

2014 No. 870

CONSUMER PROTECTION

The Consumer Protection (Amendment) Regulations 2014

Made - - - - *31st March 2014*

Laid before Parliament *1st April 2014*

Coming into force in accordance with regulation 1

The Secretary of State, as a Minister designated^(a) for the purposes of section 2(2) of the European Communities Act 1972^(b), in relation to matters relating to consumer protection and to the control of advertising, makes the following Regulations in exercise of the powers conferred by section 2(2) of that Act.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Consumer Protection (Amendment) Regulations 2014.

(2) Paragraph (1), this paragraph and regulation 9 come into force on 13th June 2014 immediately before the coming into force of the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013^(c) and apply in relation to contracts entered into on or after that date.

(3) The remaining provisions of these Regulations come into force on 1st October 2014 and apply in relation to contracts entered into, or payments made, on or after that date.

(4) In these Regulations “the 2008 Regulations” means the Consumer Protection from Unfair Trading Regulations 2008^(d).

Amendments to regulation 2 of the 2008 Regulations

2.—(1) Regulation 2 of the 2008 Regulations (interpretation) is amended as follows.

(2) In paragraph (1), in the definition of “business”—

(a) after “includes” insert “—(a)”, and

(b) after “profession” insert—

“, and

(b) the activities of any government department or local or public authority;”.

(3) In that paragraph, for the definition of “consumer” substitute—

““consumer” means an individual acting for purposes that are wholly or mainly outside that individual’s business;”.

(a) S.I. 1993/2661 and S.I. 1985/749.

(b) 1972 c. 68; section 2(2) was amended by the European Union (Amendment) Act 2008 (c.7), Schedule 1, paragraph 1.

(c) S.I. 2013/3134.

(d) S.I. 2008/1277, amended by S.I. 2013/3134 and S.I. 2014/549.

- (4) In that paragraph, after that definition insert—
 ““digital content” means data which are produced and supplied in digital form;”.
- (5) In that paragraph, for the definition of “goods” substitute—
 ““goods” means any tangible moveable items, but that includes water, gas and electricity if and only if they are put up for sale in a limited volume or set quantity;”.
- (6) In that paragraph, for the definition of “product” substitute—
 ““product” means—
 (a) goods,
 (b) a service,
 (c) digital content,
 (d) immoveable property,
 (e) rights or obligations, or
 (f) a product of the kind mentioned in paragraphs (1A) and (1B),
 but the application of this definition to Part 4A is subject to regulations 27C and 27D;”.
- (7) In that paragraph, for the definition of “trader” substitute—
 ““trader”—
 (a) means a person acting for purposes relating to that person’s business, whether acting personally or through another person acting in the trader’s name or on the trader’s behalf, and
 (b) except in Part 4A, includes a person acting in the name of or on behalf of a trader;”.
- (8) In that paragraph, in the definition of “transactional decision”, after paragraph (b) insert “(but the application of this definition to regulations 5 and 7 as they apply for the purposes of Part 4A is subject to regulation 27B(2))”.
- (9) After that paragraph insert—
 “(1A) A trader (“T”) who demands payment from a consumer (“C”) in full or partial settlement of C’s liabilities or purported liabilities to T is to be treated for the purposes of these Regulations as offering to supply a product to C.
 (1B) In such a case the product that T offers to supply comprises the full or partial settlement of those liabilities or purported liabilities.”.

New Part 4A of the 2008 Regulations

3. After Part 4 of the 2008 Regulations insert—

“PART 4A CONSUMERS’ RIGHTS TO REDRESS

When does a consumer have a right to redress?

- 27A.**—(1) A consumer has a right to redress under this Part if—
 (a) the conditions in this regulation are met, and
 (b) the conditions (if any) in the following provisions of this Part for the availability of that right are met.
- (2) The first condition is that—
 (a) the consumer enters into a contract with a trader for the sale or supply of a product by the trader (a “business to consumer contract”),

- (b) the consumer enters into a contract with a trader for the sale of goods to the trader (a “consumer to business contract”), or
 - (c) the consumer makes a payment to a trader for the supply of a product (a “consumer payment”).
- (3) Paragraph (2)(b) does not apply if, under the contract, the trader supplies or agrees to supply a product to the consumer as well as paying or agreeing to pay the consumer.
- (4) The second condition is that—
- (a) the trader engages in a prohibited practice in relation to the product, or
 - (b) in a case where a consumer enters into a business to consumer contract for goods or digital content—
 - (i) a producer engages in a prohibited practice in relation to the goods or digital content, and
 - (ii) when the contract is entered into, the trader is aware of the commercial practice that constitutes the prohibited practice or could reasonably be expected to be aware of it.
- (5) In paragraph (4)(b) “producer” means—
- (a) a manufacturer of the goods or digital content,
 - (b) an importer of the goods or digital content into the European Economic Area, or
 - (c) a person who purports to be a producer by placing the person’s name, trade mark or other distinctive sign on the goods or using it in connection with the digital content,
- and includes a producer acting personally or through another person acting in the producer’s name or on the producer’s behalf.
- (6) The third condition is that the prohibited practice is a significant factor in the consumer’s decision to enter into the contract or make the payment.

What does “prohibited practice” mean in this Part?

- 27B.—**(1) In this Part “prohibited practice” means a commercial practice that—
- (a) is a misleading action under regulation 5, or
 - (b) is aggressive under regulation 7.
- (2) Regulations 5 and 7 apply for the purposes of this Part as if for the definition of “transactional decision” in regulation 2(1) there were substituted—
- ““transactional decision” means any decision taken by a consumer to enter into a contract with a trader for the sale or supply of a product by the trader, or for the sale of goods to the trader, or to make a payment to a trader for the supply of a product.”.

What immoveable property is covered by this Part?

- 27C.—**(1) In this Part “product” does not include immoveable property other than a relevant lease.
- (2) In this regulation “relevant lease” in relation to England and Wales means—
- (a) an assured tenancy within the meaning of Part 1 of the Housing Act 1988(a), or
 - (b) a lease under which accommodation is let as holiday accommodation.
- (3) But none of the following are relevant leases for the purposes of paragraph (2)(a)—

(a) 1988 c.50; Part 1 was amended by the Courts and Legal Services Act 1990 (c.41), Police and Justice Act 2006 (c.48), Tribunals, Courts and Enforcement Act 2007 (c.15), Housing and Regeneration Act 2008 (c.17), Crime and Courts Act 2013 (c.22) and Anti-social Behaviour, Crime and Policing Act 2014 (c.12)

- (a) a lease granted by—
 - (i) a private registered provider of social housing^(a), or
 - (ii) a registered social landlord within the meaning of Part 1 of the Housing Act 1996^(b);
 - (b) a lease of a dwelling-house or part of a dwelling-house—
 - (i) granted on payment of a premium calculated by reference to a percentage of the value of the dwelling-house or part or of the cost of providing it, or
 - (ii) under which the lessee (or the lessee’s personal representatives) will or may be entitled to a sum calculated by reference, directly or indirectly, to the value of the dwelling-house or part;
 - (c) a lease granted to a person as a result of the exercise by a local housing authority within the meaning of the Housing Act 1996 of its functions under Part 7 (homelessness) of that Act.
- (4) In this regulation “relevant lease” in relation to Scotland means—
- (a) an assured tenancy within the meaning of Part 2 of the Housing (Scotland) Act 1988^(c), or
 - (b) a lease under which accommodation is let as holiday accommodation.
- (5) In this regulation “relevant lease” in relation to Northern Ireland means—
- (a) a private tenancy within the meaning of Article 3 of the Private Tenancies (Northern Ireland) Order 2006^(d), or
 - (b) a lease under which accommodation is let as holiday accommodation.
- (6) But neither of the following are relevant leases for the purposes of paragraph (5)(a)—
- (a) a lease of a dwelling-house or part of a dwelling-house—
 - (i) granted on payment of a premium calculated by reference to a percentage of the value of the dwelling-house or part or of the cost of providing it, or
 - (ii) under which the lessee (or the lessee’s personal representatives) will or may be entitled to a sum calculated by reference, directly or indirectly, to the value of the dwelling-house or part;
 - (b) a private tenancy resulting from the exercise by the Northern Ireland Housing Executive of its functions under Part 2 (homelessness) of the Housing (Northern Ireland) Order 1988^(e).

What financial services are covered by this Part?

27D.—(1) In this Part “product” does not include a service provided in the course of carrying on a regulated activity within the meaning of section 22 of the Financial Services and Markets Act 2000^(f), other than a service to which paragraph (2) applies.

(2) This paragraph applies to a service consisting of the provision of credit under an agreement which is a restricted-use credit agreement within paragraph (a) or (b) of the definition of that term in article 60L(1) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001^(g).

(a) For the meaning of “private registered provider of social housing” see section 80(3)(a) of the Housing and Regeneration Act 2008 (c.17).

(b) 1996 c.52; section 16A was inserted by the Housing Act 2004 (c.34), section 221.

(c) 1988 c.43.

(d) S.I. 2006/1459 (N.I.10), to which there are amendments not relevant to these Regulations.

(e) S.I. 1988/1990 (N.I.23); relevant amending provisions are the Housing and Regeneration Act 2008 (c.17), sections 314 and 325(1) and Schedule 15.

(f) 2000 c. 8; section 22 was amended by the Financial Services Act 2012 (c.21), section 7(1).

(g) S.I. 2001/544; relevant amending instruments are S.I. 2013/1881 and S.I. 2014/366.

(3) But paragraph (2) does not apply to an agreement under which the obligation of the borrower to repay is secured by a legal or equitable mortgage on land (other than timeshare accommodation).

(4) In paragraph (3)—

“mortgage” includes a charge and (in Scotland) a heritable security;

“timeshare accommodation” means overnight accommodation which is the subject of a timeshare contract within the meaning of the Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010.

(5) The fact that the supply of a product within regulation 2(1A) and (1B) may constitute an activity within article 39F (debt-collecting) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 does not prevent this Part from applying in relation to that supply.

When does the right to unwind apply to a business to consumer contract?

27E.—(1) A consumer has the right to unwind in respect of a business to consumer contract if the consumer indicates to the trader that the consumer rejects the product, and does so—

- (a) within the relevant period, and
- (b) at a time when the product is capable of being rejected.

(2) An indication under paragraph (1) may be something that the consumer says or does, but it must be clear.

(3) In paragraph (1)(a) “the relevant period” means the period of 90 days beginning with the later of—

- (a) the day on which the consumer enters into the contract, and
- (b) the relevant day.

(4) In this Part “the relevant day” means the day on which—

- (a) the goods are first delivered,
- (b) the performance of the service begins,
- (c) the digital content is first supplied,
- (d) the lease begins, or
- (e) the right is first exercisable,

(as the case may be).

(5) But in the case of a mixed contract, “the relevant day” means the latest of the days mentioned in paragraph (4) that is relevant to the contract.

(6) In this Part “mixed contract” means a contract relating to a product which consists of any two or more of goods, a service, digital content, immovable property or rights.

(7) For the purposes of this Part, where the consumer’s access to digital content on a device requires its transmission to the device under arrangements initiated by the trader, the day on which the digital content is first provided is—

- (a) the day on which it reaches the device, or
- (b) if earlier, the day on which it reaches another trader chosen by the consumer to supply, under a contract with the consumer, a service by which digital content reaches the device.

(8) For the purposes of paragraph (1)(b), a product remains capable of being rejected only if—

- (a) the goods have not been fully consumed,
- (b) the service has not been fully performed,
- (c) the digital content has not been fully consumed,

- (d) the lease has not expired, or
 - (e) the right has not been fully exercised,
- (as the case may be).
- (9) For the purposes of paragraph (8)—
- (a) goods have been fully consumed only if nothing is left of them, and
 - (b) digital content has been fully consumed only if the digital content was available to the consumer for a fixed period and that period has expired.
- (10) A consumer does not have the right to unwind in respect of a business to consumer contract if the consumer has exercised the right to a discount in respect of that contract and the same prohibited practice.

How does the right to unwind work in the case of a business to consumer contract?

27F.—(1) Where a consumer has the right to unwind in respect of a business to consumer contract—

- (a) the contract comes to an end so that the consumer and the trader are released from their obligations under it,
 - (b) the trader has a duty to give the consumer a refund (subject as follows), and
 - (c) if the contract was wholly or partly for the sale or supply of goods the consumer must make the goods available for collection by the trader.
- (2) The consumer’s entitlement to a refund works as follows.
- (3) To the extent that the consumer paid money under the contract, the consumer is entitled to receive back the same amount of money (but see paragraphs (7) to (10)).
- (4) To the extent that the consumer transferred anything else under the contract, the consumer is entitled to receive back the same amount of what the consumer transferred, unless paragraph (5) applies.
- (5) To the extent that the consumer transferred under the contract something for which the same amount of the same thing cannot be substituted—
- (a) the consumer is entitled to receive back in its original state whatever the consumer transferred, or
 - (b) if it cannot be given back in its original state, the consumer is entitled to be paid its market price as at the time when the product was rejected.
- (6) There is no entitlement to a refund if none of paragraphs (3) to (5) applies.
- (7) The consumer’s entitlement to receive back the same amount of money as the consumer paid is qualified by paragraphs (8) to (10) if—
- (a) the contract was for the sale or supply of a product on a regular or continuous basis, and
 - (b) the period beginning with the relevant day and ending with the day on which the consumer rejected the product exceeds one month.
- (8) In that case the consumer is only entitled to receive back the amount (if any) found by deducting the market price, when the consumer rejected the product, of the product supplied up to that time from the amount the consumer paid for it.
- (9) But paragraph (8) does not apply if it is not appropriate to apply that deduction having regard to—
- (a) the behaviour of the person who engaged in the prohibited practice, and
 - (b) the impact of the practice on the consumer.
- (10) Where the product supplied up to the time when the consumer rejected it consists wholly or partly of goods, their market price is only to be taken into account under paragraph (8) to the extent that they have been consumed.

How does the right to unwind work in the case of a consumer to business contract?

27G.—(1) A consumer who has a right to redress in respect of a consumer to business contract has the right to unwind in respect of that contract.

(2) Where paragraph (1) applies—

- (a) the consumer has the right to treat the contract as at an end so that the trader and the consumer are released from their obligations under it, and
- (b) the consumer has the right within paragraph (5) or (6).

(3) To treat the contract as at an end, the consumer must indicate to the trader that the contract is ended.

(4) An indication under paragraph (3) may be something that the consumer says or does, but it must be clear.

(5) If the trader is able to return the goods to the consumer in the condition they were in when sold by the consumer—

- (a) the consumer has a right to the return of the goods, and
- (b) the consumer must repay to the trader the amount (if any) that the trader has paid for the goods.

(6) If paragraph (5) does not apply, the consumer has a right to a payment from the trader of the amount (if any) by which the market price of the goods when the trader paid for them exceeds what the trader paid for them.

How does the right to unwind work if payments are demanded which are not due?

27H.—(1) A consumer has the right to unwind in respect of a consumer payment for a product within regulation 2(1A) and (1B) if the consumer was not required to make all or part of the payment.

(2) Where paragraph (1) applies, the consumer has the right to receive back from the trader—

- (a) the same amount of money as the consumer paid to the trader, or
- (b) in a case where the consumer was required to make part of the payment, an amount equal to the part of the payment the consumer was not required to make.

How does the right to a discount work?

27I.—(1) A consumer has the right to a discount in respect of a business to consumer contract if—

- (a) the consumer has made one or more payments for the product to the trader or one or more payments under the contract have not been made, and
- (b) the consumer has not exercised the right to unwind in respect of the contract.

(2) If the consumer has made one or more payments, the consumer has the right to receive back from the trader the relevant percentage of the payment or payments.

(3) If one or more payments have not been made, the consumer has the right—

- (a) to reduce by the relevant percentage as many of those payments as is appropriate having regard to the seriousness of the prohibited practice, or
- (b) in a case within paragraph (6), to reduce all of those payments by the relevant percentage.

(4) Subject to paragraph (6), the relevant percentage is as follows—

- (a) if the prohibited practice is more than minor, it is 25%,
- (b) if the prohibited practice is significant, it is 50%,
- (c) if the prohibited practice is serious, it is 75%, and

- (d) if the prohibited practice is very serious, it is 100%.
- (5) The seriousness of the prohibited practice is to be assessed by reference to—
 - (a) the behaviour of the person who engaged in the practice,
 - (b) the impact of the practice on the consumer, and
 - (c) the time that has elapsed since the prohibited practice took place.
- (6) Paragraph (5) does not apply if—
 - (a) the amount payable for the product under the contract exceeds £5,000,
 - (b) the market price of the product, at the time that the consumer entered into the contract, is lower than the amount payable for it under the contract, and
 - (c) there is clear evidence of the difference between the market price of the product and the amount payable for it under the contract.
- (7) In such a case, the relevant percentage is the percentage difference between the market price of the product and the amount payable for it under the contract.
- (8) The application of this regulation does not affect any of the other rights and liabilities under the contract.

How does the right to damages work?

- 27J.**—(1) Subject as follows, a consumer has the right to damages if the consumer—
- (a) has incurred financial loss which the consumer would not have incurred if the prohibited practice in question had not taken place, or
 - (b) has suffered alarm, distress or physical inconvenience or discomfort which the consumer would not have suffered if the prohibited practice in question had not taken place.
- (2) The right to damages is the right to be paid damages by the trader for the loss or the alarm, distress or physical inconvenience or discomfort in question.
- (3) The right to be paid damages for financial loss does not include the right to be paid damages in respect of the difference between the market price of a product and the amount payable for it under a contract.
- (4) The right to be paid damages under this regulation is a right to be paid only damages in respect of loss that was reasonably foreseeable at the time of the prohibited practice.
- (5) A consumer does not have the right to damages if the trader proves that—
- (a) the occurrence of the prohibited practice in question was due to—
 - (i) a mistake,
 - (ii) reliance on information supplied to the trader by another person,
 - (iii) the act or default of a person other than the trader,
 - (iv) an accident, or
 - (v) another cause beyond the trader’s control, and
 - (b) the trader took all reasonable precautions and exercised all due diligence to avoid the occurrence of the prohibited practice.

How can a consumer enforce the rights to redress?

- 27K.**—(1) A consumer with a right to redress under this Part may bring a claim in civil proceedings to enforce that right.
- (2) In Scotland, proceedings to enforce the right to unwind may be brought before the sheriff or in the Court of Session.
- (3) Paragraph (4) applies if in proceedings under this regulation the consumer establishes that the consumer has—

- (a) the right to unwind,
 - (b) the right to a discount, or
 - (c) the right to damages.
- (4) The court must make an order that gives effect to—
- (a) that right, and
 - (b) any associated obligations of the consumer under this Part.
- (5) The Limitation Act 1980^(a) applies to a claim under this regulation in England and Wales as if it were an action founded on simple contract.
- (6) The Limitation (Northern Ireland) Order 1989^(b) applies to a claim under this regulation in Northern Ireland as if it were an action founded on simple contract.

How does this Part relate to the existing law?

27L.—(1) Nothing in this Part affects the ability of a consumer to make a claim under a rule of law or equity, or under an enactment, in respect of conduct constituting a prohibited practice.

- (2) But a consumer may not—
- (a) make a claim to be compensated under a rule of law or equity, or under an enactment, in respect of such conduct if the consumer has been compensated under this Part in respect of the conduct, or
 - (b) make a claim to be compensated under this Part in respect of such conduct if the consumer has been compensated under a rule of law or equity, or under an enactment, in respect of the conduct.
- (3) In this regulation “enactment” includes—
- (a) an enactment contained in subordinate legislation within the meaning of the Interpretation Act 1978^(c),
 - (b) an enactment contained in, or in an instrument made under, a Measure or Act of the National Assembly for Wales,
 - (c) an enactment contained in, or in an instrument made under, an Act of the Scottish Parliament, and
 - (d) an enactment contained in, or in an instrument made under, Northern Ireland legislation.”.

Other amendments of the 2008 Regulations

4.—(1) In regulation 19(1) of the 2008 Regulations (duty of enforcement authority to enforce regulations), at the end insert “(other than Part 4A).”.

(2) Regulation 27A of the 2008 Regulations (inertia selling) is re-numbered as regulation 27M.

(3) In regulation 29 of the 2008 Regulations (agreement not to be void or unenforceable by reason of breach of Regulations), at the beginning insert “Except as provided by Part 4A, ”.

Amendments of other enactments

5. In section 2 of the Misrepresentation Act 1967^(d) (damages for misrepresentation), after subsection (3) insert—

(a) 1980 c.58.
 (b) S.I. 1989/1339 (N.I. 11).
 (c) 1978 c.30.
 (d) 1967 c.7.

“(4) This section does not entitle a person to be paid damages in respect of a misrepresentation if the person has a right to redress under Part 4A of the Consumer Protection from Unfair Trading Regulations 2008 (SI 2008/1277) in respect of the conduct constituting the misrepresentation.

(5) Subsection (4) does not prevent a debtor from bringing a claim under section 75(1) of the Consumer Credit Act 1974 against a creditor under a debtor-creditor-supplier agreement in a case where, but for subsection (4), the debtor would have a claim against the supplier in respect of a misrepresentation (and, where section 75 of that Act would otherwise apply, it accordingly applies as if the debtor had a claim against the supplier).”.

6. In section 2 of the Misrepresentation Act (Northern Ireland) 1967(a) (damages for misrepresentation), after subsection (3) insert—

“(4) This section does not entitle a person to be paid damages in respect of a misrepresentation if the person has a right to redress under Part 4A of the Consumer Protection from Unfair Trading Regulations 2008 (SI 2008/1277) in respect of the conduct constituting the misrepresentation.

(5) Subsection (4) does not prevent a debtor from bringing a claim under section 75(1) of the Consumer Credit Act 1974 against a creditor under a debtor-creditor-supplier agreement in a case where, but for subsection (4), the debtor would have a claim against the supplier in respect of a misrepresentation (and, where section 75 of that Act would otherwise apply, it accordingly applies as if the debtor had a claim against the supplier).”.

7. In paragraph 1 of Schedule 1 to the Prescription and Limitation (Scotland) Act 1973(b) (obligations affected by prescriptive periods of five years under section 6), before paragraph (b) insert—

“(af) to any obligation arising by virtue of a right to redress under Part 4A of the Consumer Protection from Unfair Trading Regulations 2008 (SI 2008/1277);”.

8. In section 10 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985(c) (negligent misrepresentation), after subsection (2) insert—

“(3) This section does not entitle a person to be paid damages in respect of a misrepresentation if the person has a right to redress under Part 4A of the Consumer Protection from Unfair Trading Regulations 2008 (SI 2008/1277) in respect of the conduct constituting the misrepresentation.

(4) Subsection (3) does not prevent a debtor from bringing a claim under section 75(1) of the Consumer Credit Act 1974 against a creditor under a debtor-creditor-supplier agreement in a case where, but for subsection (4), the debtor would have a claim against the supplier in respect of a misrepresentation (and, where section 75 of that Act would otherwise apply, it accordingly applies as if the debtor had a claim against the supplier).”.

9.—(1) The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 are amended as follows.

(2) In regulation 35(8) (consumer not required to bear cost of collecting goods unless consumer agreed to bear them) for “unless the consumer agreed to bear them.” substitute “unless the trader has offered to collect the goods and the consumer has agreed to bear the costs of the trader doing so.”.

(3) In Schedule 1 (information relating to on-premises contracts)—

- (a) in each of paragraphs (a) and (c), for “goods or services” in each place substitute “goods, services or digital content”, and
- (b) in paragraph (e), for “or to perform the service.” substitute “, to perform the service or to supply the digital content.”.

(a) 1967 c.14.
(b) 1973 c.52.
(c) 1985 c.73.

- (4) In Schedule 2 (information relating to distance and off-premises contracts)—
- (a) in each of paragraphs (a) and (f), for “goods or services” in each place substitute “goods, services or digital content”, and
 - (b) in paragraph (j), for “or to perform the services.” substitute “, to perform the services or to supply the digital content.”.
- (5) In Schedule 4 (consequential amendments)—
- (a) in paragraph 4, in the substituted paragraph (e), for “50(1)” substitute “38(1)”, and
 - (b) in paragraph 9 (repeal of paragraph 29 of Schedule 1 to the 2008 Regulations), for “, omit paragraph 29.” substitute “(commercial practices which are in all circumstances considered unfair), in paragraph 29 omit the words from “, except where” to the end of the paragraph.”.

Jenny Willott

Parliamentary Under Secretary of State for Employment Relations and Consumer Affairs
31st March 2014

Department for Business, Innovation and Skills

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Consumer Protection from Unfair Trading Regulations 2008 (S.I. 2008/1277) (“the 2008 Regulations”) which implement Directive 2005/29/EC of the European Parliament and of the Council concerning unfair business-to-consumer commercial practices (OJ No L 149, 11.6.2005, p22). They provide consumers with rights to redress in respect of misleading and aggressive commercial practices. These changes come into force on 1st October 2014 and apply to contracts entered into, or payments made, on or after that date.

The Regulations also make minor amendments to the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 (“the 2013 Regulations”). Those changes come into force on 13th June 2014 immediately prior to the coming into force of the 2013 Regulations.

Regulation 2 makes various amendments to the definitions of “consumer”, “trader”, “goods” and “product” in the 2008 Regulations.

Regulation 3 inserts new Part 4A which contains provisions on when the rights to redress are available, what they entail and how they can be enforced. New regulation 27A sets out when a consumer has a right to redress. First, the consumer must enter into a contract for the sale or supply of a product by a trader (a “business to consumer contract”) or for the sale of goods to a trader (a “consumer to business contract”), or they must make a payment to a trader for the supply of a product (a “consumer payment”). Second, the trader must engage in a prohibited practice in relation to the product. Third, the prohibited practice must be a significant factor in the consumer’s decision to enter into the contract or make the payment. Finally, the consumer must satisfy any specific conditions which apply to the right of redress they are exercising.

The table below sets out the rights to redress which are available to the consumer if the conditions in regulation 27A are met:

<i>Consumer transaction</i>	<i>Right to redress</i>
Business to consumer contract	The right to unwind (regulation 27F) The right to a discount (regulation 27I) The right to damages (regulation 27J)
Consumer to business contract	The right to unwind (regulation 27G) The right to damages (regulation 27J)
Consumer payment for product within regulation 2(1A) and (1B)	The right to unwind (regulation 27H) The right to damages (regulation 27J)
Consumer payment for any other type of product	The right to damages

New Regulation 27B defines a “prohibited practice” as being a misleading action under regulation 5 or an aggressive commercial practice under regulation 7 of the 2008 Regulations. The meaning of “transactional decision” is modified for the purposes of new Part 4A.

New Regulations 27C and 27D modify the definition of “product” to the extent that it applies to new Part 4A. For the purpose of new Part 4A, the definition of “product” does not include immoveable property (other than a relevant lease) or financial services (other than certain types of regulated credit agreements).

New Regulations 27E to 27F covers the right to unwind a business to consumer contract. New regulation 27E provides that the consumer must exercise the right to unwind within a period of 90 days and while the product remains capable of being rejected. New regulation 27F provides that the effect of unwinding such a contract is that it comes to an end and the consumer has a right to a refund (and, where applicable, any goods are restored to the trader).

New regulation 27G sets out how the right to unwind applies in the case of a consumer to business contract. For such contracts the consumer has a right to return of the goods, or if they

cannot be returned in the same condition, to be refunded any difference between the amount the trader paid and the amount the goods were worth.

New regulation 27H provides that consumers have a right to unwind a consumer payment which they were not required to make and that this entitles them to receive that money back from the trader.

New regulation 27I sets out when the right to a discount is available and what it entails. The right to a discount is available in respect of past or future payments under a contract for the supply of a product to a consumer. It entitles consumers to a 25%, 50%, 75% or 100% discount on such payments. The level of the discount depends on the seriousness of the prohibited practice which is assessed by reference to behaviour of the trader, the impact of the practice on the consumer and the time which has elapsed. If the consumer paid in excess of £5,000 for the product then the discount they receive will be the difference in value between the market price of the product and the amount they paid. The exercising of the right to the discount has no effect on any other rights and liabilities under the contract.

New regulation 27J sets out when the right to damages is available and what it entails. The right to damages is available for additional financial losses and alarm, distress, physical discomfort and inconvenience caused by the prohibited practice. Traders have a due diligence defence in respect of the right to damages.

New regulation 27K makes provision for consumers to be able to bring civil proceedings to enforce their rights to redress under new Part 4A. Regulation 7 makes a related amendment to the Prescription and Limitation (Scotland) Act 1973 to deal with the prescription period which applies in relation to Scotland.

New regulation 27L makes clear that the new rights to redress do not affect existing causes of action which consumers may have in respect of the same conduct save that they cannot recover twice for the same loss.

Regulation 4 makes consequential amendments to other provisions in the 2008 Regulations. Regulations 5, 6 and 8 repeal section 2 of the Misrepresentation Act 1967, section 2 of the Misrepresentation Act (Northern Ireland) 1967 and section 10 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 to the extent a consumer has a right to redress under Part 4A of the 2008 Regulations. Those provisions will however continue to have effect in cases where a consumer is bringing a claim under section 75(1) of the Consumer Credit Act 1974.

Regulation 9 makes minor amendments to correct provisions in the 2013 Regulations.

An impact assessment of the effect that the instrument will have on the costs of business, the voluntary sector and the public sector is available from the BIS website at www.gov.uk/bis.

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