 2 of the Bill)
96	Applications under sections 87 to 89 or section 93	8(1)	Textual change and structural change
97	Terms and conditions of orders	8(2)	Textual change and structural change
98	Minor may enter into contract with approval of District Court	9(1)	Textual change (minor grammatical)
99	Persons who may apply	9(2)	Textual change
100(1), (2)	Referral of application	9(3)	Textual change and structural change
100(3)	Referral of application	9(4)	Textual change
100(4)	Referral of application	9(4)	Textual change and structural change
101	Contracts relating to property held on trust	9(5)	Textual change and structural change
102	Guarantees and indemnities	10	Textual change and structural change
103	Application	12(1)	Textual change and structural change
104(1)	Claim that is not subject of proceeding	12(1)(a)	Textual change and structural change
104(2)	Claim that is not subject of proceeding	12(7)	Textual change and structural change
105	Claim that has become subject of proceeding	12(1)(b)	Textual change and structural change
106	Who may apply for approval	12(2)	Textual change and structural change
107	Court may refuse or grant approval	12(3)	Textual change and structural change
108	Money or damages to be held on trust	12(4)	Textual change and structural change
109	Payment on minor reaching 18 years or marrying or entering into civil union or de facto relationship	12(5)	Textual change and structural change
110	Provisions do not limit or affect certain other provisions	12(8)	Textual change (minor grammatical)

New provision	Title of new provision	Old provision	Nature of change
111	Variation of certain orders	13(1)	Textual change and structural change
112	Order may be made on court's own motion or on application	13(2)	Textual change (minor grammatical)
113	Jurisdiction of District Courts	14	Textual change (minor grammatical)
114(1), (2)	Jurisdiction of Disputes Tribunals	14A(1), (2)	Textual change (minor grammatical)
114(3)	Jurisdiction of Disputes Tribunals	14A(2)	Structural change
114(4)	Jurisdiction of Disputes Tribunals	14A(3)	Textual change (minor grammatical)
115(1), (2)	This subpart to be code	15(1), (3)	Textual change and structural change
115(3), (4)	This subpart to be code	15(4)	Textual change and structural change
116	Effect of this subpart on trust	16(1)	Textual change and structural change
117	Agreement to extinguish or vary trust may be approved	16(2)–(4)	Textual change and structural change
Sale of Goods Act 1908			
118(1)	Interpretation (action)	2(1)	Textual change (minor grammatical)
118(1)	Interpretation (buyer)	2(1)	No change
118(1)	Interpretation (contract of sale)	2(1)	No change
118(1), (4)	Interpretation (deliverable state)	2(4)	Textual change and structural change
118(1)	Interpretation (delivery)	2(1)	No change
118(1)	Interpretation (document of title to goods)	2(1)	Textual change and structural change
118(1)	Interpretation (fault)	2(1)	No change
118(1)	Interpretation (future goods)	2(1)	Textual change
118(1), (2)	Interpretation (good faith)	2(2)	Textual change and structural change
118(1)	Interpretation (goods)	2(1)	Textual change and structural change

New provision	Title of new provision	Old provision	Nature of change
118(1)	Interpretation (insolvent)	2(3)	Textual change and structural change
118(1)	Interpretation (mercantile agent)	27(3)	Textual change and structural change
118(1)	Interpretation (perfected security interest)	27(3)	Textual change and structural change
118(1)	Interpretation (plaintiff)	2(1)	Textual change (minor grammatical)
118(1)	Interpretation (price)	2(1)	Textual change
118(1)	Interpretation (property)	2(1)	No change
118(1)	Interpretation (quality of goods)	2(1)	Textual change
118(1)	Interpretation (sale)	2(1)	No change
118(1)	Interpretation (seller)	2(1)	No change
118(1)	Interpretation (specific goods)	2(1)	No change
118(1)	Interpretation (warranty)	2(1)	Textual change (minor grammatical)
118(1)	Interpretation (writ of execution)	2(1)	Textual change (minor grammatical)
118(2)	Interpretation (good faith)	2(2)	Textual change
118(3)	Interpretation (insolvent)	2(3)	Textual change
118(4)	Interpretation (deliverable state)	2(4)	Textual change
119	Contract of sale of goods	3(1)	Textual change and structural change
120	Contracts of sale may be between one part-owner and another	3(2)	Textual change and structural change
121	Contracts of sale may be absolute or conditional	3(3)	Structural change
122	Sale and agreement to sell	3(4), (5)	Textual change and structural change.
123	Capacity to buy and sell	4	Textual change and structural change This provision contains a minor amendment (see Schedule 2 of the Bill)
124	How contract of sale is made	5	Textual change and

New provision	Title of new provision	Old provision	Nature of change
			structural change
125	Existing or future goods	7	Textual change and structural change
126	Contract void if goods have perished without seller's knowledge	8	Textual change
127	Goods that perish before sale but after agreement to sell	9	Textual change and structural change
128	Fixing contract price	10	Textual change and structural change
129(1), (2)	Agreement to sell at valuation	11(1)	Textual change and structural change
129(3)	Agreement to sell at valuation	11(2)	Textual change
130(1), (3)	Stipulations about time	12(1), (3)	Textual change
130(2)	Stipulations about time	12(2)	No change
131	Conditions and warranties	13(2)	Textual change
132	Breach of condition to be fulfilled by seller	13(1), (3)	Textual change (minor grammatical)
133	Impossibility or other excuse	13(4)	Textual change
134(1)(a)	Implied condition and warranties as to title and quiet possession	14(a)	Textual change and structural change
134(1)(b), (c)	Implied condition and warranties as to title and quiet possession	14(b), (c)	Textual change (minor grammatical)
134(2)	Implied condition and warranties as to title and quiet possession	14	Textual change and structural change
135	Sale by description	15	Textual change and structural change
136	Implied conditions or warranties as to quality or fitness	16	Textual change and structural change
137	Implied condition that goods are reasonably fit for purpose	16(a)	Textual change and structural change
138	Implied condition that goods are of merchantable quality	16(b)	Textual change and structural change
139	Implied warranty or condition by usage of trade	16(c)	Textual change and structural change
140	Express warranty or condition	16(d)	Textual change and

New provision	Title of new provision	Old provision	Nature of change
			structural change
141(1), (2)	Sale by sample	17(1), (2)	Textual change and structural change
142	Goods must be ascertained	18	Textual change
143(1)	Property is transferred when parties intend	19(1)	Textual change
143(2)	Property is transferred when parties intend	19(2)	Textual change and structural change
144	Ascertaining parties' intention	20	Textual change
145(1)	Rules for ascertaining parties' intention	20, Rule 1	Textual change and structural change
145(2)	Rules for ascertaining parties' intention	20, Rule 1	Textual change and structural change
145(3)	Rules for ascertaining parties' intention	20, Rule 2	Textual change
145(4)	Rules for ascertaining parties' intention	20, Rule 3	Textual change and structural change
145(5)(a)	Rules for ascertaining parties' intention	20, Rule 4(a)	Textual change and structural change
145(5)(b)	Rules for ascertaining parties' intention	20, Rule 4(b)	Textual change and structural change
145(6)	Rules for ascertaining parties' intention	20, Rule 5(1)	Textual change
145(7)	Rules for ascertaining parties' intention	20, Rule 5(1)	Textual change and structural change
145(8)(a)	Rules for ascertaining parties' intention	20, Rule 5(1)	Textual change and structural change
145(8)(b)	Rules for ascertaining parties' intention	20, Rule 5(2)	Textual change and structural change
146	Reservation of right of disposal	21	Textual change and structural change
147	Risk passes with property unless otherwise agreed	22	Textual change and structural change
148(1)–(3)	Sale by person who is not owner	23(1)	Textual change and structural change
148(4)(a)–(c)	Sale by person who is not owner	23(2)(a)–(c)	Textual change and structural change

New provision	Title of new provision	Old provision	Nature of change
149	Market overt	24	Textual change (minor grammatical)
150	Sale under voidable title	25	Textual change and structural change
151	Revesting of property in stolen goods on conviction of offender	26	Textual change
152	Seller in possession after sale	27(1), (1A)	Textual change and structural change
153(1)(2)	Buyer in possession after sale	27(2), (2A)	Textual change and structural change
153(4)	Buyer in possession after sale	27(2A)	Textual change and structural change
154	Effect of writs of execution	28	Textual change and structural change
155	Duties of seller and buyer	29	Textual change
156	Payment and delivery are concurrent conditions	30	Textual change and structural change
157	Determining whether buyer to take possession of goods or seller to send goods	31(1)	Textual change
158	Place of delivery	31(2)	Textual change and structural change
159	Goods must be sent within reasonable time if no time is fixed	31(3)	Textual change
160	Goods in possession of third person	31(4)	Textual change
161	Demand or tender of delivery must be at reasonable hour	31(5)	Textual change and structural change
162	Seller must bear expenses of putting goods into deliverable state	31(6)	Textual change and structural change
163	Delivery of wrong quantity or of mixed goods	32	Textual change and structural change
164	Buyer not bound to accept delivery by instalments	33(1)	No change
165	Instalment deliveries: breach of contract	33(2)	Textual change and structural change
166	Delivery to carrier	34	Textual change and structural change

New provision	Title of new provision	Old provision	Nature of change
167	Risk where goods are delivered at distant place	35	Textual change and structural change
168	Buyer's right to examine goods	36	Textual change (minor grammatical)
169	Acceptance of goods	37	Textual change and structural change
170	Buyer not bound to return rejected goods	38	Textual change and structural change
171	Liability of buyer for neglecting or refusing to take delivery of goods	39	Textual change and structural change
172	Unpaid seller defined	40	Textual change
173(1)–(3)	Unpaid seller's rights	41(1)	Textual change and structural change
173(4)	Unpaid seller's rights	41(2)	Textual change
174(1), (3)	Unpaid seller's lien	42(1), (2)	Textual change (minor grammatical)
174(2)	Unpaid seller's lien	42(1)	Textual change and structural change
175	Part delivery	43	Textual change (minor grammatical)
176	When unpaid seller loses lien	44	Textual change (minor grammatical)
177	Right to stopgoods in transit	45	Textual change and structural change
178(1)	Duration of transit	46(1)	Textual change This provision contains a minor amendment (see Schedule 2 of the Bill)
178(2), (3)	Duration of transit	46(2), (3)	Textual change (minor grammatical)
178(4)–(6)	Duration of transit	46(3), (4), (6)	Textual change and structural change
179	Goods delivered to ship chartered by buyer	46(5)	Textual change and structural change
180	Part delivery	46(7)	Structural change
181	How right is exercised	47(1)	Textual change and structural change

New provision	Title of new provision	Old provision	Nature of change
182	Notice of seller's claim	47(1)	Textual change and structural change
183	Redelivery of goods	47(2)	Textual change and structural change
184	Effect of subsale or pledge by buyer	48	Textual change and structural change
185	Transfer of document of title to person in good faith and for valuable consideration	48	Textual change and structural change
186	Sale not generally rescinded by lien or stopping goods in transit	49(1)	Textual change and structural change
187	Buyer's title on resale	49(2)	Textual change and structural change
188	Resale in case of perishable goods or notice of intention to resell	49(3)	Textual change and structural change
189	Express power of sale	49(4)	Textual change and structural change
190	Claim for price	50	Textual change and structural change
191	Damages for non-acceptance	51	Textual change and structural change
192	Damages for non-delivery	52	Textual change and structural change
193	Specific performance	53	Textual change and structural change
194(1)–(3)	Remedy for breach of warranty	54(1)	Textual change and structural change This provision contains a minor amendment (see Schedule 2 of the Bill)
194(4)	Remedy for breach of warranty	54(2)	No change
194(5), (6)	Remedy for breach of warranty	54(3), (4)	Textual change
195	Interest and special damages	55	Textual change and structural change
196	Exclusion of implied terms and conditions	56	Textual change and structural change
197	Exclusion where Consumer Guarantees Act 1993 applies	56A	Textual change

New provision	Title of new provision	Old provision	Nature of change
198	Reasonable price and reasonable time are questions of fact	10(3), 57	Textual change (minor grammatical)
199	Rights and duties under Act enforceable by proceeding	58	Textual change (minor grammatical)
200	Savings	60	Textual change and structural change
Sale of Goods (United Nations Convention) Act 1994			
201	Purpose	Long Title	No change
202	Interpretation	2	Textual change (minor grammatical)
203	Convention to have force of law	4	No change
204	Convention to be code	5	No change
205	Certificates about Contracting States	6	Textual change and structural change
Electronic Transactions Act 2002			
206	Purpose	3	No change
207	Overview	4	No change
208	Interpretation (data storage device)	5	No change
208	Interpretation (electronic)	5	No change
208	Interpretation (electronic communication)	5	No change
208	Interpretation (electronic signature)	5	No change
208	Interpretation (information)	5	No change
208	Interpretation (information system)	5	No change
208	Interpretation (legal requirement)	5	No change
208	Interpretation (Minister)	5	No change
208	Interpretation (transaction)	5	No change
209	Further provision relating to interpretation	6	No change
8	Act binds the Crown	7	No change
210	Validity of information	8	No change
211	When default rules in sections 211 to 215 apply	9	No change
212	Time of dispatch	10	No change
213	Time of receipt	11	No change
214	Place of dispatch	12	No change

New provision	Title of new provision	Old provision	Nature of change
215	Place of receipt	13	No change
216	Time of communication of acceptance of offer	13A	No change
217	When subpart applies	14	Textual change
218	When legal requirement can be met by electronic means	15	No change
219	Consent to use of electronic technology	16	No change
220	When integrity of information maintained	17	Textual change (minor grammatical)
221	Legal requirement that information be in writing	18	No change
222	Legal requirement to record information in writing	19	No change
223	Legal requirement to give information in writing	20	No change
224	Legal requirements relating to layout and format of certain information and writing materials	21	No change
225	Legal requirement for signature	22	Textual change (minor grammatical)
226	Legal requirement that signature or seal be witnessed	23	Textual change (minor grammatical)
227	Presumption about reliability of electronic signatures	24	No change
228	Legal requirement to retain document or information that is in paper or other non-electronic form	25	Textual change (minor grammatical)
229	Legal requirement to retain information that is in electronic form	26	Textual change and structural change
230	Extra conditions for electronic communications	27	Textual change (minor grammatical)
231	Legal requirement to provide or produce information that is in paper or other non-electronic form	28	Textual change (minor grammatical)
232	Legal requirement to provide or produce information that is in electronic form	29	Textual change (minor grammatical)
233	Legal requirement to provide access to information that is in paper or other non-electronic form	30	Textual change (minor grammatical)
234	Legal requirement to provide access to information that is in electronic form	31	Textual change (minor grammatical)
235	Originals	32	Textual change (minor grammatical)
236	Legal requirement relating to content of information	33	Textual change (minor grammatical)
237	Copyright	34	Textual change (minor grammatical)
	Review of enactments and provisions excluded from Part 3	35	(Omitted as spent)
238	Regulations and Order in Council to amend Schedule 5	14(3)-(5), 36	Textual change (minor grammatical)

New provision	Title of new provision	Old provision	Nature of change
239	Authority to prescribe electronic forms and requirements for using electronic forms	37	No change
	Related amendment to Interpretation Act 1999	38	(Incorporated in Interpretation Act 1999)
Carriage of Goods Act 1979			
240	Overview		
241	This subpart applies to carriage of goods by carrier under contract	5(1), (2)	Textual change and structural change
242(1)(a)	This subpart does not apply to international carriage, to postal services, or in certain other cases	5(1)	Textual change and structural change
242(1)(b)	This subpart does not apply to international carriage, to postal services, or in certain other cases	5(4A)	Textual change and structural change
242(1)(c)	This subpart does not apply to international carriage, to postal services, or in certain other cases	4(2)	Textual change and structural change
242(1)(d)	This subpart does not apply to international carriage, to postal services, or in certain other cases	5(4)	Textual change and structural change
242(2)	This subpart does not apply to international carriage, to postal services, or in certain other cases	5(3)	Textual change and structural change
242(3)	This subpart does not apply to international carriage, to postal services, or in certain other cases	5(4)	Textual change and structural change
242(4)	This subpart does not apply to international carriage, to postal services, or in certain other cases	5(4B) and 4(2)	Textual change and structural change
243	Other remedies affected	6	Textual change
244	Interpretation (actual carrier)	2	Textual change and structural change
244	Interpretation (carriage)	2	Textual change (minor grammatical)
244	Interpretation (carrier)	2	Textual change
244	Interpretation (checked baggage)	2	No change
244	Interpretation (contract of carriage)	2	No change
244	Interpretation (contracting carrier)	2	No change
244	Interpretation (contracting party)	2	No change
244	Interpretation (court)	2	No change
244	Interpretation (goods)	2	Textual change and structural change
244	Interpretation (hand baggage)	2	Textual change
244	Interpretation (incidental service)	2	Textual change and structural change

New provision	Title of new provision	Old provision	Nature of change
244	Interpretation (international carriage)	2	Textual change and structural change
244	Interpretation (loss)	2	No change
244	Interpretation (passenger)	2	Textual change
244	Interpretation (ship)	2	No change
245	Meaning of unit of goods	3(1)	Textual change and structural change
246	Liability depends on kind of contract of carriage	8(1)	Textual change and structural change
247(1)	Particular kind of contract of carriage is matter for agreement subject to meeting requirements for that kind	8(3), (5), (6), (7), (9)	Textual change and structural change
247(2)	Particular kind of contract of carriage is matter for agreement subject to meeting requirements for that kind	8(2), (4)	Textual change and structural change
247(3)	Particular kind of contract of carriage is matter for agreement subject to meeting requirements for that kind	8(4), (5)	Textual change and structural change
248(1)(a)	Requirements for contract for carriage at owner's risk	8(5)(a), (b)	Textual change and structural change
248(1)(b)	Requirements for contract for carriage at owner's risk	8(1), (9)	Textual change and structural change
248(2)	Requirements for contract for carriage at owner's risk	8(5)(b)	Textual change and structural change
249(1)	Requirements for contract for carriage on declared terms	8(7)	Textual change and structural change
249(2)	Requirements for contract for carriage on declared terms	8(8)	Textual change (minor grammatical)
249(3)	Requirements for contract for carriage on declared terms	8(8)	Structural change
250	Requirements for contract for carriage at declared value risk	8(6)	Textual change and structural change
251	How to determine whether difference between amounts charged is fair and reasonable for contract at owner's risk or declared value risk	8(9), (10)	Textual change and structural change
252	Contract between contracting carrier and actual carrier or between actual carriers	8(11)	Textual change and structural change
253(1)	Application of sections 254 to 259	8(12)	Textual change and structural change
253(2)	Application of sections 254 to 259	8(13), (14)	Textual change and structural change
254	Liability of contracting carrier	9(1)	Textual change and structural change
255	When responsibility begins	9(2), (7)	Textual change and structural change
256(1)–(4)	When responsibility ends if goods are to be delivered to consignee	9(3)	Textual change and structural change
256(5)	When responsibility ends if goods are to be delivered to consignee	9(5)	Textual change and structural change

New provision	Title of new provision	Old provision	Nature of change
257	When responsibility ends if goods are to be collected by consignee	9(3)(b)	Textual change and structural change
258	When responsibility ends if consignee's whereabouts are unknown	9(4)	Textual change and structural change
259	When responsibility ends in case of international carriage	9(6)	Textual change and structural change
260(1), (2)	Carrier's liability limited to \$2,000 for each unit of goods or to declared value	15	Textual change and structural change
260(3)	Carrier's liability limited to \$2,000 for each unit of goods or to declared value	8(12), (13), 15(2)	Textual change and structural change
261	Unit of goods for purpose of determining limit of liability	3(2)	Textual change and structural change
262(1), (2)	Carrier not liable in certain circumstances	8(13), 14	Textual change and structural change
262(3)	Carrier not liable in certain circumstances	14	Textual change and structural change
263(1)	Liability of actual carrier to contracting carrier	10(1)	Textual change and structural change
263(2)	Liability of actual carrier to contracting carrier	10(2), (3)(a) and (b)	Textual change and structural change
263(3)	Liability of actual carrier to contracting carrier	10(1)	Textual change and structural change
264(1), (2)	Liability where 1 actual carrier is involved	10(2)	Textual change and structural change
265(1)–(3)	Liability where more than 1 actual carrier is involved	10(3)	Textual change and structural change
265(4)	Liability where more than 1 actual carrier is involved	10(4)	Textual change and structural change
266	When actual carriers are jointly responsible or separately responsible	10(5), (6)	Textual change and structural change
267	Provisions relating to joint liability of actual carriers	10(7)–(9)	Textual change and structural change
268	Contracting party has same rights where contracting carrier insolvent or cannot be found	11	Textual change and structural change
269(1), (2)	Liquidator or assignee in bankruptcy holds money on trust	11(2)	Textual change and structural change
269(3)	Liquidator or assignee in bankruptcy holds money on trust	11(4)	Textual change and structural change
270	Special rules relating to liability of carrier in respect of baggage	12(1), (3)	Textual change and structural change
271	Other rules relating to hand baggage	12(2), (4), (5)	Textual change and structural change
272(1)–(5)	Contracts of successive carriage by air	13(2)–(4)	Textual change and structural change
272(6)	Contracts of successive carriage by air	13(1)	Textual change and structural change
273	When successive carriers are jointly responsible or separately responsible	13(5), (6)	Textual change and structural change
274	Liability of carrier's employee	16	Textual change and structural change

New provision	Title of new provision	Old provision	Nature of change
275	Contracting party to warrant condition of goods and compliance with enactments	17	Textual change and structural change
276	Contracting out permitted on notice and limitation provisions	7	Textual change and structural change
277	Notice of claim against contracting carrier must be given	18(1)	Textual change and structural change
278	Notice of claim must be given within 30 days	18(1), (4)	Textual change and structural change
279	Notice of claim against actual carrier must be given within 10 days	18(2)	Textual change and structural change
280	No notice required if carrier is or ought to be aware of damage or loss	18(3)	Textual change and structural change
281	Carrier may consent to non-notified proceeding being brought	18(5)	Textual change and structural change
282	Court may grant leave to bring non-notified proceeding if consent not given	18(6), (7)	Textual change and structural change
283	Limitation on proceedings against carriers for loss of goods	19(1)	Textual change and structural change
284	Limitation on proceedings against carriers for damage to or partial loss of goods	19(2)	Textual change and structural change
285	Carrier may consent to proceeding being brought after limitation period	19(3)	Textual change and structural change
286	Court may grant leave to bring proceeding after limitation period if consent not given	19(4), (5)	Textual change and structural change
287	Proceeding by consignee if not contracting party	20	Textual change and structural change
288	Contracting out permitted on rights of carriers	7	Textual change and structural change
289	Right to sue for freight	21	Textual change
290	Proceeding for recovery of freight	22	Textual change and structural change
291	Carrier's lien	23(1), (2), (8)	Textual change and structural change
292	Notice of carrier's claim	23(3)	Textual change and structural change
293	Carrier may store goods	23(4)	Textual change and structural change
294	Sale of goods by public auction	23(5)–(7)	Textual change and structural change
295	Storage and disposal of unclaimed or rejected goods	24	Textual change and structural change
296(1)–(3)	Disposal of perishable goods	25(1)	Textual change and structural change
296(4), (5)	Disposal of perishable goods	25(2), (3)	Textual change and structural change
297	Disposal of dangerous goods	26	Textual change and structural change
298	Liability of carrier extinguished	27	Textual change and structural change

New provision	Title of new provision	Old provision	Nature of change
299	Common carrier of goods abolished	28	Textual change and structural change
300	Proceedings against New Zealand agents of overseas carriers	29	Textual change
301	Certain other Acts not affected	30	Textual change and structural change
Mercantile Law Act 1908			
302	Interpretation (document of title)	2	Structural change
302	Interpretation (goods)	2	No change
302	Interpretation (mercantile agent)	2	Structural change
302	Interpretation (pledge)	2	Structural change
303	Sale, pledge, or other disposition by agent in possession with owner's consent is valid	3(1)	Textual change and structural change
304	Buyer, etc, has notice of lack of authority if goods subject to perfected security interest	3(1A)	Textual change and structural change
305	Effect of withdrawal or expiry of owner's consent	3(2)	Textual change and structural change
306	Provisions relating to consent	3(3), (4)	Textual change and structural change
307	Effect of pledges of documents of title	4	Textual change (minor grammatical)
308	Pledge of goods as security for existing debt or liability	5	Textual change (minor grammatical)
309	Rights acquired by exchange of goods or documents	6	Textual change and structural change
310	Agreements through employees or other authorised persons	7	Textual change
311	Consignee's lien	8	Textual change and structural change
312	Effect of transfer of document of title to goods on vendor's lien and right of stopping goods in transit	9	Textual change and structural change
313	Mode of transferring documents	10	Structural change
314	Saving of rights of true owner	11	Textual change and structural change This provision contains a minor amendment (see Schedule 2 of the Bill)
315	Common law powers of mercantile agent	12	Textual change
316	Application of this subpart	1(4), 13A(1)	Structural change
317	This subpart does not limit application of Hague Rules	13(7)	Textual change (minor grammatical)
318	Interpretation (bill of lading)	13(1)-(3), 13A(2)-(4)	Textual change (minor grammatical)

New provision	Title of new provision	Old provision	Nature of change
318	Interpretation (contract of carriage)	13(1)-(3), 13A(2)-(4)	No change
318	Interpretation (holder)	13(1)-(3), 13A(2)-(4)	Textual change (minor grammatical)
318	Interpretation (information technology)	13(1)-(3), 13A(2)-(4)	This provision contains a minor amendment (see Schedule 2 of the Bill)
318	Interpretation (network)	13(1)-(3), 13A(2)-(4)	No change
318	Interpretation (sea waybill)	13(1)-(3), 13A(2)-(4)	Textual change (minor grammatical)
318	Interpretation (ship's delivery order)	13(1)-(3), 13A(2)-(4)	Textual change (minor grammatical)
318(2)	Interpretation	13(1)-(3), 13A(2)-(4)	Textual change and structural change
319	Goods that cease to exist or cannot be identified	13(4)	Textual change and structural change
320	Holder of bill of lading or person to whom delivery is to be made has rights under contract of carriage	13B(1)	Textual change and structural change
321	Rights where possession of bill of lading no longer gives right to possession of goods	13B(2)	Textual change and structural change
322	Rights in relation to ship's delivery order	13B(3)	Textual change and structural change
323	Rights may be exercised for benefit of person who suffers loss or damage	13B(4)	Textual change and structural change
324	Transfer extinguishes certain rights	13B(5)	Textual change and structural change
325	Person in whom rights are vested becomes subject to liabilities	13C(1), (3)	Textual change and structural change
326	Liabilities exclude liabilities in respect of goods to which ship's delivery order does not relate	13C(2)	Textual change and structural change
327	Right of stopping goods in transit, or claims for freight, not affected	14	Textual change and structural change This provision contains a minor amendment (see Schedule 2 of the Bill)
328	Bill of lading in hands of shipper, consignee, or endorsee is conclusive evidence as against master or other signer of bill	15, 16	Textual change and structural change
329	Regulations relating to network or other information technology	13(5), (6)	Textual change and structural change
330	Special provisions about received for shipment bills of lading	Mercantile Law Amendment Act 1922, 3	Textual change and structural change
331	Interpretation (entry)	21	Textual change This provision contains a minor amendment (see Schedule 2 of the Bill)

New provision	Title of new provision	Old provision	Nature of change
331	Interpretation (goods)	21	Textual change
331	Interpretation (owner of goods)	21	Textual change (minor grammatical)
331	Interpretation (report)	21	Textual change This provision contains a minor amendment (see Schedule 2 of the Bill)
331	Interpretation (shipowner)	21	No change
331	Interpretation (warehouse)	21	Textual change (minor grammatical)
331	Interpretation (warehouse owner)	21	Textual change (minor grammatical)
331	Interpretation (wharf)	21	Textual change (minor grammatical)
331	Interpretation (wharf owner)	21	Textual change (minor grammatical)
332	Shipowner may enter and land goods in default of entry and landing by owner of goods	22	Textual change and structural change This provision contains a minor amendment (see Schedule 2 of the Bill)
333	Place for landing goods	22(c), (d)	Textual change and structural change This provision contains a minor amendment (see Schedule 2 of the Bill)
334	Owner who is ready and offers to land or take delivery of goods	22(e)	Textual change and structural change
335	Landing of goods at wharf where ship is discharged for purpose of sorting goods	22(f)	Textual change and structural change
336	Requirement for notice in certain circumstances	22(g)	Textual change and structural change
337	Continuation of lien for freight if shipowner gives notice	23(1), (2)	Textual change and structural change
338	Discharge of lien on production of receipt and delivery of copy of receipt or release	23(3)	Textual change and structural change
339	Discharge of lien on deposit with warehouse owner	24	Textual change and structural change This provision contains a minor amendment (see Schedule 2 of the Bill)
340	Right of wharf owner or warehouse owner, if no notice is given, to pay deposit to shipowner	25	Textual change and structural change
341	Course to be taken if notice to retain is given	26	Textual change and structural change
342	Wharf owner or warehouse owner may sell goods by public auction after 90 days	27	Textual change and structural change This provision contains a

New provision	Title of new provision	Old provision	Nature of change
			minor amendment (see Schedule 2 of the Bill)
343	Notices of sale to be given	28	Textual change and structural change
344	How money arising from sale is to be applied	29	Textual change and structural change
345	Wharf owner's or warehouse owner's rent and expenses	30	Textual change and structural change
346	Wharf owner's or warehouse owner's protection	31	Textual change and structural change
347	Interpretation (bonded warehouse)	32	Textual change (minor grammatical)
347	Interpretation (dutiabale goods)	NA	Textual change
347	Interpretation (free warehouse)	32	Textual change and structural change
347	Interpretation (goods)	32	Textual change
347	Interpretation (pledge)	32	Textual change (minor grammatical)
347	Interpretation (pledgee)	32	No change
347	Interpretation (sale)	32	Textual change (minor grammatical)
347	Interpretation (subpurchaser)	32	Textual change and structural change
347	Interpretation (warehouse keeper)	32	Textual change (minor grammatical)
347	Interpretation (warehouse keeper's records)	32	Textual change (minor grammatical) This provision contains a minor amendment (see Schedule 2 of the Bill)
347	Interpretation (warehouse owner)	32	Textual change
347	Interpretation (warrant or certificate)	32	Textual change and structural change
348	Unpaid vendor's lien ends on delivery of bond warrant to good faith holder for value	33	Textual change and structural change
349	Possession of warrant or certificate is evidence of ownership	34	Textual change and structural change
350	Holder of warrant or certificate entitled to delivery	35	Textual change and structural change
351	Registered holder of warrant or certificate must be treated as owner	36	Textual change and structural change
352	Lien of registered transferee of warrant or certificate ends on delivery of warrant or certificate in good faith and for value	37	Textual change and structural change
353	Warrant or certificate of free goods put on same footing as bond warrants	38	Textual change and structural change
354	Provisions apply to both bonded and free warehouses	39	Textual change (minor grammatical)
355	Vendor's lien not prejudiced except in certain cases	40	Textual change and structural change

New provision	Title of new provision	Old provision	Nature of change
			This provision contains a minor amendment (see Schedule 2 of the Bill)
356	Goods not to be transferred in records except on production of warrant or certificate	41	Textual change and structural change
357	Special contracts restraining negotiability of warrant or certificate	42	Textual change and structural change
358	Warehouseowner's lien not prejudiced by sale or transfer of goods	43	Textual change (minor grammatical)

PART 4 – ISSUES NOTED FOR POSSIBLE FUTURE REFORM

To locate the new provision in the Bill, refer to the comparative table in Schedule 3, Part 2.

Existing provision number	Title of new provision	Issue for future reform
General		
	Act binds the Crown	See discussion in Part 2 of this document.
Contracts Privity Act 1982		
No issues noted for future reform		
Contractual Mistakes Act 1977		
5	This subpart to be a code	<p>Is the Act a code?</p> <p>There has been considerable academic debate about whether the 1977 Act is a code that supplants all pre-existing law about mistake. Much of the debate has been based on, or has referred to, the fact that the section 5 heading is not repeated in the section body. (See <i>Law of Contract in New Zealand</i> (4th ed, Burrows, Finn, and Todd), [10.1.2]; and also R Sutton (2003) 9 NZBLQ 234 at p 260 and Law Commission <i>Contract Statutes Review</i> (NZLC R25, 1993, at [2.21].)</p> <p>Because of the differing views on this issue, we consider a drafting change to clarify the position would be beyond a “minor amendment to clarify Parliament’s intent”.</p> <p>Has the Act repealed the common law rule of estoppel by representation?</p> <p>Burrows, Finn, and Todd at [10.2.2] note that “although it is not clearly stated in the statute, it appears that the Contractual Mistakes Act provisions have impliedly repealed a rule of the common law, sometimes known as the doctrine of estoppel by representation”.</p>
2	Interpretation	<p>Does mistake include a mistake as to matters of expectation?</p> <p><i>Compcorp Ltd v Force Entertainment Limited</i> (2003) 7 NZBLC 103, 996 dealt with the issue of mistakes as to “matters of expectation”. This issue was dealt</p>

Existing provision number	Title of new provision	Issue for future reform
		with in a draft of the definition of “mistake” originally suggested by the Statutes Revision committee. See Burrows, Finn and Todd at [10.3.1].
Contractual Remedies Act 1979		
6(2)	Damages for misrepresentation	<p>(1) There is a question as to whether silence or non-disclosure can constitute misrepresentation. See Burrows, Finn, and Todd at [11.2.1(e)].</p> <p>See s 13(1) of the Financial Markets Conduct Act 2013 for one approach to the omission of information.</p> <p>(2) There is some case law on the concept of inducement. Burrows, Finn and Todd at [11.2.4] notes that “the law now is that, despite the wording of s 6, there is no “inducement” to contract unless the representor intended such a result, or at least unless the representor wilfully used language which would induce a normal person”. There is a question whether the legislature should clarify the concept of inducement.</p> <p>(3) Future consideration could be given to reflecting in the statute the fact that a misrepresentation is legally harmless if the plaintiff (a) never knew of its existence or (b) did not allow it to affect his or her judgment or (c) was aware of its untruth. See Burrows, Finn and Todd at [11.2.4].</p>
7(3)	Party may cancel contract if induced to enter into it by misrepresentation or if term is or will be broken	The courts have rephrased this test. See for example <i>Brooklands Motor Co Ltd v Bridge Wholesale Acceptance Corp (Australia) Ltd</i> (1994) 7 NZCLC 260,449. See Burrows, Finn, and Todd at [18.2.1].
7(3), (4)	Party may cancel contract if induced to enter into it by misrepresentation or if term is or will be broken	<p>Future reform could address the issue of “readiness and willingness to perform”.</p> <p>See Burrows, Finn, and Todd at [18.3.3]: “<i>Noble v Keenan</i> [(2005) 6 NZCPR 433] thus settles the question of whether a person cancelling a contract under the Contractual Remedies Act 1979 must themselves be ready and willing to perform it”.</p> <p>Burrows, Finn, and Todd acknowledge that it might be difficult to codify such a rule.</p>

Existing provision number	Title of new provision	Issue for future reform
8(3)	Effect of cancellation	<p>(1) A literal interpretation of s 8(3) can cause difficulties. For example, there is a question about whether an arbitration clause survives cancellation.</p> <p>See Burrows, Finn and Todd at [18.3.5].</p> <p>(2) There is also an issue about whether obligations that have fallen due for performance before the cancellation, but remain unperformed after it, can be enforced.</p> <p><i>Brown v Langwoods Photo Stores Ltd</i> [1991] 1 NZLR 173 at 176 suggests that “There is nothing, however, to suggest that it abrogates rights and liabilities accrued before cancellation... The provision does not abrogate any cause of action accrued unconditionally before cancellation, whether or not for debt.”</p>
9(5), (6)	Protection of purchaser of property in good faith and for valuable consideration	<p>Provisions in the other contracts statutes that give the court a power similar to one to “vest in a party, or direct a party to transfer or assign to any other party or to deliver to any other party the possession of, the whole or any part of any real or personal property that was the subject of the contract or was the whole or part of the consideration for it” do not have an equivalent of s 9(5) and (6). There is an issue about whether those provisions should apply more generally.</p>
11(1)	Remedies enforceable by or against assignee	<p>The Supreme Court has recently looked at assignment in relation to section 11(1) of the 1979 Act.</p> <p>It held in <i>Savvy Vineyards 3552 Ltd v Kakara Estate Ltd</i> [2014] NZSC 121 at [92] that the words “or burden of a contract” may not have any effect as the common law does not allow for the burden of a contract to be assigned (and the common law had not been negated by the Act).</p> <p>It is unclear what this ruling means for the rest of section 11.</p>
Frustrated Contracts Act 1944		
4(5)(c)	This subpart does not apply in certain circumstances	<p>Burrows, Finn, and Todd at [20.3.2(d)(iii)(2)] describe s 4(5)(c) as “a little bewildering”. The text suggests that there “seems no reason why the statutory provisions for the apportionment of loss should not have been permitted in the case of any contract for the sale of goods”.</p>

Existing provision number	Title of new provision	Issue for future reform
		Further change may desirable in a substantive reform.
Illegal Contracts Act 1970		
8	Restraints of trade	There is a question as to whether the powers in s 8 are designed to be discretionary or whether a court must choose one of the three options in the provision. Compare Burrows, Finn, and Todd at [13.9.1], citing <i>C E Elley Ltd v Burgess</i> (1997) 7 TCLR 582 and NZLC R25 at [3.43].
Minors' Contracts Act 1969		
No issues noted for future reform		
Sale of Goods Act 1908		
8	Contract void if goods have perished without seller's knowledge	<i>Laws of New Zealand, Sale of Goods</i> [71] notes that the applicability of the Contractual Mistakes Act is not clear.
13(2)	Conditions and warranties	<i>Laws of New Zealand, Sale of Goods</i> [80] suggests that this can run the other way as well (ie a term called a "condition" can be a warranty).
16(a)	Implied condition that goods are reasonably fit for purpose	Section 8 of the Consumer Guarantees Act 1993 operates in a different manner. Future reform may wish to align the two.
16(b)	Implied condition that goods are of merchantable quality	What is and what is not "merchantable quality" may be difficult for an ordinary user of the legislation to understand. Compare s 7 of the Consumers Guarantees Act 1993, which is much more explicit about what amounts to "acceptable quality". <i>Laws of New Zealand, Sale of Goods</i> [100] notes "In the United Kingdom, a statutory definition of 'merchantable quality' has been introduced, although no such definition has been enacted in New Zealand. However, this definition is largely declaratory, and has not affected any significant change in the law." Section 146 of the Sale of Goods Act 1979 (UK) provides: "Goods of any kind are of merchantable quality... if they are as fit for the purpose or

Existing provision number	Title of new provision	Issue for future reform
		<p>purposes for which goods of that kind are commonly bought as it is reasonable to expect having regard to any description applied to them, the price (if relevant) and all the other relevant circumstances”.</p> <p>If the above definition is truly declaratory rather than affecting a change in the law, there is a question whether such a definition of merchantable quality could be added to the Bill within the revision powers.</p> <p>Alternatively, the sale of goods provision could be aligned with the Consumer Guarantees Act 1993 in a future reform.</p>
17(1)	Sale by sample	<p>Compare s 10 of the Consumer Guarantees Act 1993, which refers to a sample or “demonstration model”.</p> <p>The sale of goods provision could be aligned with the Consumer Guarantees Act 1993 in a future reform.</p>
27(2)	[Seller or buyer] in possession after sale	<p>The link in this provision to mercantile agents may no longer be appropriate. Section 3(1) of the Mercantile Law Act refers to the agent acting in the ordinary course of business of a mercantile agent. This may be difficult to apply in the Sale of Goods Act context.</p>
Sale of Goods (United Nations Convention) Act 1994		
No issues noted for future reform		
Electronic Transactions Act 2002		
37	Authority to prescribe electronic forms and requirements for using electronic forms	<p>Sometimes when old Acts require a prescribed “form”, in practice, the department only wants to prescribe certain information (rather than an actual hard copy “form”). See s 116(2) of the Limited Partnerships Act 2008: “In subsection (1)(a) and (g), prescribing the form includes specifying the content, means of communication, or any other requirement of an application without necessarily specifying the use of a particular form.”</p>
Carriage of Goods Act 1979		
No issues noted for future reform		
Mercantile Law Act 1908		

Existing provision number	Title of new provision	Issue for future reform
1(4),13A(1)	Application of this subpart	<i>Gault on Commercial Law</i> at [ML13A.01] notes that the provisions do not apply to a number of documents (eg air waybills): “With the growth of air transport and mixed mode transport, these omissions may cause problems in the future.”
11	Saving of rights of true owner	Section 11(c) refers to deducting the amount of the person’s lien. In similar contexts, the costs of the sale are also deducted before the “balance” is paid. See, s 185(1)(a) and (2) of the Property Law Act 2007.
37	Lien of registered transferee of warrant or certificate ends on delivery of warrant or certificate in good faith and for value	<i>Gault on Commercial Law</i> at [ML9.01] refers to problems with how this relates to s 9 of the Mercantile Law Act 1908 and s 48 of the Sale of Goods Act 1908.
Part 5	Unpaid vendors of warehoused goods	See discussion in Part 2 of this document.
<p>Additional Issue: technological advances</p> <p>Paul Myburgh pointed out in “Bits, Bytes and Bills of Lading: EDI and New Zealand Maritime Law” (1993) NZLJ 324 that the way in which people communicate today is significantly different to when this Act was enacted. This has led to some inefficiencies, especially in maritime law, where contracts by electronic data interchange have raised questions as to the “definition of a ‘document’, the ‘signing of contracts’, and the problem of the bill of lading as a negotiable document of title”.</p>		