
DRAFT STATUTORY INSTRUMENTS

2008 No.

The Consumer Protection from
Unfair Trading Regulations 2008

PART 1

GENERAL

Interpretation

2.—(1) In these Regulations—

“average consumer” shall be construed in accordance with paragraphs (2) to (6);

“business” includes a trade, craft or profession;

“code of conduct” means an agreement or set of rules (which is not imposed by legal or administrative requirements), which defines the behaviour of traders who undertake to be bound by it in relation to one or more commercial practices or business sectors;

“code owner” means a trader or a body responsible for—

(a) the formulation and revision of a code of conduct; or

(b) monitoring compliance with the code by those who have undertaken to be bound by it;

“commercial practice” means any act, omission, course of conduct, representation or commercial communication (including advertising and marketing) by a trader, which is directly connected with the promotion, sale or supply of a product to or from consumers, whether occurring before, during or after a commercial transaction (if any) in relation to a product;

“consumer” means any individual who in relation to a commercial practice is acting for purposes which are outside his business;

“enforcement authority” means the OFT, every local weights and measures authority in Great Britain (within the meaning of section 69 of the Weights and Measures Act 1985⁽¹⁾) and the Department of Enterprise, Trade and Investment in Northern Ireland;

“goods” includes ships, aircraft, animals, things attached to land and growing crops;

“invitation to purchase” means a commercial communication which indicates characteristics of the product and the price in a way appropriate to the means of that commercial communication and thereby enables the consumer to make a purchase;

“materially distort the economic behaviour” means in relation to an average consumer, appreciably to impair the average consumer’s ability to make an informed decision thereby causing him to take a transactional decision that he would not have taken otherwise;

“OFT” means the Office of Fair Trading;

“premises” includes any place and any stall, vehicle, ship or aircraft;

(1) 1985 c.72; section 69 was amended by paragraph 75 of Schedule 16 to the Local Government (Wales) Act 1994 (c.19) and by paragraph 144 of Schedule 13 to the Local Government etc (Scotland) Act 1994 (c.39).

“product” means any goods or service and includes immovable property, rights and obligations;
“professional diligence” means the standard of special skill and care which a trader may reasonably be expected to exercise towards consumers which is commensurate with either—

- (a) honest market practice in the trader’s field of activity, or
- (b) the general principle of good faith in the trader’s field of activity;

“ship” includes any boat and any other description of vessel used in navigation;

“trader” means any person who in relation to a commercial practice is acting for purposes relating to his business, and anyone acting in the name of or on behalf of a trader;

“transactional decision” means any decision taken by a consumer, whether it is to act or to refrain from acting, concerning—

- (a) whether, how and on what terms to purchase, make payment in whole or in part for, retain or dispose of a product; or
- (b) whether, how and on what terms to exercise a contractual right in relation to a product.

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

(3) Paragraphs (4) and (5) set out the circumstances in which a reference to the average consumer shall be read as in addition referring to the average member of a particular group of consumers.

(4) In determining the effect of a commercial practice on the average consumer where the practice is directed to a particular group of consumers, a reference to the average consumer shall be read as referring to the average member of that group.

(5) In determining the effect of a commercial practice on the average consumer—

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

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