
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations give effect in the United Kingdom to Directive [2002/65/EC](#) of the European Parliament and of the Council of 23 September 2002 concerning the distance marketing of consumer financial services and amending Council Directive [90/619/EEC](#) and Directives [97/7/EC](#) and [98/27/EC](#) (O.J. L 271, 9.10.2002, p.16) (“the Directive”) so far as it is not given effect by rules made by the Financial Services Authority under the Financial Services and Markets Act 2000 or made by a professional body designated under that Act.

Regulations 3 to 5 identify the transactions to which the substantive provisions of these Regulations apply. Regulation 3 defines these as “distance contracts”, as defined in regulation 2(1) (or, for the purposes of regulation 15, comparable supplies of financial services) made on or after the date on which the Regulations come into force. Regulation 4 then disapplies certain provisions from various categories of contract and supply where equivalent provision is made by other regimes: paragraph (1) excludes contracts and supplies made by suppliers established in another State within the European Economic Area where the law of that State regulates the contract or supply in accordance with the Directive; paragraphs (2) to (4), taken with paragraphs (5) and (6), exclude contracts and supplies in relation to which effect is given to the Directive by rules made or approved by the Financial Services Authority under the Financial Services and Markets Act 2000. Regulation 5 gives effect to Article 1(2) of the Directive in the light of Recital (17) in the Directive’s preamble, under which the substantive provisions of the Directive only apply to an “initial service agreement” with a financial services supplier or the first in a series of similar operations, and not to every subsequent transaction carried out under that agreement or in that series.

Regulation 6 sets out how the Regulations apply in cases where financial services are marketed through an intermediary, as contemplated by Recital (19) in the preamble to the Directive. Some provisions of the Regulations apply to the intermediary instead of the supplier; others apply to either or both of them; others again still apply only to the supplier.

Regulations 7 and 8 and the Schedules contain the first set of main provisions, requiring suppliers of financial services, where the Regulations apply, to provide consumers with certain information listed in the Schedules. This information generally has to be provided before the consumer is bound by a distance contract for supply of the financial services in question.

Regulations 9 to 13 contain the next set of main provisions, giving consumers a right to cancel most distance contracts for financial services during a set period after commencement of the contract.

Regulation 9 contains the right to cancel, specifying the means by which the right can be exercised and defining the effect of cancellation as termination of the contract at the time at which the notice of cancellation is given. Regulation 10 defines the period during which the cancellation right can be exercised: generally from the time the consumer is bound by the contract until 14 days after that, or until 14 days after the information required by regulation 8 is provided if later, but until 30 days after the later of those dates in the case of a contract for a personal pension and until 30 days after the day on which the consumer is informed that the distance contract has been concluded in the case of a contract for life insurance. Paragraph (1) of regulation 11 lists certain types of contract to which, as permitted by the Directive, the cancellation right does not apply except in the circumstances dealt with in paragraphs (2) and (3) of that regulation.

Regulation 12 provides that, where a distance contract is cancelled under regulation 9, certain other subsidiary distance contracts connected with that contract—defined in paragraph (1) as “attached contracts”—are automatically cancelled too.

Status: This is the original version (as it was originally made).

Regulation 13 then provides for the consequences of cancellation of distance contracts, whether by notice under regulation 9 or automatically under regulation 12: the supplier must refund any sums received from the consumer under the contract, less a proportionate charge for any services already supplied, and must release and return to the consumer any security taken under the contract; the consumer must repay to the supplier any money paid to the consumer under the contract, and return any property acquired under it.

Regulation 14 provides that, where a plastic card issued to a consumer is used fraudulently by someone else to make a payment in connection with a distance contract (other than where the Consumer Credit Act 1974 (c. 39) covers the matter), the consumer is entitled to cancel the payment and to have all sums paid credited or returned by the card issuer.

Regulation 15 prevents consumers from being bound by any obligation in respect of financial services supplied to them but for which they have not asked; and makes it a criminal offence to demand or assert a right to payment with any such supply, or to take or threaten enforcement action with a view to obtaining payment for such a supply, without reason to believe payment is legally due.

Regulation 16 is designed to prevent the Regulations being undermined. It renders void any contractual term which is inconsistent with any provision of these Regulations or purports to impose on a consumer additional or greater duties or liabilities than those provided for in the Regulations; and it overrides any contractual term which aims to apply the law of a non-EEA State so as to prevent a contract or supply closely connected with an EEA State from being governed by the provisions of the Directive.

Regulations 17 to 21 and 26 to 28 contain or provide for enforcement mechanisms in relation to the substantive provisions of the Regulations.

Paragraph (1) of regulation 17 specifies for these purposes that the enforcement authority for certain types of distance contract or supply listed in paragraph (2) is the Financial Services Authority, and that the enforcement authorities for other distance contracts and supplies are the Office of Fair Trading with local weights and measures authorities (in Great Britain) or with the Department of Enterprise, Trade and Investment (in Northern Ireland). Regulation 18 requires any such enforcement authority to consider complaints made to it about breaches of the Regulations unless the complaint is frivolous or vexatious or another enforcement authority has agreed to deal with it. Regulation 19 enables enforcement authorities to apply to the courts for injunctions against persons responsible for breaches of the Regulations, and regulations 20 and 21 provide for notification and publication of details about injunctions granted and undertakings given in relation to such breaches.

Regulations 26 and 27 bring the Directive, these Regulations, and relevant rules corresponding to them, within the scope of Part 8 of the Enterprise Act 2002 (c. 40), which contains special powers for the enforcement of certain consumer legislation; regulation 28 brings offences under these Regulations within the scope of section 230 of that Act, so that local weights and measures authorities must notify the OFT of intended prosecutions under these Regulations.

Regulation 22 provides that breaches of certain provisions of the Regulations are criminal offences, provides for personal criminal liability on the part of certain officers or members of corporate and other bodies where they are responsible for the commission by such bodies of offences under the Regulations, and gives the enforcement authorities power to prosecute offences under the Regulations within their respective spheres of responsibility.

Regulation 23 provides that the functions of the FSA under the Regulations are to be treated as functions under the Financial Services and Markets Act 2000 (c. 8) so as to apply for the purposes of these Regulations various general powers and provisions of that Act.

Regulation 24 amends the Unfair Terms in Consumer Contracts Regulations 1999 (S.I.1999/2083) so as to deem automatically unfair, for the purposes of those Regulations, any contractual term placing on a consumer the burden of proving whether a supplier or intermediary has complied with obligations deriving from the Directive or any provision implementing it.

Regulation 25 makes amendments to the Consumer Protection (Distance Selling) Regulations 2000 (S.I. 2000/2334) consequential upon the provisions of these Regulations.

Regulation 29 contains transitional provisions in connection with the application of these Regulations to regulated consumer credit agreements.

A full regulatory impact assessment of the effect that this instrument will have on the costs of business is available. Copies of it have been placed in the libraries of both Houses of Parliament, and copies are also available from the Savings and Investment Products Team, HM Treasury, 1 Horse Guards Road, London SW1A 2HQ and at www.hm-treasury.gov.uk.