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STATUTORY INSTRUMENTS

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**2014 No. 870**

**The Consumer Protection (Amendment) Regulations 2014**

**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 immovable property is covered by this Part?**

**27C.**—(1) In this Part “product” does not include immovable 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(1), 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) a lease granted by—
  - (i) a private registered provider of social housing(2), or
  - (ii) a registered social landlord within the meaning of Part 1 of the Housing Act 1996(3);
- (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—

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(1) 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)

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

(3) 1996 c.52; section 16A was inserted by the Housing Act 2004 (c.34), section 221.

- (a) an assured tenancy within the meaning of Part 2 of the Housing (Scotland) Act 1988(4), 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(5), 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(6).

#### **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(7), 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(8).

(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.

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(4) 1988 c.43.

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

(6) 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.

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

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

### **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, immoveable 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<sup>(9)</sup> 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<sup>(10)</sup> 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<sup>(11)</sup>,
- (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.”.

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<sup>(9)</sup> 1980 c.58.

<sup>(10)</sup> S.I. 1989/1339 (N.I. 11).

<sup>(11)</sup> 1978 c.30.