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## CONSUMER PROTECTION FROM UNFAIR TRADING REGULATIONS 2019

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Statutory Document No. 20XX/XXXX

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*European Communities (Isle of Man) Act 1973*

## CONSUMER PROTECTION FROM UNFAIR TRADING REGULATIONS 2019

*Laid before Tynwald:**Coming into Operation:**30 October 2019*

The Council of Ministers makes the following Regulations under section 2B of the European Communities (Isle of Man) Act 1973.

### PART 1 - INTRODUCTORY AND INTERPRETATION

#### 1 Title and commencement

- (1) These Regulations are the Consumer Protection from Unfair Trading Regulations 2019.
- (2) These Regulations come into operation on 30 October 2019<sup>1</sup>.

#### 2 Interpretation

SI 2008/1277/2

- (1) In these Regulations —

“**average consumer**” is construed in accordance with paragraphs (2) to (6);

“**business**” includes —

- (a) a trade, craft or profession; and
- (b) the activities of the Isle of Man Government or any local authority;

“**code of conduct**” means an agreement or set of rules (which is not imposed by legal or administrative requirements), which defines the behaviour of

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<sup>1</sup> Section 2B(9) of the European Communities (Isle of Man) Act 1973 specifies that regulations shall be laid before Tynwald and if Tynwald at the sitting before which such instrument is so laid or at the next following sitting resolves that the instrument shall be annulled, the regulations shall thereupon cease to have effect.

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 an individual acting for purposes that are wholly or mainly outside that individual's business;

**“digital content”** means data which are produced and supplied in digital form;

**“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;

**“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;

**“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 that person to take a transactional decision that he or she would not have taken otherwise;

**“OFT”** means the Isle of Man Office of Fair Trading;

**“premises”** includes any place and any stall, vehicle, ship or aircraft;

**“product”** means —

- (a) goods;
- (b) a service;
- (c) digital content;
- (d) immovable property;
- (e) rights or obligations; or
- (f) a product of the kind mentioned in paragraphs (2) and (3),

but the application of this definition to Part 5 is subject to regulations 39 and 40;

**“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”** —

- (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; and

**“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,

(but the application of this definition to regulations 5 and 7 as they apply for the purposes of Part 5 is subject to regulation 38(2)).

- (2) 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.
- (3) In such a case the product that T offers to supply comprises the full or partial settlement of those liabilities or purported liabilities.
- (4) 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 must be taken of the material characteristics of such an average consumer including that person being reasonably well informed, reasonably observant and circumspect.
- (5) Paragraphs (6) and (7) set out the circumstances in which a reference to the average consumer must be read as in addition referring to the average member of a particular group of consumers.
- (6) 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 must be read as referring to the average member of that group.
- (7) 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 must be read as referring to the average member of that group.

- (8) Paragraph (7) 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

### 3 Prohibition of unfair commercial practices

SI 2008/1277/3

- (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.

### 4 Prohibition of the promotion of unfair commercial practices

SI 2008/1277/4

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

### 5 Misleading actions

SI 2008/1277/5

- (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 the average consumer 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 or she 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 or she 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); and
  - (k) the consumer's rights or the risks the consumer 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.

## 6 Misleading omissions

SI 2008/1277/6

- (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 or she 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 retained EU obligation or an enactment.
- (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 the trader’s 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; and
  - (iv) complaint handling policy;
- (g) for products and transactions involving a right of withdrawal or cancellation, the existence of such a right.

## 7 Aggressive commercial practices

SI 2008/1277/7

- (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 the average consumer to take a transactional decision that person would not have taken otherwise.
- (2) In determining whether a commercial practice uses harassment, coercion or undue influence account must 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

### 8 Offences relating to unfair commercial practices

SI 2008/1277/8

- (1) A trader is guilty of an offence if –
- (a) the trader 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 must 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 Offence of misleading action

SI 2008/1277/9

A trader is guilty of an offence if the trader 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 Offence of misleading omission

SI 2008/1277/10

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

### 11 Offence of aggressive commercial practice

SI 2008/1277/11

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

**12 Offence of a prohibited commercial practice**

SI 2008/1277/12

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

**13 Penalty for offences**

SI 2008/1277/13

A person guilty of an offence under regulation 8, 9, 10, 11 or 12 is liable to the following maximum penalties —

- (a) on summary conviction, to 3 months' custody, or a fine of level 5 on the standard scale or both; or
- (b) on conviction on indictment, to 2 years' custody, a fine or both.

**14 Time limit for prosecution**

SI 2008/1277/14

(1) No proceedings for an offence under these Regulations may be commenced after —

- (a) the end of the period of 3 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 Attorney General,

whichever is earlier.

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

(3) Notwithstanding anything in section 75(1) of the Summary Jurisdiction Act 1989, a complaint relating to an offence under these Regulations which is heard by a court of summary jurisdiction may be so heard if it is made at any time before the end of the period of 12 months beginning with the date the offence was committed or the matter of complaint arose.

**15 Offence due to the default of another person**

SI 2008/1277/16

(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 16 or 17,

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 16 or 17, 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 16 or 17, 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.

## 16 Due diligence defence

SI 2008/1277/17

- (1) In any proceedings against a person ("A") for an offence under regulation 9, 10, 11 or 12 it is a defence for A to prove —
  - (a) that the commission of the offence was due to —
    - (i) a mistake;
    - (ii) reliance on information supplied to A by another person;
    - (iii) the act or default of another person;
    - (iv) an accident; or
    - (v) another cause beyond A's control; and
  - (b) that A took all reasonable precautions and exercised all due diligence to avoid the commission of such an offence by A or any person under A's control.
- (2) A person ("A") is not 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) A 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 A's possession; and
  - (b) the notice is served on the prosecutor at least 7 clear days before the date of the hearing.

## 17 Innocent publication of advertisement defence

SI 2008/1277/18

- (1) In any proceedings against a person ("A") for an offence under regulation 9, 10, 11 or 12 committed by the publication of an advertisement it is a defence for A to prove that —
  - (a) A is a person whose business it is to publish or to arrange for the publication of advertisements;

- (b) A received the advertisement for publication in the ordinary course of business; and
  - (c) A 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

### 18 Duty and power to enforce

SI 2008/1277/19

- (1) It is the OFT’s duty to enforce these Regulations.
- (2) In determining how to comply with paragraph (1) the OFT must 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.

### 19 Infringement

In this Part an infringement is an act or omission which contravenes these Regulations.

### 20 Consultation

P2002/40/214 and drafting

- (1) The OFT must not make an application for an enforcement order unless the OFT has engaged in appropriate consultation with the person against whom the enforcement order would be made.
- (2) Appropriate consultation is consultation for the purpose of —
  - (a) achieving the cessation of the infringement in a case where an infringement is occurring;
  - (b) ensuring that there will be no repetition of the infringement in a case where the infringement has occurred;
  - (c) ensuring that there will be no repetition of the infringement in a case where the cessation of the infringement is achieved under paragraph (a);
  - (d) ensuring that the infringement does not take place in the case of an infringement which the OFT believes is likely to take place.
- (3) Paragraph (1) does not apply if the OFT thinks that an application for an enforcement order should be made without delay.

- (4) Paragraph (1) ceases to apply —
  - (a) for the purposes of an application for an enforcement order at the end of the period of 14 days beginning with the day after the person against whom the enforcement order would be made receives a request for consultation from the OFT;
  - (b) for the purposes of an application for an interim enforcement order at the end of the period of 7 days beginning with the day after the person against whom the interim enforcement order would be made receives a request for consultation from the OFT.
- (5) In this regulation (except paragraph (4)) and in regulation 21 references to an enforcement order include references to an interim enforcement order.

## 21 Applications

P2002/40/215 and drafting

- (1) An application for an enforcement order must name the person the OFT thinks —
  - (a) has engaged or is engaging in conduct which constitutes an infringement; or;
  - (b) is likely to engage in conduct which constitutes an infringement.
- (2) The OFT may make an application for an enforcement order in respect of any infringement.
- (3) The High Court has jurisdiction to make an enforcement order.

## 22 Enforcement orders

P2002/40/217 and drafting

- (1) This regulation applies if an application for an enforcement order is made under regulation 21 and the court finds that the person named in the application is likely to engage or has engaged in conduct which constitutes the infringement.
- (2) If this regulation applies the court may make an enforcement order against the person.
- (3) In considering whether to make an enforcement order the court must have regard to whether the person named in the application —
  - (a) has given an undertaking under regulation 25 in respect of conduct such as is mentioned in paragraph (3) of that regulation;
  - (b) has failed to comply with the undertaking.
- (4) An enforcement order must —
  - (a) indicate the nature of the conduct to which the finding under paragraph (1) relates; and

- (b) direct the person to comply with paragraph (5).
- (5) A person complies with this paragraph if the person –
  - (a) does not continue or repeat the conduct;
  - (b) does not engage in the conduct in the course of the person's business or another business;
  - (c) does not consent to or connive in the carrying out of such conduct by a body corporate with which the person has a special relationship (within the meaning of regulation 29(3)).
- (6) But paragraph (5)(a) does not apply in the case of a finding under paragraph (1) where the infringement has not yet taken place.
- (7) An enforcement order may require a person against whom the order is made to publish in such form and manner and to such extent as the court thinks appropriate for the purpose of eliminating any continuing effects of the infringement –
  - (a) the order;
  - (b) a corrective statement.
- (8) If the court makes a finding under paragraph (1) it may accept an undertaking by the person –
  - (a) to comply with paragraph (5); or
  - (b) to take steps which the court believes will secure that the person complies with paragraph (5).
- (9) An undertaking under paragraph (8) may include a further undertaking by the person to publish in such form and manner and to such extent as the court thinks appropriate for the purpose of eliminating any continuing effects of the infringement –
  - (a) the terms of the undertaking;
  - (b) a corrective statement.
- (10) An enforcement order may require a person against whom the order is made to take enhanced consumer measures (defined in regulation 26) within a period specified by the court.
- (11) An undertaking under paragraph (8) may include a further undertaking by the person to take enhanced consumer measures within a period specified in the undertaking.
- (12) Where a person is required by an enforcement order or an undertaking under this regulation to take enhanced consumer measures, the order or undertaking may include requirements as to the provision of information or documents to the court by the person in order that the court may determine if the person is taking those measures.
- (13) If the court –



- (a) makes a finding under paragraph (1); and
  - (b) accepts an undertaking under paragraph (8),
- it must not make an enforcement order in respect of the infringement to which the undertaking relates.

## **23 Interim enforcement order**

P2002/40/218 and drafting

- (1) The court may make an interim enforcement order against a person named in the application for the order if it appears to the court –
  - (a) that it is alleged that the person is engaged in conduct which constitutes an infringement or is likely to engage in conduct which constitutes an infringement;
  - (b) that if the application had been an application for an enforcement order it would be likely to be granted;
  - (c) that it is expedient that the conduct is prohibited or prevented (as the case may be) immediately; and
  - (d) if no notice of the application has been given to the person named in the application that it is appropriate to make an interim enforcement order without notice.
- (2) An interim enforcement order must –
  - (a) indicate the nature of the alleged conduct; and
  - (b) direct the person to comply with paragraph (3).
- (3) A person complies with this paragraph if the person –
  - (a) does not continue or repeat the conduct;
  - (b) does not engage in such conduct in the course of the person's business or another business;
  - (c) does not consent to or connive in the carrying out of such conduct by a body corporate with which the person has a special relationship (within the meaning of regulation 29(3)).
- (4) But paragraph (3)(a) does not apply in so far as the application is made in respect of an allegation that the person is likely to engage in conduct that will constitute an infringement in the future.
- (5) An application for an interim enforcement order against a person may be made at any time before an application for an enforcement order against the person in respect of the same conduct is determined.
- (6) An application for an interim enforcement order must refer to all matters –
  - (a) which are known to the applicant; and

- (b) which are material to the question whether or not the application is granted.
- (7) If an application for an interim enforcement order is made without notice the application must state why no notice has been given.
- (8) The court may vary or discharge an interim enforcement order on the application of —
  - (a) the OFT;
  - (b) the person against whom it is made.
- (9) An interim enforcement order against a person is discharged on the determination of an application for an enforcement order made against the person in respect of the same conduct.
- (10) If it appears to the court as mentioned in paragraph (1)(a) to (c) the court may instead of making an interim enforcement order accept an undertaking from the person named in the application —
  - (a) to comply with paragraph (3); or
  - (b) to take steps which the court believes will secure that the person complies with paragraph (3).

## **24 Unfair commercial practices: substantiation of claims**

P2002/40/218A and drafting

- (1) For the purposes of considering an application for an enforcement order or for an interim enforcement order 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.
- (2) If, having been required under paragraph (1) 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.

## **25 Undertakings**

P2002/40/219 and drafting

- (1) The OFT may accept from a person to whom paragraph (2) applies an undertaking that the person will comply with paragraph (3).
- (2) This paragraph applies to a person who the OFT believes —
  - (a) has engaged in conduct which constitutes an infringement;

- (b) is engaging in such conduct;
  - (c) is likely to engage in conduct which constitutes an infringement.
- (3) A person complies with this paragraph if that person –
- (a) does not continue or repeat the conduct;
  - (b) does not engage in such conduct in the course of that person’s business or another business;
  - (c) does not consent to or connive in the carrying out of such conduct by a body corporate with which that person has a special relationship (within the meaning of regulation 29(3)).
- (4) But paragraph (3)(a) does not apply in the case of an undertaking given by a person in so far as paragraph (2) applies to that person by virtue of subparagraph (c).
- (5) An undertaking under this regulation may include a further undertaking by the person –
- (a) to take enhanced consumer measures (defined in regulation 26) within a period specified in the undertaking; and
  - (b) where such measures are included, to provide information or documents to the OFT in order that the OFT may determine if the person is taking those measures.

## **26 Definition of enhanced consumer measures**

P2002/40/219A

- (1) In this Part, enhanced consumer measures are measures (not excluded by paragraph (5)) falling within –
- (a) the redress category described in paragraph (2);
  - (b) the compliance category described in paragraph (3); or
  - (c) the choice category described in paragraph (4).
- (2) The measures in the redress category are –
- (a) measures offering compensation or other redress to consumers who have suffered loss as a result of the conduct which has given rise to the enforcement order or undertaking;
  - (b) where the conduct referred to in sub-paragraph (a) relates to a contract, measures offering such consumers the option to terminate (but not vary) that contract;
  - (c) where such consumers cannot be identified, or cannot be identified without disproportionate cost to the subject of the enforcement order or undertaking, measures intended to be in the collective interests of consumers.

- (3) The measures in the compliance category are measures intended to prevent or reduce the risk of the occurrence or repetition of the conduct to which the enforcement order or undertaking relates (including measures with that purpose which may have the effect of improving compliance with consumer law more generally).
- (4) The measures in the choice category are measures intended to enable consumers to choose more effectively between persons supplying or seeking to supply goods or services.
- (5) The following are not enhanced consumer measures —
  - (a) a publication requirement included in an enforcement order as described in regulation 22(7); or
  - (b) a publication requirement included in an undertaking accepted by the court as described in regulation 22(9).

## 27 Inclusion of enhanced consumer measures etc.

P2002/40/219B

- (1) An enforcement order or undertaking may include only such enhanced consumer measures as the court or the OFT (as the case may be) considers to be just and reasonable.
- (2) For the purposes of paragraph (1) the court or the OFT must in particular consider whether any proposed enhanced consumer measures are proportionate, taking into account —
  - (a) the likely benefit of the measures to consumers;
  - (b) the costs likely to be incurred by the subject of the enforcement order or undertaking; and
  - (c) the likely cost to consumers of obtaining the benefit of the measures.
- (3) The costs referred to in paragraph (2)(b) are —
  - (a) the cost of the measures; and
  - (b) the reasonable administrative costs associated with taking the measures.
- (4) An enforcement order or undertaking may include enhanced consumer measures in the redress category —
  - (a) only in a loss case; and
  - (b) only if the court or the OFT (as the case may be) is satisfied that the cost of such measures to the subject of the enforcement order or undertaking is unlikely to be more than the sum of the losses suffered by consumers as a result of the conduct which has given rise to the enforcement order or undertaking.

- (5) The cost referred to in paragraph (4)(b) does not include the administrative costs associated with taking the measures.
- (6) Paragraph (7) applies if an enforcement order or undertaking includes enhanced consumer measures offering compensation and a settlement agreement is entered into in connection with the payment of compensation.
- (7) A waiver of a person's rights in the settlement agreement is not valid if it is a waiver of the right to bring civil proceedings in respect of conduct other than the conduct which has given rise to the enforcement order or undertaking.
- (8) The following definitions apply for the purposes of paragraph (4)(a).
- (9) In the case of an enforcement order or undertaking under regulation 23, "a loss case" means a case in which —
  - (a) paragraph (1) of that regulation applies (a finding that a person has engaged in conduct which constitutes an infringement); and
  - (b) consumers have suffered loss as a result of that conduct.
- (10) In the case of an undertaking under regulation 25, "a loss case" means a case in which —
  - (a) paragraph (2)(a) or (b) of that regulation applies (a belief that a person has engaged or is engaging in conduct which constitutes an infringement); and
  - (b) consumers have suffered loss as a result of that conduct.

## 28 Further proceedings

P2002/40/220

- (1) This regulation applies if the court —
  - (a) makes an enforcement order under regulation 22;
  - (b) makes an interim enforcement order under regulation 23; or
  - (c) accepts an undertaking under either of those regulations.
- (2) This regulation does not apply in the case of a failure to comply with an order or undertaking which consists only of a failure to provide information or documents required by the order or undertaking as described in regulation 22(12).
- (3) An application to the court in respect of a failure to comply with an undertaking may include an application for an enforcement order or for an interim enforcement order.
- (4) If the court finds that an undertaking is not being complied with it may make an enforcement order or an interim enforcement order (instead of making any other order it has power to make).

- (5) In the case of an application for an enforcement order or for an interim enforcement order as mentioned in paragraph (3), regulation 20 must be ignored and regulations 21, 22 or 23 (as the case may be) and 26 and 27 apply subject to the following modifications –
- (a) regulation 21(1)(b) must be ignored;
  - (b) regulation 22(8), (9), (11) and (13) must be ignored, and regulation 22(12) must be ignored to the extent that it relates to an undertaking under regulation 22(8);
  - (c) regulation 23(10) must be ignored;
  - (d) regulations 26 and 27 must be ignored to the extent that they relate to an undertaking under regulation 22(8) or 25.

## 29 Bodies corporate: accessories

P2002/40/222

- (1) This regulation applies if the person whose conduct constitutes an infringement is a body corporate.
- (2) If the conduct takes place with the consent or connivance of a person (an accessory) who has a special relationship with the body corporate, the consent or connivance is also conduct which constitutes the infringement.
- (3) A person has a special relationship with a body corporate if the person is –
- (a) a controller of the body corporate; or
  - (b) a director, manager, secretary or other similar officer of the body corporate or a person purporting to act in such a capacity.
- (4) A person is a controller of a body corporate if –
- (a) the directors of the body corporate or of another body corporate which is its controller are accustomed to act in accordance with the person's directions or instructions; or
  - (b) either alone or with an associate or associates the person is entitled to exercise or control the exercise of one third or more of the voting power at any general meeting of the body corporate or of another body corporate which is its controller.
- (5) An enforcement order or an interim enforcement order may be made against an accessory in respect of an infringement whether or not such an order is made against the body corporate.
- (6) The court may accept an undertaking under regulation 22(8) or 23(10) from an accessory in respect of an infringement whether or not it accepts such an undertaking from the body corporate.

- (7) The OFT may accept an undertaking under regulation 25 from an accessory in respect of an infringement whether or not it accepts such an undertaking from the body corporate.
- (8) Paragraph (9) applies if –
- (a) an order is made as mentioned in paragraph (5); or
  - (b) an undertaking is accepted as mentioned in paragraph (6) or (7).
- (9) In such a case for paragraph (7) of regulation 22, paragraph (3) of regulation 23 or paragraph (3) of regulation 25 (as the case may be) there is substituted the following paragraph –
- “(6) A person complies with this paragraph if the person –
- (a) does not continue or repeat the conduct;
  - (b) does not in the course of any business carried on by the person engage in conduct such as that which constitutes the infringement committed by the body corporate mentioned in regulation 29(1);
  - (c) does not consent to or connive in the carrying out of such conduct by another body corporate with which the person has a special relationship (within the meaning of regulation 29(3)).”.
- (10) A person is an associate of an individual if –
- (a) the person is the spouse or civil partner of the individual;
  - (b) the person is a relative of the individual;
  - (c) the person is a relative of the individual's spouse or civil partner;
  - (d) the person is the spouse or civil partner of a relative of the individual;
  - (e) the person is the spouse or civil partner of a relative of the individual's spouse or civil partner;
  - (f) the person lives in the same household as the individual otherwise than merely because the person or the individual is the other's employer, tenant, lodger or boarder;
  - (g) the person is a relative of a person who is an associate of the individual by virtue of subparagraph (f);
  - (h) the person has at some time in the past fallen within any of subparagraphs (a) to (g).
- (11) A person is also an associate of –
- (a) an individual with whom the person is in partnership;
  - (b) an individual who is an associate of the individual mentioned in subparagraph (a);
  - (c) a body corporate if the person is a controller of it or the person is an associate of a person who is a controller of the body corporate.

- (12) A body corporate is an associate of another body corporate if –
- (a) the same person is a controller of both;
  - (b) a person (“A”) is a controller of one and persons who are A’s associates are controllers of the other;
  - (c) a person (“B”) is a controller of one and B and persons who are B’s associates are controllers of the other;
  - (d) a group of 2 or more persons is a controller of each company and the groups consist of the same persons;
  - (e) a group of 2 or more persons is a controller of each company and the groups may be regarded as consisting of the same persons by treating (in one or more cases) a member (“C”) of either group as replaced by a person of whom C is an associate.
- (13) A relative is a brother, sister, uncle, aunt, nephew, niece, lineal ancestor or lineal descendant.

### 30 Bodies corporate: orders

P2002/40/223

- (1) This regulation applies if a court makes an enforcement order or an interim enforcement order against a body corporate and –
- (a) at the time the order is made the body corporate is a member of a group of interconnected bodies corporate;
  - (b) at any time when the order is in force the body corporate becomes a member of a group of interconnected bodies corporate; or
  - (c) at any time when the order is in force a group of interconnected bodies corporate of which the body corporate is a member is increased by the addition of one or more further members.
- (2) The court may direct that the order is binding upon all of the members of the group as if each of them were the body corporate against which the order is made.
- (3) A group of interconnected bodies corporate is a group consisting of 2 or more bodies corporate all of whom are interconnected with each other.
- (4) Any 2 bodies corporate are interconnected –
- (a) if one of them is a subsidiary of the other; or
  - (b) if both of them are subsidiaries of the same body corporate.
- (5) In this regulation “subsidiary” has the meaning given by section 220 of the Companies Act 2006.



**31 Investigatory powers**

P2002/40/223A

The investigatory powers available to the OFT for the purposes of the OFT's functions under these Regulations are those contained in sections 25 to 34 of the Consumer Protection Act 1991.

**32 Evidence**

P2002/40/228 and drafting

- (1) Proceedings under this Part are civil proceedings for the purposes of section 11 of the Civil Evidence Act 1973 (convictions as evidence in civil proceedings).
- (2) In proceedings under this Part any finding by a court in civil proceedings that an act or omission mentioned in regulation 20 has occurred —
  - (a) is admissible as evidence that the act or omission occurred;
  - (b) unless the contrary is proved, is sufficient evidence that the act or omission occurred.
- (3) But paragraph (2) does not apply to any finding —
  - (a) which has been reversed on appeal;
  - (b) which has been varied on appeal so as to negative it.

**33 Advice and information**

P2002/40/229 and drafting

- (1) The OFT must prepare and publish advice and information with a view to —
  - (a) explaining the provisions of this Part to persons who are likely to be affected by them; and
  - (b) indicating how the OFT expects such provisions to operate.
- (2) The OFT must prepare and publish advice and information with a view to —
  - (a) explaining the provisions of sections 25 to 34 of the Consumer Protection Act 1991, so far as they relate to investigatory powers exercised for the purpose of enforcing these Regulations, to persons who are likely to be affected by them; and
  - (b) indicating how the OFT expects such provisions to operate.
- (3) The OFT may at any time publish revised or new advice or information.
- (4) Advice or information published in pursuance of paragraph (1)(b) may include advice or information about the factors which the OFT may take into account in considering how to exercise the functions conferred on it by this Part.

- (5) Advice or information published by the OFT under this regulation is to be published in such form and in such manner as it considers appropriate.
- (6) In preparing advice or information under this regulation the OFT must consult such persons as it thinks are representative of persons affected by this Part.

### **34 Goods and services**

P2002/40/232

- (1) References in this Part to goods and services must be construed in accordance with this regulation.
- (2) Goods include —
  - (a) buildings and other structures;
  - (b) ships, aircraft and hovercraft.
- (3) The supply of goods includes —
  - (a) supply by way of sale, lease, hire or hire purchase;
  - (b) in relation to buildings and other structures, construction of them by one person for another.
- (4) Goods or services which are supplied wholly or partly outside the Island must be taken to be supplied to or for a person in the Island if they are supplied in accordance with arrangements falling within paragraph (5).
- (5) Arrangements fall within this paragraph if they are made by any means and —
  - (a) at the time the arrangements are made the person seeking the supply is in the Island; or
  - (b) at the time the goods or services are supplied (or ought to be supplied in accordance with the arrangements) the person responsible under the arrangements for effecting the supply is in or has a place of business in the Island.

### **35 Person supplying goods**

P2002/40/233 and drafting

- (1) This regulation has effect for the purpose of references in this Part to a person supplying or seeking to supply goods under —
  - (a) a hire-purchase agreement;
  - (b) a credit-sale agreement;
  - (c) a conditional sale agreement.
- (2) The references include references to a person who conducts any antecedent negotiations relating to the agreement.

- (3) The expressions “hire-purchase agreement”, “conditional sale” and “credit-sale agreement” must be construed in accordance with section 21 of the Hire Purchase Act 1939.
- (4) The expression “antecedent negotiations” must be construed in accordance with section 20 of the Supply of Goods and Services Act 1996.

### **36 Supply of services**

P2002/40/234 and drafting

- (1) References in this Part to the supply of services must be construed in accordance with this regulation.
- (2) The supply of services does not include the provision of services under a contract of service or of apprenticeship whether it is express or implied and (if it is express) whether it is oral or in writing.
- (3) The supply of services includes —
  - (a) performing for gain or reward any activity other than the supply of goods;
  - (b) rendering services to order;
  - (c) the provision of services by making them available to potential users.
- (4) The supply of services includes making arrangements for the use of computer software or for granting access to data stored in any form which is not readily accessible.
- (5) The supply of services includes making arrangements by means of an agreement for sharing the use of electronic communications apparatus.
- (6) The supply of services includes permitting or making arrangements to permit the use of land in such circumstances as the OFT specifies by order.
- (7) An order under paragraph (6) is subject to Tynwald approval.

## **PART 5 - CONSUMERS' RIGHTS TO REDRESS**

### **37 When does a consumer have a right to redress?**

SI 2008/1277/27A

- (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 United Kingdom or the Island; 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.

### 38 What does “prohibited practice” mean in this Part?

SI 2008/1277/27B

- (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.”.

### 39 What immoveable property is covered by this Part?

SI 2008/1277/27C

- (1) In this Part “**product**” does not include immoveable property other than a relevant lease.
- (2) In this regulation “**relevant lease**” means —
  - (a) a tenancy within the meaning of section 4 of the Landlord and Tenant Act 1954; 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 Department, local authority or Statutory Board for the purposes of Part IV of the Housing Act 1955; or
    - (ii) a housing trust or approved housing association within the meaning of section 10 of the Housing (Miscellaneous Provisions) Act 1976; or
  - (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 by a charity to a person who is homeless.

### 40 What financial services are covered by this Part?

SI 2008/1277/27D and drafting

- (1) In this Part “**product**” does not include a service provided —
  - (a) by a person in the course of carrying on a regulated activity within the meaning of section 3 of the Financial Services Act 2008 where the person is licensed under that Act to carry on that class of regulated activity, other than a service to which paragraph (2) applies; or

- (b) by a person —
  - (i) authorised under section 8 of the Insurance Act 2008;
  - (ii) holding a permit issued under section 22 of that Act;
  - (iii) subject to an exemption under section 5(2)(c) or 5(2)(d) of that Act; or
  - (iv) registered as an insurance manager or an insurance intermediary under section 25 of that Act; or
  - (v) exempt from the requirement to be registered as an insurance intermediary under that Act by regulation 9(1)(c) of the Insurance Intermediaries (General Business) Regulations 1999<sup>2</sup>,

as part of any business carried on by virtue of that authorisation, permit, registration or exemption.

- (2) This paragraph applies to a service consisting of the provision of corporate services falling within Class 4 of Schedule 1 to the Regulated Activities Order 2011<sup>3</sup> and trust services falling within Class 5 of that Schedule.

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

SI 2008/1277/27E

- (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;

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<sup>2</sup> SD 88/99 (as amended).

<sup>3</sup> SD 0884/11.

- (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.

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

SI 2008/1277/27F

- (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.

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

SI 2008/1277/27G

- (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.

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

SI 2008/1277/27H

- (1) A consumer has the right to unwind in respect of a consumer payment for a product within regulation 2(2) and (3) 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.

#### 45 How does the right to a discount work?

SI 2008/1277/271

- (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 (4) 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.

#### **46 How does the right to damages work?**

SI 2008/1277/27J

- (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.

#### 47 How can a consumer enforce a right to redress?

SI 2008/1277/27K

- (1) A consumer with a right to redress under this Part may bring a claim in civil proceedings to enforce that right.
- (2) Paragraph (3) 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.
- (3) The court must make an order that gives effect to –
  - (a) that right; and
  - (b) any associated obligations of the consumer under this Part.
- (4) The Limitation Act 1984 applies to a claim under this regulation as if it were an action founded on simple contract.

#### 48 How does this Part relate to the existing law?

SI 2008/1277/27L

- (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.

### PART 6 - SUPPLEMENTARY

#### 49 Inertia selling

SI 2008/1277/27M

- (1) This regulation applies where a trader engages in the unfair commercial practice described in paragraph 29 of Schedule 1 (inertia selling).

- (2) The consumer is exempted from any obligation to provide consideration for the products supplied by the trader.
- (3) The absence of a response from the consumer following the supply does not constitute consent to the provision of consideration for, or the return or safekeeping of, the products.
- (4) In the case of an unsolicited supply of goods, the consumer may, as between the consumer and the trader, use, deal with or dispose of the goods as if they were an unconditional gift to the consumer.

## **50 Validity of agreements**

SI 2008/1277/29

Except as provided by Part 5, an agreement is not void or unenforceable by reason only of a breach of these Regulations.

## **51 Amendments, repeals and transitional and saving provisions**

SI 2008/1277/30

- (1) Schedule 2 (which contains repeals, revocations and amendments) has effect.
- (2) Schedule 3 (which contains transitional and saving provisions) has effect.

**MADE**

**W GREENHOW**  
*Chief Secretary*



**SCHEDULE 1****COMMERCIAL PRACTICES WHICH ARE IN ALL CIRCUMSTANCES  
CONSIDERED UNFAIR**

[Regulation 3(4)(d)]

- (1) Claiming to be a signatory to a code of conduct when the trader is not.
- (2) Displaying a trust mark, quality mark or equivalent without having obtained the necessary authorisation.
- (3) Claiming that a code of conduct has an endorsement from a public or other body which it does not have.
- (4) Claiming that a trader (including a trader's commercial practices) or a product has been approved, endorsed or authorised by a public or private body when the trader, the commercial practices or the product have not or making such a claim without complying with the terms of the approval, endorsement or authorisation.
- (5) Making an invitation to purchase products at a specified price without disclosing the existence of any reasonable grounds the trader may have for believing that he or she will not be able to offer for supply, or to procure another trader to supply, those products or equivalent products at that price for a period that is, and in quantities that are, reasonable having regard to the product, the scale of advertising of the product and the price offered (bait advertising).
- (6) Making an invitation to purchase products at a specified price and then –
  - (a) refusing to show the advertised item to consumers;
  - (b) refusing to take orders for it or deliver it within a reasonable time;  
or
  - (c) demonstrating a defective sample of it,  
with the intention of promoting a different product (bait and switch).
- (7) Falsely stating that a product will only be available for a very limited time, or that it will only be available on particular terms for a very limited time, in order to elicit an immediate decision and deprive consumers of sufficient opportunity or time to make an informed choice.
- (8) Undertaking to provide after-sales service to consumers with whom the trader has communicated prior to a transaction in a language which is not English (in the case of a trader located in the Island or the United Kingdom) or not an official language of the EEA State where the trader is located and then making such service available only in another language without clearly disclosing this to the consumer before the consumer is committed to the transaction.

- (9) Stating or otherwise creating the impression that a product can legally be sold when it cannot.
- (10) Presenting rights given to consumers in law as a distinctive feature of the trader's offer.
- (11) Using editorial content in the media to promote a product where a trader has paid for the promotion without making that clear in the content or by images or sounds clearly identifiable by the consumer (advertorial).
- (12) Making a materially inaccurate claim concerning the nature and extent of the risk to the personal security of the consumer or the consumer's family if the consumer does not purchase the product.
- (13) Promoting a product similar to a product made by a particular manufacturer in such a manner as deliberately to mislead the consumer into believing that the product is made by that same manufacturer when it is not.
- (14) Establishing, operating or promoting a pyramid promotional scheme where a consumer gives consideration for the opportunity to receive compensation that is derived primarily from the introduction of other consumers into the scheme rather than from the sale or consumption of products.
- (15) Claiming that the trader is about to cease trading or move premises when the trader is not.
- (16) Claiming that products are able to facilitate winning in games of chance.
- (17) Falsely claiming that a product is able to cure illnesses, dysfunction or malformations.
- (18) Passing on materially inaccurate information on market conditions or on the possibility of finding the product with the intention of inducing the consumer to acquire the product at conditions less favourable than normal market conditions.
- (19) Claiming in a commercial practice to offer a competition or prize promotion without awarding the prizes described or a reasonable equivalent.
- (20) Describing a product as 'gratis', 'free', 'without charge' or similar if the consumer has to pay anything other than the unavoidable cost of responding to the commercial practice and collecting or paying for delivery of the item.
- (21) Including in marketing material an invoice or similar document seeking payment which gives the consumer the impression that the consumer has already ordered the marketed product when the consumer has not.
- (22) Falsely claiming or creating the impression that the trader is not acting for purposes relating to his or her trade, business, craft or profession, or falsely representing oneself as a consumer.



- (23) Creating the false impression that after-sales service in relation to a product is available in –
  - (a) the United Kingdom or the Island (if the product is sold there);
  - (b) an EEA State other than the one in which the product is sold; or
  - (c) any other country other than the one in which the product is sold.
- (24) Creating the impression that the consumer cannot leave the premises until a contract is formed.
- (25) Conducting personal visits to the consumer's home ignoring the consumer's request to leave or not to return, except in circumstances and to the extent justified to enforce a contractual obligation.
- (26) Making persistent and unwanted solicitations by telephone, fax, e-mail or other remote media except in circumstances and to the extent justified to enforce a contractual obligation.
- (27) Requiring a consumer who wishes to claim on an insurance policy to produce documents which could not reasonably be considered relevant as to whether the claim was valid, or failing systematically to respond to pertinent correspondence, in order to dissuade a consumer from exercising that consumer's contractual rights.
- (28) Including in an advertisement a direct exhortation to children to buy advertised products or persuade their parents or other adults to buy advertised products for them.
- (29) Demanding immediate or deferred payment for or the return or safekeeping of products supplied by the trader, but not solicited by the consumer.
- (30) Explicitly informing a consumer that if the consumer does not buy the product or service, the trader's job or livelihood will be in jeopardy.
- (31) Creating the false impression that the consumer has already won, will win, or will on doing a particular act win, a prize or other equivalent benefit, when in fact either –
  - (a) there is no prize or other equivalent benefit; or
  - (b) taking any action in relation to claiming the prize or other equivalent benefit is subject to the consumer paying money or incurring a cost.

**SCHEDULE 2**

[Regulation 51(1)]

**REPEALS, REVOCATIONS AND AMENDMENTS****PART 1****REPEALS OR AMENDMENTS TO ACTS****1 Fraudulent Mediums Act 1952**

The Fraudulent Mediums Act 1952 is repealed.

**2 Part 1 of the Auctions Act 1985**

Part 1 of the Auctions Act 1985 is repealed.

**3 Consumer Protection (Trade Descriptions) Act 1970**

- (1) The Consumer Protection (Trade Descriptions) Act 1970 is amended as follows.
- (2) The following provisions are repealed —
  - (a) section 1(1) (prohibition of false trade descriptions);
  - (b) section 5 (trade descriptions used in advertisements);
  - (c) section 6 (offer to supply);
  - (d) sections 7 to 10 (power to define terms and to require display etc. of information);
  - (e) sections 13 to 15 (false representations or statements concerning services etc);
  - (f) section 21(1) and (2) (accessories to offences committed abroad);
  - (g) section 22 (restrictions on institution of proceedings and admission of evidence);
  - (h) section 32 (power to exempt goods sold for export; etc);
  - (i) section 37 (market research experiments); and
  - (j) section 39(2) (interpretation).
- (3) In section 1, for subsection (2) substitute —

«(2)	Sections 2 to 4 have effect for the interpretation of expressions used in this Act».
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- (4) In section 12 (false representations as to royal approval or award, etc), after subsection (2) insert —

«(3) A person is not be guilty of an offence under subsection (1) or (2) by reason of doing anything that is a commercial practice unless the commercial practice is unfair. In this subsection “commercial practice” and “unfair” have the same meaning as in the Consumer Protection from Unfair Trading Regulations 2019<sup>4</sup>.».

- (5) In section 38 (orders), in subsection (3), for the words from “section 7” to “thereof” substitute «section 16 or 36 of this Act».
- (6) In section 39 (interpretation), in subsection (1), for “2 to 6” substitute «2 to 4».

#### 4 Moneylenders Act 1991

In Section 10 of the Moneylenders Act 1991 (Harassment of debtors), after subsection (3) insert —

«(3A) Subsection (1) does not apply to anything done by a person to another in circumstances where what is done is a commercial practice within the meaning of the Consumer Protection from Unfair Trading Regulations 2019<sup>5</sup> and the other is a consumer in relation to that practice.».

#### 5 Fair Trading Act 1996

- (1) Section 7 (Consumer trade practices) of the Fair Trading Act 1996 is repealed.
- (2) Omit Schedule 1.
- (3) In section 25 (General restrictions on disclosure of information) —
- (a) in subsection (2)(a)(v), for “Part VI (misleading advertisements) of the Consumer Protection Act 1991” substitute «the Consumer Protection from Unfair Trading Regulations 2019<sup>6</sup>»; and
- (b) in subsection (3), for “Part VI of the Consumer Protection Act 1991” substitute «the Consumer Protection from Unfair Trading Regulations 2019».

#### 6 Hire Purchase Act 1939

In section 7(2) of the Hire Purchase Act 1939 (Duty of owners and sellers to supply documents and information), omit from “, and, if the default” to the end of the section.

<sup>4</sup> SD 2019/????

<sup>5</sup> SD 2019/????

<sup>6</sup> SD 2019/????

**7 Telecommunications Act 1984**

- (1) Section 39(2) of the Telecommunications Act 1984 (General restrictions on disclosure of information) is amended as follows.
- (2) In paragraph (b), after “*Consumer Protection Act 1991*” insert «or the Consumer Protection from Unfair Trading Regulations 2019<sup>7</sup>».
- (3) In paragraph (d), after “enactments” insert «or statutory documents».

**8 Consumer Protection Act 1991**

- (1) The Consumer Protection Act 1991 is amended as follows.
- (2) Part III (misleading price indications) is repealed.
- (3) In sections 25 to 37, in each place they occur, for the words “made by or under Part III” substitute «of the Consumer Protection from Unfair Trading Regulations 2019<sup>8</sup>».
- (4) In section 34(1)(a) (Restrictions on disclosure of information), for “or regulations under section 23” substitute «the Consumer Protection from Unfair Trading Regulations 2019».
- (5) In section 35 (defence of due diligence), in subsection (5), for “, 12(6) or 17(1)” substitute «or 12(6)».
- (6) In section 61(4) (Meaning of “supply”), for “made by or under Part III” substitute «of the Consumer Protection from Unfair Trading 2019».
- (7) Part VI (misleading advertisements) is repealed.

**9 Copyright Act 1991**

- (1) The Copyright Act 1991 is amended as follows.
- (2) In section 113A (forfeiture of infringing copies, etc.), in subsection (2) —
  - (a) in paragraph (b) omit “or”; and
  - (b) after paragraph (b) insert —
 

«(ba) an offence under the Consumer Protection from Unfair Trading Regulations 2019 <sup>9</sup> ; or».
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- (3) In section 164C (forfeiture of unauthorised decoders), in subsection (2) —
  - (a) in paragraph (b) omit “or”; and
  - (b) after paragraph (b) insert —
 

«(ba) an offence under the Consumer Protection from Unfair Trading Regulations 2019; or».
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<sup>7</sup> SD 2019/????<sup>8</sup> SD 2019/????<sup>9</sup> SD 2019/????

**10 Performers Protection Act 1996**

- (1) The Performers Protection Act 1996 is amended as follows.
- (2) In section 26ZA (forfeiture of illicit recordings), in subsection (2) —
  - (a) in paragraph (b) omit “or”; and
  - (b) after paragraph (b) insert —
 

«(ba) an offence under the Consumer Protection from Unfair Trading Regulations 2019 <sup>10</sup> ; or».
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**11 Weights and Measures Act 1989**

- (1) The Weights and Measures Act 1989 is amended as follows.
- (2) Section 22 (misrepresentation) is repealed.
- (3) In section 48(a)(ii) (power to modify Part V etc), omit “22(2),”.

**PART 2**

## REVOCATIONS OR AMENDMENTS TO SECONDARY LEGISLATION

**12 Business Advertisements (Disclosure) Order 1977 (Application) Order 2001**

The Business Advertisements (Disclosure) Order 1977 (Application) Order 2001<sup>11</sup> is revoked.

**13 Consumer Protection (Code of Practice for Traders on Price Indications in the Isle of Man) Order 2008**

The Consumer Protection (Code of Practice for Traders on Price Indications in the Isle of Man) Order 2008<sup>12</sup> is revoked.

**14 Price Marking (Food and Drink) Services Order 2004**

The Price Marking (Food and Drink) Services Order 2004<sup>13</sup> is revoked.

**15 Duty Stamps Regulations 2006**

In regulation 10 of the Duty Stamps Regulations 2006<sup>14</sup> (disqualification from being registered), in paragraph (7)(a), at the end insert —

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<sup>10</sup> SD 2019/????

<sup>11</sup> SD 96/01.

<sup>12</sup> SD 101/08.

<sup>13</sup> SD 176/04, as amended by SD 249/09, SD 2013/0252 and SD 2019/0168.

<sup>14</sup> SD 75/06.

«regulation 8, 9, 10, 11 or 12 of the Consumer Protection from Unfair Trading Regulations 2019<sup>15</sup> (but only if the product to which the unfair commercial practice related was, or included, dutiable alcoholic liquor);».

**16 Identification of Imported Eggs Order 1975**

The Identification of Imported Eggs Order 1975<sup>16</sup> is revoked.

**17 Definition of Terms Order 1976**

The Definition of Terms Order 1976<sup>17</sup> is revoked.

**18 Trade Descriptions (Place of Production) (Marking) (No. 2) Order 1992**

The Trade Descriptions (Place of Production) (Marking) (No. 2) Order 1992<sup>18</sup> is revoked.

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<sup>15</sup> SD 2019/????

<sup>16</sup> GC 62/75.

<sup>17</sup> GC 101/76.

<sup>18</sup> GC 514/92.

**SCHEDULE 3**

[Regulation 51(2)]

**TRANSITIONAL AND SAVING PROVISIONS****Disclosure of information**

- (1) This paragraph applies in relation to information which immediately before the date on which these Regulations come into force was subject to the provisions of any enactment which permitted the disclosure of information for the purposes of any function under, or proceedings brought under or by virtue of Part VI (misleading advertisements) of the Consumer Protection Act 1991.
- (2) Such disclosure continues to be permitted.

### *EXPLANATORY NOTE*

*(This note is not part of the Regulations)*

These Regulations implement Directive 2005/29/EC of the European Parliament and of the Council concerning unfair business-to-consumer commercial practices (OJ L 149, 11.6.2005, p22) (“the Directive”). To the extent that it was not already applicable as part of the law of the Island by virtue of section 2(1) of the European Communities (Isle of Man) Act 1973, the Directive was applied to the Island with modifications by the European Communities (Consumer Protection) (Application) Order 2019.

Part 2 sets out the prohibition on unfair commercial practices. The prohibition relates to commercial practices that contravene the requirements of professional diligence, misleading actions, misleading omissions, aggressive commercial practices and commercial practices of the type specified in Schedule 1. Part 2 also imposes a prohibition on the promotion of unfair commercial practices by persons responsible for codes of conduct for traders.

Part 3 provides that, with limited exceptions, breaches of the prohibition on unfair commercial practices will be criminal offences. It also provides, in relation to the offences, for defences of due diligence and innocent publication of advertisements.

Part 4 places a duty on the OFT to enforce the Regulations. It permits the OFT to apply to the High Court for an enforcement order.

Part 5 concerns the conditions under which a consumer has a right to redress and how this right is enforced.

Part 6 covers the unfair commercial practice of inertia selling.

Schedule 1 details the commercial practices that are deemed unfair for the purpose of these Regulations.

Schedule 2 makes amendments to other enactments in order to accommodate the Directive and these Regulations.

Schedule 3 contains transitional and saving provisions.