
DRAFT STATUTORY INSTRUMENTS

2008 No.

The Consumer Protection from
Unfair Trading Regulations 2008

PART 1

GENERAL

Citation and commencement

1. These Regulations may be cited as the Consumer Protection from Unfair Trading Regulations 2008 and shall come into force on 26th May 2008.

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;

(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).

“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;

“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.

PART 2

PROHIBITIONS

Prohibition of unfair commercial practices

3.—(1) Unfair commercial practices are prohibited.

(2) Paragraphs (3) and (4) set out the circumstances when a commercial practice is unfair.

- (3) A commercial practice is unfair if—
 - (a) it contravenes the requirements of professional diligence; and
 - (b) it materially distorts or is likely to materially distort the economic behaviour of the average consumer with regard to the product.
- (4) A commercial practice is unfair if—
 - (a) it is a misleading action under the provisions of regulation 5;
 - (b) it is a misleading omission under the provisions of regulation 6;
 - (c) it is aggressive under the provisions of regulation 7; or
 - (d) it is listed in Schedule 1.

Prohibition of the promotion of unfair commercial practices

4. The promotion of any unfair commercial practice by a code owner in a code of conduct is prohibited.

Misleading actions

5.—(1) A commercial practice is a misleading action if it satisfies the conditions in either paragraph (2) or paragraph (3).

- (2) A commercial practice satisfies the conditions of this paragraph—
 - (a) if it contains false information and is therefore untruthful in relation to any of the matters in paragraph (4) or if it or its overall presentation in any way deceives or is likely to deceive the average consumer in relation to any of the matters in that paragraph, even if the information is factually correct; and
 - (b) it causes or is likely to cause the average consumer to take a transactional decision he would not have taken otherwise.
- (3) A commercial practice satisfies the conditions of this paragraph if—
 - (a) it concerns any marketing of a product (including comparative advertising) which creates confusion with any products, trade marks, trade names or other distinguishing marks of a competitor; or
 - (b) it concerns any failure by a trader to comply with a commitment contained in a code of conduct which the trader has undertaken to comply with, if—
 - (i) the trader indicates in a commercial practice that he is bound by that code of conduct, and
 - (ii) the commitment is firm and capable of being verified and is not aspirational,

and it causes or is likely to cause the average consumer to take a transactional decision he would not have taken otherwise, taking account of its factual context and of all its features and circumstances.

- (4) The matters referred to in paragraph (2)(a) are—
 - (a) the existence or nature of the product;
 - (b) the main characteristics of the product (as defined in paragraph 5);
 - (c) the extent of the trader's commitments;
 - (d) the motives for the commercial practice;
 - (e) the nature of the sales process;
 - (f) any statement or symbol relating to direct or indirect sponsorship or approval of the trader or the product;

- (g) the price or the manner in which the price is calculated;
 - (h) the existence of a specific price advantage;
 - (i) the need for a service, part, replacement or repair;
 - (j) the nature, attributes and rights of the trader (as defined in paragraph 6);
 - (k) the consumer’s rights or the risks he may face.
- (5) In paragraph (4)(b), the “main characteristics of the product” include—
- (a) availability of the product;
 - (b) benefits of the product;
 - (c) risks of the product;
 - (d) execution of the product;
 - (e) composition of the product;
 - (f) accessories of the product;
 - (g) after-sale customer assistance concerning the product;
 - (h) the handling of complaints about the product;
 - (i) the method and date of manufacture of the product;
 - (j) the method and date of provision of the product;
 - (k) delivery of the product;
 - (l) fitness for purpose of the product;
 - (m) usage of the product;
 - (n) quantity of the product;
 - (o) specification of the product;
 - (p) geographical or commercial origin of the product;
 - (q) results to be expected from use of the product; and
 - (r) results and material features of tests or checks carried out on the product.
- (6) In paragraph (4)(j), the “nature, attributes and rights” as far as concern the trader include the trader’s—
- (a) identity;
 - (b) assets;
 - (c) qualifications;
 - (d) status;
 - (e) approval;
 - (f) affiliations or connections;
 - (g) ownership of industrial, commercial or intellectual property rights; and
 - (h) awards and distinctions.
- (7) In paragraph (4)(k) “consumer’s rights” include rights the consumer may have under Part 5A of the Sale of Goods Act 1979(2) or Part 1B of the Supply of Goods and Services Act 1982(3).

(2) 1979 c.54; Part 5A was inserted by S.I. 2002/3045.

(3) 1982 c.29. Part 1B was inserted by S.I.2002/3045.

Misleading omissions

6.—(1) A commercial practice is a misleading omission if, in its factual context, taking account of the matters in paragraph (2)—

- (a) the commercial practice omits material information,
- (b) the commercial practice hides material information,
- (c) the commercial practice provides material information in a manner which is unclear, unintelligible, ambiguous or untimely, or
- (d) the commercial practice fails to identify its commercial intent, unless this is already apparent from the context,

and as a result it causes or is likely to cause the average consumer to take a transactional decision he would not have taken otherwise.

(2) The matters referred to in paragraph (1) are—

- (a) all the features and circumstances of the commercial practice;
- (b) the limitations of the medium used to communicate the commercial practice (including limitations of space or time); and
- (c) where the medium used to communicate the commercial practice imposes limitations of space or time, any measures taken by the trader to make the information available to consumers by other means.

(3) In paragraph (1) “material information” means—

- (a) the information which the average consumer needs, according to the context, to take an informed transactional decision; and
- (b) any information requirement which applies in relation to a commercial communication as a result of a Community obligation.

(4) Where a commercial practice is an invitation to purchase, the following information will be material if not already apparent from the context in addition to any other information which is material information under paragraph (3)—

- (a) the main characteristics of the product, to the extent appropriate to the medium by which the invitation to purchase is communicated and the product;
- (b) the identity of the trader, such as his trading name, and the identity of any other trader on whose behalf the trader is acting;
- (c) the geographical address of the trader and the geographical address of any other trader on whose behalf the trader is acting;
- (d) either—
 - (i) the price, including any taxes; or
 - (ii) where the nature of the product is such that the price cannot reasonably be calculated in advance, the manner in which the price is calculated;
- (e) where appropriate, either—
 - (i) all additional freight, delivery or postal charges; or
 - (ii) where such charges cannot reasonably be calculated in advance, the fact that such charges may be payable;
- (f) the following matters where they depart from the requirements of professional diligence—
 - (i) arrangements for payment,
 - (ii) arrangements for delivery,
 - (iii) arrangements for performance,

- (iv) complaint handling policy;
- (g) for products and transactions involving a right of withdrawal or cancellation, the existence of such a right.

Aggressive commercial practices

7.—(1) A commercial practice is aggressive if, in its factual context, taking account of all of its features and circumstances—

- (a) it significantly impairs or is likely significantly to impair the average consumer’s freedom of choice or conduct in relation to the product concerned through the use of harassment, coercion or undue influence; and
- (b) it thereby causes or is likely to cause him to take a transactional decision he would not have taken otherwise.

(2) In determining whether a commercial practice uses harassment, coercion or undue influence account shall be taken of—

- (a) its timing, location, nature or persistence;
- (b) the use of threatening or abusive language or behaviour;
- (c) the exploitation by the trader of any specific misfortune or circumstance of such gravity as to impair the consumer’s judgment, of which the trader is aware, to influence the consumer’s decision with regard to the product;
- (d) any onerous or disproportionate non-contractual barrier imposed by the trader where a consumer wishes to exercise rights under the contract, including rights to terminate a contract or to switch to another product or another trader; and
- (e) any threat to take any action which cannot legally be taken.

(3) In this regulation—

- (a) “coercion” includes the use of physical force; and
- (b) “undue influence” means exploiting a position of power in relation to the consumer so as to apply pressure, even without using or threatening to use physical force, in a way which significantly limits the consumer’s ability to make an informed decision.

PART 3

OFFENCES

Offences relating to unfair commercial practices

8.—(1) A trader is guilty of an offence if—

- (a) he knowingly or recklessly engages in a commercial practice which contravenes the requirements of professional diligence under regulation 3(3)(a); and
- (b) the practice materially distorts or is likely to materially distort the economic behaviour of the average consumer with regard to the product under regulation 3(3)(b).

(2) For the purposes of paragraph (1)(a) a trader who engages in a commercial practice without regard to whether the practice contravenes the requirements of professional diligence shall be deemed recklessly to engage in the practice, whether or not the trader has reason for believing that the practice might contravene those requirements.

9. A trader is guilty of an offence if he engages in a commercial practice which is a misleading action under regulation 5 otherwise than by reason of the commercial practice satisfying the condition in regulation 5(3)(b).

10. A trader is guilty of an offence if he engages in a commercial practice which is a misleading omission under regulation 6.

11. A trader is guilty of an offence if he engages in a commercial practice which is aggressive under regulation 7.

12. A trader is guilty of an offence if he engages in a commercial practice set out in any of paragraphs 1 to 10, 12 to 27 and 29 to 31 of Schedule 1.

Penalty for offences

13. A person guilty of an offence under regulation 8, 9, 10, 11 or 12 shall be liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum; or
- (b) on conviction on indictment, to a fine or imprisonment for a term not exceeding two years or both.

Time limit for prosecution

14.—(1) No proceedings for an offence under these Regulations shall be commenced after—

- (a) the end of the period of three years beginning with the date of the commission of the offence, or
- (b) the end of the period of one year beginning with the date of discovery of the offence by the prosecutor,

whichever is earlier.

(2) For the purposes of paragraph (1)(b) a certificate signed by or on behalf of the prosecutor and stating the date on which the offence was discovered by him shall be conclusive evidence of that fact and a certificate stating that matter and purporting to be so signed shall be treated as so signed unless the contrary is proved.

(3) Notwithstanding anything in section 127(1) of the Magistrates' Courts Act 1980⁽⁴⁾, an information relating to an offence under these Regulations which is triable by a magistrates' court in England and Wales may be so tried if it is laid at any time before the end of the period of twelve months beginning with the date of the commission of the offence.

(4) Notwithstanding anything in section 136 of the Criminal Procedure (Scotland) Act 1995⁽⁵⁾ summary proceedings in Scotland for an offence under these Regulations may be commenced at any time before the end of the period of twelve months beginning with the date of the commission of the offence.

(5) For the purposes of paragraph (4), section 136(3) of the Criminal Procedure (Scotland) Act 1995 shall apply as it applies for the purposes of that subsection.

(6) Notwithstanding anything in Article 19(1) of the Magistrates' Courts (Northern Ireland) Order 1981⁽⁶⁾ a complaint charging an offence under these Regulations which is triable by a magistrates' court in Northern Ireland may be so tried if it is made at any time before the end of the period of twelve months beginning with the date of the commission of the offence.

(4) 1980 c.43.

(5) 1995 c.46.

(6) S.I. 1981/1675 (N.I.26).

Offences committed by bodies of persons

15.—(1) Where an offence under these Regulations committed by a body corporate is proved—

- (a) to have been committed with the consent or connivance of an officer of the body, or
- (b) to be attributable to any neglect on his part,

the officer as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.

(2) In paragraph (1) a reference to an officer of a body corporate includes a reference to—

- (a) a director, manager, secretary or other similar officer; and
- (b) a person purporting to act as a director, manager, secretary or other similar officer.

(3) Where an offence under these Regulations committed by a Scottish partnership is proved—

- (a) to have been committed with the consent or connivance of a partner, or
- (b) to be attributable to any neglect on his part,

the partner as well as the partnership is guilty of the offence and liable to be proceeded against and punished accordingly.

(4) In paragraph (3) a reference to a partner includes a person purporting to act as a partner.

Offence due to the default of another person

16.—(1) This regulation applies where a person “X”—

- (a) commits an offence under regulation 9, 10, 11 or 12, or
- (b) would have committed an offence under those regulations but for a defence under regulation 17 or 18,

and the commission of the offence, or of what would have been an offence but for X being able to rely on a defence under regulation 17 or 18, is due to the act or default of some other person “Y”.

(2) Where this regulation applies Y is guilty of the offence, subject to regulations 17 and 18, whether or not Y is a trader and whether or not Y’s act or default is a commercial practice.

(3) Y may be charged with and convicted of the offence by virtue of paragraph (2) whether or not proceedings are taken against X.

Due diligence defence

17.—(1) In any proceedings against a person for an offence under regulation 9, 10, 11 or 12 it is a defence for that person to prove—

(a) that the commission of the offence was due to—

- (i) a mistake;
- (ii) reliance on information supplied to him by another person;
- (iii) the act or default of another person;
- (iv) an accident; or
- (v) another cause beyond his control; and

(b) that he took all reasonable precautions and exercised all due diligence to avoid the commission of such an offence by himself or any person under his control.

(2) A person shall not be entitled to rely on the defence provided by paragraph (1) by reason of the matters referred to in paragraph (ii) or (iii) of paragraph (1)(a) without leave of the court unless—

- (a) he has served on the prosecutor a notice in writing giving such information identifying or assisting in the identification of that other person as was in his possession; and
- (b) the notice is served on the prosecutor at least seven clear days before the date of the hearing.

Innocent publication of advertisement defence

18.—(1) In any proceedings against a person for an offence under regulation 9, 10, 11 or 12 committed by the publication of an advertisement it shall be a defence for a person to prove that—

- (a) he is a person whose business it is to publish or to arrange for the publication of advertisements;
 - (b) he received the advertisement for publication in the ordinary course of business; and
 - (c) he did not know and had no reason to suspect that its publication would amount to an offence under the regulation to which the proceedings relate.
- (2) In paragraph (1) “advertisement” includes a catalogue, a circular and a price list.

PART 4

ENFORCEMENT

Duty to enforce

19.—(1) It shall be the duty of every enforcement authority to enforce these Regulations.

(2) Where the enforcement authority is a local weights and measures authority the duty referred to in paragraph (1) shall apply to the enforcement of these Regulations within the authority’s area.

(3) Where the enforcement authority is the Department of Enterprise, Trade and Investment in Northern Ireland the duty referred to in paragraph (1) shall apply to the enforcement of these Regulations within Northern Ireland.

(4) In determining how to comply with its duty of enforcement every enforcement authority shall have regard to the desirability of encouraging control of unfair commercial practices by such established means as it considers appropriate having regard to all the circumstances of the particular case.

(5) Nothing in this regulation shall authorise any enforcement authority to bring proceedings in Scotland for an offence.

Power to make test purchases

20. An enforcement authority may or may authorise any of its officers on its behalf to—

- (a) make a purchase of a product, or
- (b) enter into an agreement to secure the provision of a product,

for the purposes of determining whether these Regulations are being complied with.

Power of entry and investigation, etc.

21.—(1) A duly authorised officer of an enforcement authority may at all reasonable hours exercise the following powers—

- (a) he may, for the purposes of ascertaining whether a breach of these Regulations has been committed, inspect any goods and enter any premises other than premises used only as a dwelling;

- (b) if he has reasonable cause to suspect that a breach of these Regulations has been committed, he may, for the purpose of ascertaining whether it has been committed, require any trader to produce any documents relating to his business and may take copies of, or of any entry in, any such document;
 - (c) if he has reasonable cause to believe that a breach of these Regulations has been committed, he may seize and detain any goods for the purpose of ascertaining, by testing or otherwise, whether the breach has been committed; and
 - (d) he may seize and detain goods or documents which he has reason to believe may be required as evidence in proceedings for a breach of these Regulations.
- (2) If and to the extent that it is reasonably necessary to secure that the provisions of these Regulations are observed, the officer may for the purpose of exercising his powers under paragraphs (1)(c) and (d) to seize goods or documents—
- (a) require any person having authority to do so to break open any container or open any vending machine; and
 - (b) himself open or break open any such container or open any vending machine where a requirement made under sub-paragraph (a) in relation to the container or vending machine has not been complied with.
- (3) An officer seizing any goods or documents in exercise of his powers under this regulation shall—
- (a) inform the person from whom they are seized, and,
 - (b) where goods are seized from a vending machine, inform—
 - (i) the person whose name and address are stated on the machine as being the proprietor's; or
 - (ii) if there is no such name or address stated on the machine the occupier of the premises on which the machine stands or to which it is affixed,
- that the goods or documents have been so seized.
- (4) In this regulation “document” includes information recorded in any form.
- (5) The reference in paragraph (1)(b) to the production of documents is, in the case of a document which contains information recorded otherwise than in legible form, a reference to the production of a copy of the information in legible form.
- (6) An officer seeking to exercise a power under this regulation must produce evidence of his identity and authority to a person (if there is one) who appears to the officer to be the occupier of the premises.
- (7) Where an officer seizes goods or documents in exercise of a power under this regulation they may not be detained—
- (a) for a period of more than 3 months; or
 - (b) where the goods or documents are reasonably required by the enforcement authority in connection with the enforcement of these Regulations, for longer than they are so required.
- (8) An officer entering any premises under this regulation may take with him such other persons and such equipment as may appear to him to be necessary.
- (9) Nothing in this regulation or in regulation 22 gives any power to an officer of an enforcement authority—
- (a) to require any person to produce, or
 - (b) to seize from another person,

any document which the other person would be entitled to refuse to produce in proceedings in the High Court on the grounds of legal professional privilege or (in Scotland) in proceedings in the Court of Session on the grounds of confidentiality of communications.

(10) In paragraph (9) “communications” means—

- (a) communications between a professional legal adviser and his client; or
- (b) communications made in connection with or in contemplation of legal proceedings and for the purposes of those proceedings.

(11) If any person who is not an officer of an enforcement authority purports to act as such under this regulation or under regulation 22 he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Power to enter premises with a warrant

22.—(1) If a justice of the peace by any written information on oath is satisfied—

- (a) that there are reasonable grounds for believing that Condition A or B is met, and
- (b) that Condition C, D or E is met,

the justice may by warrant under his hand authorise an officer of an enforcement authority to enter the premises at all reasonable times, if necessary by force.

(2) Condition A is that there are on any premises goods or documents which a duly authorised officer of the enforcement authority has power under regulation 21(1) to inspect and that their inspection is likely to disclose evidence of a breach of these Regulations.

(3) Condition B is that a breach of these Regulations has been, is being or is about to be committed on any premises.

(4) Condition C is that the admission to the premises has been or is likely to be refused and that notice of intention to apply for a warrant under this regulation has been given to the occupier.

(5) Condition D is that an application for admission, or the giving of a notice of intention to apply for a warrant, would defeat the object of the entry.

(6) Condition E is that the premises are unoccupied or that the occupier is absent and it might defeat the object of the entry to await his return.

(7) A warrant under paragraph (1)—

- (a) ceases to have effect at the end of the period of one month beginning with the day it is issued;
- (b) must be produced for inspection to the person (if there is one) who appears to the officer to be the occupier of the premises.

(8) An officer entering any premises under this regulation may take with him such other persons and such equipment as may appear to him to be necessary.

(9) On leaving any premises which an officer is authorised to enter by warrant under this regulation the officer shall, if the premises are unoccupied or the occupier is temporarily absent, leave the premises as effectively secured against trespassers as he found them.

(10) In its application to Scotland, this regulation has effect as if—

- (a) the references in paragraph (1) to a justice of the peace included references to a sheriff; and
- (b) the reference in paragraph (1) to information on oath were a reference to evidence on oath.

(11) In its application to Northern Ireland, this regulation has effect as if the references in paragraph (1) to a justice of the peace were references to a lay magistrate.

Obstruction of authorised officers

23.—(1) Any person who—

- (a) intentionally obstructs an officer of an enforcement authority acting in pursuance of these Regulations,
- (b) intentionally fails to comply with any requirement properly made of him by such an officer under regulation 21, or
- (c) without reasonable cause fails to give such an officer any other assistance or information which he may reasonably require of him for the purpose of the performance of his functions under these Regulations,

is guilty of an offence and liable, on summary conviction, to a fine not exceeding level 5 on the standard scale.

(2) Any person who, in giving any information which is required of him under paragraph (1) (c), makes any statement which he knows to be false in a material particular is guilty of an offence and liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum; or
- (b) on conviction on indictment, to a fine or imprisonment for a term not exceeding two years or both.

(3) Nothing in this regulation shall be construed as requiring a person to answer any question or give any information if to do so might incriminate him.

Notice of test and intended proceedings

24.—(1) Where goods purchased by an officer pursuant to regulation 20 are submitted to a test and the test leads to the institution of any proceedings for a breach of these Regulations the officer shall inform—

- (a) the person from whom the goods were purchased, or
- (b) where the goods were sold through a vending machine, the person mentioned in regulation 21(3)(b),

of the result of the test.

(2) Where goods seized by an officer pursuant to regulation 21 are submitted to a test then the officer shall inform the person mentioned in regulation 21(3) of the result of the test.

(3) Where, as a result of the test, any proceedings in respect of a breach of these Regulations are taken against any person, the officer shall allow him to have the goods tested on his behalf if it is reasonably practicable to do so.

Compensation

25.—(1) Where an officer of an enforcement authority seizes and detains goods in exercise of the powers under regulation 21 the enforcement authority shall be liable to pay compensation to any person having an interest in the goods in respect of any loss or damage caused by reason of the exercise of the power if—

- (a) there has been no breach of these Regulations in relation to the goods, and
- (b) the exercise of that power is not attributable to any neglect or default by that person.

(2) Any disputed question as to the right to or the amount of any compensation payable under this provision shall be determined by arbitration or, in Scotland, by a single arbiter appointed, failing agreement between the parties, by the sheriff.

Application of Part 8 of Enterprise Act 2002

26. In Schedule 13 to the Enterprise Act 2002(7)(listed Directives and Regulations), after paragraph 9B insert—

“9C Directive [2005/29/EC](#) of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market.”.

Evidence as to factual claims

27. After section 218 of the Enterprise Act 2002 insert—

“218A Unfair commercial practices: substantiation of claims

(1) This section applies where an application for an enforcement order or for an interim enforcement order is made in respect of a Community infringement involving a contravention of Directive [2005/29/EC](#) of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market.

(2) For the purposes of considering the application the court may require the person named in the application to provide evidence as to the accuracy of any factual claim made as part of a commercial practice of that person if, taking into account the legitimate interests of that person and any other party to the proceedings, it appears appropriate in the circumstances.

(3) If, having been required under subsection (2) to provide evidence as to the accuracy of a factual claim, a person—

- (a) fails to provide such evidence, or
- (b) provides evidence as to the accuracy of the factual claim that the court considers inadequate,

the court may consider that the factual claim is inaccurate.

(4) In this section “commercial practice” has the meaning given by regulation 2 of the Consumer Protection from Unfair Trading Regulations 2008.”.

PART 5

SUPPLEMENTARY

Crown

28.—(1) The powers conferred by regulations 21 and 22 are not exercisable in relation to premises occupied by the Crown.

(2) The Crown is not criminally liable as a result of any provision of these Regulations.

(3) Paragraph (2) does not affect the application of any provision of these Regulations in relation to a person in the public service of the Crown.

Validity of agreements

29. An agreement shall not be void or unenforceable by reason only of a breach of these Regulations.

(7) [2002 c.40](#); paragraph 9B of Schedule 13 was inserted by [S.I. 2006/3363](#).

Amendments, repeals and transitional and saving provisions

- 30.**—(1) Schedule 2 (which contains amendments) shall have effect.
(2) Schedule 3 (which contains transitional and saving provisions) shall have effect.
(3) Schedule 4 (which contains repeals and revocations) shall have effect.

Date

Department for Business, Enterprise &
Regulatory Reform