

2003 No. 3183

CONSUMER PROTECTION

**The Control of Misleading Advertisements (Amendment)
Regulations 2003**

| | |
|-------------------------------|---------------------------|
| <i>Made</i> - - - - | <i>8th December 2003</i> |
| <i>Laid before Parliament</i> | <i>8th December 2003</i> |
| <i>Coming into force</i> - - | <i>29th December 2003</i> |

Whereas the Secretary of State is a Minister designated(a) for the purposes of section 2(2) of the European Communities Act 1972(b) in relation to measures relating to the control of advertising;

Now therefore, the Secretary of State, in exercise of the powers conferred upon her by section 2(2) of that Act hereby makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Control of Misleading Advertisements (Amendment) Regulations 2003 and shall come into force on 29th December 2003.

Amendment of the Control of Misleading Advertisements Regulations 1988

2. The Control of Misleading Advertisements Regulations 1988(c) are amended in accordance with the Schedule to these Regulations.

8th December 2003

Stephen Timms,
Minister of State for Energy, E-Commerce and Postal Services,
Department of Trade and Industry

(a) S.I. 1985/749.

(b) 1972 c. 68.

(c) S.I. 1988/915. These Regulations were previously amended by the Broadcasting Act 1990 (c. 42) and by the Control of Misleading Advertisements (Amendment) Regulations 2000 (S.I. 2000/914).

SCHEDULE

Article 2

Amendments to the Control of Misleading Advertisements Regulations 1988

1.—(1) In regulation 2 (interpretation), paragraph (1) is amended as follows.

(2) The definitions of “the Commission”, “relevant body”, “on S4C” and “the Welsh Authority” are revoked.

(3) For the definition of “licensed service” (including the definition of “licensed local delivery service”) there is substituted—

““licensed service” means a service in respect of which a licence has been granted under Part I or III of the Broadcasting Act 1990(a) or under Part I or II of the Broadcasting Act 1996(b);”.

(4) Before the definition of “products with designation of origin” there is inserted—

““OFCOM” means the Office of Communications established by section 1(1) of the Office of Communications Act 2002(c);”.

(5) After the definition of “publication” there is inserted—

““S4C” and “S4C Digital” have the same meaning as in Part 3 of the Communications Act 2003(d);”.

2.—(1) Regulation 4 (complaints to the OFT) is amended as follows.

(2) In paragraph (2), for the words “the Commission, the Radio Authority or the Welsh Authority” there is substituted “OFCOM”.

3.—(1) Regulation 8 (complaints to the Commission and the Radio Authority) is amended as follows.

(2) For paragraph (1) there is substituted—

“8.—(1) It shall be the duty of OFCOM to consider any complaint made to them that any advertisement included or proposed to be included in a licensed service is misleading or is a comparative advertisement and is not permitted under regulation 4A, unless the complaint appears to OFCOM to be frivolous or vexatious.”

(3) Paragraph (2) is revoked.

(4) For paragraph (3) there is substituted—

“(3) OFCOM shall give reasons for their decisions.”

(5) In paragraph (4), for “conferred on it” there is substituted “conferred on them” and for “a relevant body” there is substituted “OFCOM”.

(6) For the cross-heading there is substituted “Complaints to OFCOM”.

4.—(1) Regulation 9 (control by the Commission and the Radio Authority of misleading advertisements and comparative advertisements) is amended as follows.

(2) For paragraph (1) there is substituted—

“9.—(1) If, having considered a complaint about an advertisement pursuant to regulation 8(1) above, they consider that the advertisement is misleading, or is a comparative advertisement and is not permitted under regulation 4A, OFCOM may, if they think it

(a) 1990 c. 42.

(b) 1996 c. 55.

(c) 2002 c. 11.

(d) 2003 c. 21.

appropriate to do so, exercise in relation to the advertisement any power conferred on them by virtue of a condition included in a licence in accordance with section 325(4) of the Communications Act 2003.”

(3) In paragraph (2)—

- (a) for “A relevant body may” there is substituted “OFCOM may”;
- (b) for “appearing to it” there is substituted “appearing to them”;
- (c) for “the body believes” there is substituted “OFCOM believe”;
- (d) for “to furnish it” there is substituted “to furnish them”; and
- (e) for “the body shall have regard” there is substituted “OFCOM shall have regard”.

(4) In paragraph (3)—

- (a) for “furnished to it following a requirement made by it” there is substituted “furnished to them following a requirement made by them”;
- (b) for “by the relevant body” there is substituted “by OFCOM”;
- (c) for “if it considers” there is substituted “if they consider”; and
- (d) for “a relevant body may” there is substituted “OFCOM may”.

(5) For the cross-heading there is substituted “Control by OFCOM of misleading advertisements and comparative advertising”.

5.—(1) Regulation 10 (complaints to the Welsh Authority) is amended as follows.

(2) For paragraph (1) there is substituted—

“**10.**—(1) It shall be the duty of OFCOM to consider any complaint made to them that any advertisement broadcast or proposed to be broadcast on S4C or S4C Digital is misleading, or is a comparative advertisement and is not permitted under regulation 4A, unless the complaint appears to OFCOM to be frivolous or vexatious.”

(3) Paragraph (2) is revoked.

(4) For paragraph (3) there is substituted—

“(3) OFCOM shall give reasons for their decisions.”

(5) In paragraph (4) for “the Welsh Authority” there is substituted “OFCOM”.

(6) For the cross-heading there is substituted “Complaints about advertisements on S4C and S4C Digital”.

6.—(1) Regulation 11 (control by the Welsh Authority of misleading advertisements and comparative advertisements) is amended as follows.

(2) For paragraph (1) there is substituted—

“**11.**—(1) If, having considered a complaint about an advertisement pursuant to regulation 10(1) above, they consider that the advertisement is misleading, or is a comparative advertisement and is not permitted under regulation 4A, OFCOM may, if they think it appropriate to do so, exercise in relation to the advertisement, the power conferred by paragraph 14 of Schedule 12 to the Communications Act 2003.”

(3) In paragraphs (2) and (3) for the words “the Welsh Authority” and “the Authority” wherever they appear, there is in each case substituted “OFCOM”.

(4) For the cross-heading there is substituted “Control of misleading advertisements and comparative advertisements on S4C and S4C Digital.”

EXPLANATORY NOTE

(This note is not part of the Order)

These Regulations amend the Control of Misleading Advertisements Regulations 1988 (“the 1988 Regulations”) to reflect provisions in the Communications Act 2003 (“the 2003 Act”) and the Broadcasting Act 1996 (“the 1996 Act”). The 1988 Regulations implement Council Directive 84/450/EEC (OJ No. L 250 19.9.1984, p. 17) concerning misleading and comparative advertising, as amended by Directive 97/55/EC of the European Parliament and the Council (OJ No. L 290, 23.10.97, p.18).

The 2003 Act provides, amongst other things, that OFCOM is to take over the regulatory functions of the Independent Television Commission and the Radio Authority. Furthermore, it confers powers on OFCOM to regulate advertising standards in relation to the Welsh Authority (which was previously self-regulatory in relation to advertising). The 1996 Act makes provision, amongst other things, for broadcasting in digital form and for the licensing of services associated with such broadcasting.

The amendments to the definition of “licensed service” (so that services licensed under the 1996 Act are now included) and to regulations 8 to 11 of the 1988 Regulations reflect the above changes and there are some further minor consequential amendments.

A full regulatory impact assessment has not been produced for this instrument as it has no impact on the costs of business.

£1.75

© Crown copyright 2003

Printed and published in the UK by The Stationery Office Limited
under the authority and superintendence of Carol Tullo, Controller of Her Majesty's
Stationery Office and Queen's Printer of Acts of Parliament.

E1700 12/2003 131700 19585

ISBN 0-11-048288-3



9 780110 482880