

The Consumer Protection (Distance Selling) Regulations 2000

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STATUTORY INSTRUMENTS

2000 No. 2334

CONSUMER PROTECTION

The Consumer Protection (Distance Selling) Regulations 2000

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| <i>Made</i> | <i>31st August 2000</i> |
| <i>Laid before Parliament</i> | <i>1st September 2000</i> |
| <i>Coming into force</i> | <i>31st October 2000</i> |

The Secretary of State, being a Minister designated^[1] for the purposes of section 2(2) of the European Communities Act 1972^[2] in relation to matters relating to

¹ S.I. 1993/2661

consumer protection, in exercise of the powers conferred on him by section 2(2) of that Act, hereby makes the following Regulations: -

Title, commencement and extent

1. - (1) These Regulations may be cited as the Consumer Protection (Distance Selling) Regulations 2000 and shall come into force on 31st October 2000.

(2) These Regulations extend to Northern Ireland.

Revocation

2. The Mail Order Transactions (Information) Order 1976^[3] is hereby revoked.

Interpretation

3. - (1) In these Regulations -

"breach" means contravention by a supplier of a prohibition in, or failure to comply with a requirement of, these Regulations;

"business" includes a trade or profession;

"consumer" means any natural person who, in contracts to which these Regulations apply, is acting for purposes which are outside his business;

"court" in relation to England and Wales and Northern Ireland means a county court or the High Court, and in relation to Scotland means the Sheriff Court or the Court of Session;

"credit" includes a cash loan and any other form of financial accommodation, and for this purpose "cash" includes money in any form;

"Director" means the Director General of Fair Trading;

"distance contract" means any contract concerning goods or services concluded between a supplier and a consumer under an organised distance sales or service provision scheme run by the supplier who, for the purpose of the contract, makes exclusive use of one or more means of distance communication up to and including the moment at which the contract is concluded;

"EEA Agreement" means the Agreement on the European Economic Area signed at Oporto on 2 May 1992 as adjusted by the Protocol signed at Brussels on 17 March 1993^[4];

"enactment" includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament;

"enforcement authority" means the Director, every weights and measures authority in Great Britain, and the Department of Enterprise, Trade and Investment in Northern Ireland;

"excepted contract" means a contract such as is mentioned in regulation 5(1);

² 1972 c. 68

³ S.I. 1976/1812

⁴ Directive 97/7/EC was added to Annex XIX to the EEA Agreement by Decision No. 15/98 of the EEA joint Committee which came into force on 1 July 2000 (O.J. No L272, 8.10.98, p.99).

"means of distance communication" means any means which, without the simultaneous physical presence of the supplier and the consumer, may be used for the conclusion of a contract between those parties; and an indicative list of such means is contained in Schedule 1;

"Member State" means a State which is a contracting party to the EEA Agreement;

"operator of a means of communication" means any public or private person whose business involves making one or more means of distance communication available to suppliers;

"period for performance" has the meaning given by regulation 19(2);

"personal credit agreement" has the meaning given by regulation 14(8);

"related credit agreement" has the meaning given by regulation 15(5);

"supplier" means any person who, in contracts to which these Regulations apply, is acting in his commercial or professional capacity; and

"working days" means all days other than Saturdays, Sundays and public holidays.

(2) In the application of these Regulations to Scotland, for references to an "injunction" or an "interim injunction" there shall be substituted references to an "interdict" or an "interim interdict" respectively.

Contracts to which these Regulations apply

4. These Regulations apply, subject to regulation 6, to distance contracts other than excepted contracts.

Excepted contracts

5. - (1) The following are excepted contracts, namely any contract -
- (a) for the sale or other disposition of an interest in land except for a rental agreement;
 - (b) for the construction of a building where the contract also provides for a sale or other disposition of an interest in land on which the building is constructed, except for a rental agreement;
 - (c) relating to financial services, a non-exhaustive list of which is contained in Schedule 2;
 - (d) concluded by means of an automated vending machine or automated commercial premises;
 - (e) concluded with a telecommunications operator through the use of a public pay-phone;
 - (f) concluded at an auction.
- (2) References in paragraph (1) to a rental agreement -
- (a) if the land is situated in England and Wales, are references to any agreement which does not have to be made in writing (whether or not in fact made in writing) because of section 2(5)(a) of the Law of Property (Miscellaneous Provisions) Act 1989⁵;
 - (b) if the land is situated in Scotland, are references to any agreement for the creation, transfer, variation or extinction of an interest in land, which does not have to be made in writing (whether or not in

⁵ 1989 c. 34

fact made in writing) as provided for in section 1(2) and (7) of the Requirements of Writing (Scotland) Act 1995^[6]; and

- (c) if the land is situated in Northern Ireland, are references to any agreement which is not one to which section II of the Statute of Frauds, (Ireland) 1695^[7] applies.

(3) Paragraph (2) shall not be taken to mean that a rental agreement in respect of land situated outside the United Kingdom is not capable of being a distance contract to which these Regulations apply.

Contracts to which only part of these Regulations apply

6. - (1) Regulations 7 to 20 shall not apply to a contract which is a "timeshare agreement" within the meaning of the Timeshare Act 1992^[8] and to which that Act applies.

(2) Regulations 7 to 19(1) shall not apply to -

- (a) contracts for the supply of food, beverages or other goods intended for everyday consumption supplied to the consumer's residence or to his workplace by regular roundsmen; or
- (b) contracts for the provision of accommodation, transport, catering or leisure services, where the supplier undertakes, when the contract is concluded, to provide these services on a specific date or within a specific period.

(3) Regulations 19(2) to (8) and 20 do not apply to a contract for a "package" within the meaning of the Package Travel, Package Holidays and Package Tours Regulations 1992^[9] which is sold or offered for sale in the territory of the Member States.

Information required prior to the conclusion of the contract

7. - (1) Subject to paragraph (4), in good time prior to the conclusion of the contract the supplier shall -

- (a) provide to the consumer the following information -
 - (i) the identity of the supplier and, where the contract requires payment in advance, the supplier's address;
 - (ii) a description of the main characteristics of the goods or services;
 - (iii) the price of the goods or services including all taxes;
 - (iv) delivery costs where appropriate;
 - (v) the arrangements for payment, delivery or performance;
 - (vi) the existence of a right of cancellation except in the cases referred to in regulation 13;
 - (vii) the cost of using the means of distance communication where it is calculated other than at the basic rate;
 - (viii) the period for which the offer or the price remains valid; and

⁶ 1995 c. 7

⁷ 1695 c. 12(1)

⁸ 1992 c. 35

⁹ S.I. 1992/3288

- (ix) where appropriate, the minimum duration of the contract, in the case of contracts for the supply of goods or services to be performed permanently or recurrently;
- (b) inform the consumer if he proposes, in the event of the goods or services ordered by the consumer being unavailable, to provide substitute goods or services (as the case may be) of equivalent quality and price; and
- (c) inform the consumer that the cost of returning any such substitute goods to the supplier in the event of cancellation by the consumer would be met by the supplier.

(2) The supplier shall ensure that the information required by paragraph (1) is provided in a clear and comprehensible manner appropriate to the means of distance communication used, with due regard in particular to the principles of good faith in commercial transactions and the principles governing the protection of those who are unable to give their consent such as minors.

(3) Subject to paragraph (4), the supplier shall ensure that his commercial purpose is made clear when providing the information required by paragraph (1).

(4) In the case of a telephone communication, the identity of the supplier and the commercial purpose of the call shall be made clear at the beginning of the conversation with the consumer.

Written and additional information

8. - (1) Subject to regulation 9, the supplier shall provide to the consumer in writing, or in another durable medium which is available and accessible to the consumer, the information referred to in paragraph (2), either -

- (a) prior to the conclusion of the contract, or
- (b) thereafter, in good time and in any event -
 - (i) during the performance of the contract, in the case of services; and
 - (ii) at the latest at the time of delivery where goods not for delivery to third parties are concerned.

(2) The information required to be provided by paragraph (1) is -

- (a) the information set out in paragraphs (i) to (vi) of Regulation 7(1)(a);
- (b) information about the conditions and procedures for exercising the right to cancel under regulation 10, including -
 - (i) where a term of the contract requires (or the supplier intends that it will require) that the consumer shall return the goods to the supplier in the event of cancellation, notification of that requirement; and
 - (ii) information as to whether the consumer or the supplier would be responsible under these Regulations for the cost of returning any goods to the supplier, or the cost of his recovering them, if the consumer cancels the contract under regulation 10;
- (c) the geographical address of the place of business of the supplier to which the consumer may address any complaints;
- (d) information about any after-sales services and guarantees; and
- (e) the conditions for exercising any contractual right to cancel the contract, where the contract is of an unspecified duration or a duration exceeding one year.

(3) Subject to regulation 9, prior to the conclusion of a contract for the supply of services, the supplier shall inform the consumer in writing or in another durable medium which is available and accessible to the consumer that, unless the parties agree otherwise, he will not be able to cancel the contract under regulation 10 once the performance of the services has begun with his agreement.

Services performed through the use of a means of distance communication

9. - (1) Regulation 8 shall not apply to a contract for the supply of services which are performed through the use of a means of distance communication, where those services are supplied on only one occasion and are invoiced by the operator of the means of distance communication.

(2) But the supplier shall take all necessary steps to ensure that a consumer who is a party to a contract to which paragraph (1) applies is able to obtain the supplier's geographical address and the place of business to which the consumer may address any complaints.

Right to cancel

10. - (1) Subject to regulation 13, if within the cancellation period set out in regulations 11 and 12, the consumer gives a notice of cancellation to the supplier, or any other person previously notified by the supplier to the consumer as a person to whom notice of cancellation may be given, the notice of cancellation shall operate to cancel the contract.

(2) Except as otherwise provided by these Regulations, the effect of a notice of cancellation is that the contract shall be treated as if it had not been made.

(3) For the purposes of these Regulations, a notice of cancellation is a notice in writing or in another durable medium available and accessible to the supplier (or to the other person to whom it is given) which, however expressed, indicates the intention of the consumer to cancel the contract.

(4) A notice of cancellation given under this regulation by a consumer to a supplier or other person is to be treated as having been properly given if the consumer -

- (a) leaves it at the address last known to the consumer and addressed to the supplier or other person by name (in which case it is to be taken to have been given on the day on which it was left);
- (b) sends it by post to the address last known to the consumer and addressed to the supplier or other person by name (in which case, it is to be taken to have been given on the day on which it was posted);
- (c) sends it by facsimile to the business facsimile number last known to the consumer (in which case it is to be taken to have been given on the day on which it is sent); or
- (d) sends it by electronic mail, to the business electronic mail address last known to the consumer (in which case it is to be taken to have been given on the day on which it is sent).

(5) Where a consumer gives a notice in accordance with paragraph (4)(a) or (b) to a supplier who is a body corporate or a partnership, the notice is to be treated as having been properly given if -

- (a) in the case of a body corporate, it is left at the address of, or sent to, the secretary or clerk of that body; or

- (b) in the case of a partnership, it is left with or sent to a partner or a person having control or management of the partnership business.

Cancellation period in the case of contracts for the supply of goods

11. - (1) For the purposes of regulation 10, the cancellation period in the case of contracts for the supply of goods begins with the day on which the contract is concluded and ends as provided in paragraphs (2) to (5).

(2) Where the supplier complies with regulation 8, the cancellation period ends on the expiry of the period of seven working days beginning with the day after the day on which the consumer receives the goods.

(3) Where a supplier who has not complied with regulation 8 provides to the consumer the information referred to in regulation 8(2), and does so in writing or in another durable medium available and accessible to the consumer, within the period of three months beginning with the day after the day on which the consumer receives the goods, the cancellation period ends on the expiry of the period of seven working days beginning with the day after the day on which the consumer receives the information.

(4) Where neither paragraph (2) nor (3) applies, the cancellation period ends on the expiry of the period of three months and seven working days beginning with the day after the day on which the consumer receives the goods.

(5) In the case of contracts for goods for delivery to third parties, paragraphs (2) to (4) shall apply as if the consumer had received the goods on the day on which they were received by the third party.

Cancellation period in the case of contracts for the supply of services

12. - (1) For the purposes of regulation 10, the cancellation period in the case of contracts for the supply of services begins with the day on which the contract is concluded and ends as provided in paragraphs (2) to (4).

(2) Where the supplier complies with regulation 8 on or before the day on which the contract is concluded, the cancellation period ends on the expiry of the period of seven working days beginning with the day after the day on which the contract is concluded.

(3) Where a supplier who has not complied with regulation 8 on or before the day on which the contract is concluded provides to the consumer the information referred to in regulation 8(2) and (3), and does so in writing or in another durable medium available and accessible to the consumer, within the period of three months beginning with the day after the day on which the contract is concluded, the cancellation period ends on the expiry of the period of seven working days beginning with the day after the day on which the consumer receives the information.

(4) Where neither paragraph (2) nor (3) applies, the cancellation period ends on the expiry of the period of three months and seven working days beginning with the day after the day on which the contract is concluded.

Exceptions to the right to cancel

13. - (1) Unless the parties have agreed otherwise, the consumer will not have the right to cancel the contract by giving notice of cancellation pursuant to regulation 10 in respect of contracts -

- (a) for the supply of services if the supplier has complied with regulation 8(3) and performance of the contract has begun with the consumer's agreement before the end of the cancellation period applicable under regulation 12;

- (b) for the supply of goods or services the price of which is dependent on fluctuations in the financial market which cannot be controlled by the supplier;
- (c) for the supply of goods made to the consumer's specifications or clearly personalised or which by reason of their nature cannot be returned or are liable to deteriorate or expire rapidly;
- (d) for the supply of audio or video recordings or computer software if they are unsealed by the consumer;
- (e) for the supply of newspapers, periodicals or magazines; or
- (f) for gaming, betting or lottery services.

Recovery of sums paid by or on behalf of the consumer on cancellation, and return of security

14. - (1) On the cancellation of a contract under regulation 10, the supplier shall reimburse any sum paid by or on behalf of the consumer under or in relation to the contract to the person by whom it was made free of any charge, less any charge made in accordance with paragraph (5).

(2) The reference in paragraph (1) to any sum paid on behalf of the consumer includes any sum paid by a creditor who is not the same person as the supplier under a personal credit agreement with the consumer.

(3) The supplier shall make the reimbursement referred to in paragraph (1) as soon as possible and in any case within a period not exceeding 30 days beginning with the day on which the notice of cancellation was given.

(4) Where any security has been provided in relation to the contract, the security (so far as it is so provided) shall, on cancellation under regulation 10, be treated as never having had effect and any property lodged with the supplier solely for the purposes of the security as so provided shall be returned by him forthwith.

(5) Subject to paragraphs (6) and (7), the supplier may make a charge, not exceeding the direct costs of recovering any goods supplied under the contract, where a term of the contract provides that the consumer must return any goods supplied if he cancels the contract under regulation 10 but the consumer does not comply with this provision or returns the goods at the expense of the supplier.

(6) Paragraph (5) shall not apply where -

- (a) the consumer cancels in circumstances where he has the right to reject the goods under a term of the contract, including a term implied by virtue of any enactment, or
- (b) the term requiring the consumer to return any goods supplied if he cancels the contract is an "unfair term" within the meaning of the Unfair Terms in Consumer Contracts Regulations 1999^[10].

(7) Paragraph (5) shall not apply to the cost of recovering any goods which were supplied as substitutes for the goods ordered by the consumer.

(8) For the purposes of these Regulations, a personal credit agreement is an agreement between the consumer and any other person ("the creditor") by which the creditor provides the consumer with credit of any amount.

Automatic cancellation of a related credit agreement

¹⁰ S.I. 1999/2083

15. - (1) Where a notice of cancellation is given under regulation 10 which has the effect of cancelling the contract, the giving of the notice shall also have the effect of cancelling any related credit agreement.

(2) Where a related credit agreement is cancelled by virtue of paragraph (1), the supplier shall, if he is not the same person as the creditor under that agreement, forthwith on receipt of the notice of cancellation inform the creditor that the notice has been given.

(3) Where a related credit agreement is cancelled by virtue of paragraph (1) -

- (a) any sum paid by or on behalf of the consumer under, or in relation to, the credit agreement which the supplier is not obliged to reimburse under regulation 14(1) shall be reimbursed, except for any sum which, if it had not already been paid, would have to be paid under subparagraph (b);
- (b) the agreement shall continue in force so far as it relates to repayment of the credit and payment of interest, subject to regulation 16; and
- (c) subject to subparagraph (b), the agreement shall cease to be enforceable.

(4) Where any security has been provided under a related credit agreement, the security, so far as it is so provided, shall be treated as never having had effect and any property lodged with the creditor solely for the purposes of the security as so provided shall be returned by him forthwith.

(5) For the purposes of this regulation and regulation 16, a "related credit agreement" means an agreement under which fixed sum credit which fully or partly covers the price under a contract cancelled under regulation 10 is granted -

- (a) by the supplier, or
- (b) by another person, under an arrangement between that person and the supplier.

(6) For the purposes of this regulation and regulation 16 -

- (a) "creditor" is a person who grants credit under a related credit agreement;
- (b) "fixed sum credit" has the same meaning as in section 10 of the Consumer Credit Act 1974^[11];
- (c) "repayment" in relation to credit means repayment of money received by the consumer, and cognate expressions shall be construed accordingly; and
- (d) "interest" means interest on money so received.

Repayment of credit and interest after cancellation of a related credit agreement

16. - (1) This regulation applies following the cancellation of a related credit agreement by virtue of regulation 15(1).

(2) If the consumer repays the whole or a portion of the credit -

- (a) before the expiry of one month following the cancellation of the credit agreement, or
- (b) in the case of a credit repayable by instalments, before the date on which the first instalment is due,

no interest shall be payable on the amount repaid.

¹¹ 1974 c. 39

(3) If the whole of a credit repayable by instalments is not repaid on or before the date referred to in paragraph (2)(b), the consumer shall not be liable to repay any of the credit except on receipt of a request in writing, signed by the creditor, stating the amounts of the remaining instalments (recalculated by the creditor as nearly as may be in accordance with the agreement and without extending the repayment period), but excluding any sum other than principal and interest.

(4) Where any security has been provided under a related credit agreement the duty imposed on the consumer to repay credit and to pay interest shall not be enforceable before the creditor has discharged any duty imposed on him by regulation 15(4) to return any property lodged with him as security on cancellation.

Restoration of goods by consumer after cancellation

17. - (1) This regulation applies where a contract is cancelled under regulation 10 after the consumer has acquired possession of any goods under the contract other than any goods mentioned in regulation 13(1)(b) to (e).

(2) The consumer shall be treated as having been under a duty throughout the period prior to cancellation -

- (a) to retain possession of the goods, and
- (b) to take reasonable care of them.

(3) On cancellation, the consumer shall be under a duty to restore the goods to the supplier in accordance with this regulation, and in the meanwhile to retain possession of the goods and take reasonable care of them.

(4) The consumer shall not be under any duty to deliver the goods except at his own premises and in pursuance of a request in writing, or in another durable medium available and accessible to the consumer, from the supplier and given to the consumer either before, or at the time when, the goods are collected from those premises.

(5) If the consumer -

- (a) delivers the goods (whether at his own premises or elsewhere) to any person to whom, under regulation 10(1), a notice of cancellation could have been given; or
- (b) sends the goods at his own expense to such a person,

he shall be discharged from any duty to retain possession of the goods or restore them to the supplier.

(6) Where the consumer delivers the goods in accordance with paragraph (5)(a), his obligation to take care of the goods shall cease; and if he sends the goods in accordance with paragraph (5)(b), he shall be under a duty to take reasonable care to see that they are received by the supplier and not damaged in transit, but in other respects his duty to take care of the goods shall cease when he sends them.

(7) Where, at any time during the period of 21 days beginning with the day notice of cancellation was given, the consumer receives such a request as is mentioned in paragraph (4), and unreasonably refuses or unreasonably fails to comply with it, his duty to retain possession and take reasonable care of the goods shall continue until he delivers or sends the goods as mentioned in paragraph (5), but if within that period he does not receive such a request his duty to take reasonable care of the goods shall cease at the end of that period.

(8) Where -

- (a) a term of the contract provides that if the consumer cancels the contract, he must return the goods to the supplier, and

(b) the consumer is not otherwise entitled to reject the goods under the terms of the contract or by virtue of any enactment, paragraph (7) shall apply as if for the period of 21 days there were substituted the period of 6 months.

(9) Where any security has been provided in relation to the cancelled contract, the duty to restore goods imposed on the consumer by this regulation shall not be enforceable before the supplier has discharged any duty imposed on him by regulation 14(4) to return any property lodged with him as security on cancellation.

(10) Breach of a duty imposed by this regulation on a consumer is actionable as a breach of statutory duty.

Goods given in part-exchange

18. - (1) This regulation applies on the cancellation of a contract under regulation 10 where the supplier agreed to take goods in part-exchange (the "part-exchange goods") and those goods have been delivered to him.

(2) Unless, before the end of the period of 10 days beginning with the date of cancellation, the part-exchange goods are returned to the consumer in a condition substantially as good as when they were delivered to the supplier, the consumer shall be entitled to recover from the supplier a sum equal to the part-exchange allowance.

(3) In this regulation the part-exchange allowance means the sum agreed as such in the cancelled contract, or if no such sum was agreed, such sum as it would have been reasonable to allow in respect of the part-exchange goods if no notice of cancellation had been served.

(4) Where the consumer recovers from the supplier a sum equal to the part-exchange allowance, the title of the consumer to the part-exchange goods shall vest in the supplier (if it has not already done so) on recovery of that sum.

Performance

19. - (1) Unless the parties agree otherwise, the supplier shall perform the contract within a maximum of 30 days beginning with the day after the day the consumer sent his order to the supplier.

(2) Subject to paragraphs (7) and (8), where the supplier is unable to perform the contract because the goods or services ordered are not available, within the period for performance referred to in paragraph (1) or such other period as the parties agree ("the period for performance"), he shall -

(a) inform the consumer; and

(b) reimburse any sum paid by or on behalf of the consumer under or in relation to the contract to the person by whom it was made.

(3) The reference in paragraph (2)(b) to any sum paid on behalf of the consumer includes any sum paid by a creditor who is not the same person as the supplier under a personal credit agreement with the consumer.

(4) The supplier shall make the reimbursement referred to in paragraph (2)(b) as soon as possible and in any event within a period of 30 days beginning with the day after the day on which the period for performance expired.

(5) A contract which has not been performed within the period for performance shall be treated as if it had not been made, save for any rights or remedies which the consumer has under it as a result of the non-performance.

(6) Where any security has been provided in relation to the contract, the security (so far as it is so provided) shall, where the supplier is unable to perform the contract within the period for performance, be treated as never having had

any effect and any property lodged with the supplier solely for the purposes of the security as so provided shall be returned by him forthwith.

(7) Where the supplier is unable to supply the goods or services ordered by the consumer, the supplier may perform the contract for the purposes of these Regulations by providing substitute goods or services (as the case may be) of equivalent quality and price provided that -

- (a) this possibility was provided for in the contract;
- (b) prior to the conclusion of the contract the supplier gave the consumer the information required by regulation 7(1)(b) and (c) in the manner required by regulation 7(2).

(8) In the case of outdoor leisure events which by their nature cannot be rescheduled, paragraph 2(b) shall not apply where the consumer and the supplier so agree.

Effect of non-performance on related credit agreement

20. Where a supplier is unable to perform the contract within the period or performance -

- (a) regulations 15 and 16 shall apply to any related credit agreement as if the consumer had given a valid notice of cancellation under regulation 10 on the expiry of the period for performance; and
- (b) the reference in regulation 15(3)(a) to regulation 14(1) shall be read, for the purposes of this regulation, as a reference to regulation 19(2).

Payment by card

21. - (1) Subject to paragraph (4), the consumer shall be entitled to cancel a payment where fraudulent use has been made of his payment card in connection with a contract to which this regulation applies by another person not acting, or to be treated as acting, as his agent.

(2) Subject to paragraph (4), the consumer shall be entitled to be recredited, or to have all sums returned by the card issuer, in the event of fraudulent use of his payment card in connection with a contract to which this regulation applies by another person not acting, or to be treated as acting, as the consumer's agent.

(3) Where paragraphs (1) and (2) apply, in any proceedings if the consumer alleges that any use made of the payment card was not authorised by him it is for the card issuer to prove that the use was so authorised.

(4) Paragraphs (1) and (2) shall not apply to an agreement to which section 83(1) of the Consumer Credit Act 1974 applies.

(5) Section 84 of the Consumer Credit Act 1974 (misuse of credit-tokens) is amended by the insertion after subsection (3) of -

" (3A) Subsections (1) and (2) shall not apply to any use, in connection with a distance contract (other than an excepted contract), of a card which is a credit-token.

(3B) In subsection (3A), "distance contract" and "excepted contract" have the meanings given in the Consumer Protection (Distance Selling) Regulations 2000."

(6) For the purposes of this regulation -

"card issuer" means the owner of the card; and

"payment card" includes credit cards, charge cards, debit cards and store cards.

Amendments to the Unsolicited Goods and Services Act 1971

22. - (1) The Unsolicited Goods and Services Act 1971^[12] is amended as follows.

(2) Omit section 1 (rights of recipient of unsolicited goods).

(3) In subsection (1) of section 2 (demands and threats regarding payment), after "them" insert "for the purposes of his trade or business".

(4) The amendments made by this regulation apply only in relation to goods sent after the date on which it comes into force.

Amendments to the Unsolicited Goods and Services (Northern Ireland) Order 1976

23. - (1) The Unsolicited Goods and Services (Northern Ireland) Order 1976^[13] is amended as follows.

(2) Omit Article 3 (rights of recipient of unsolicited goods).

(3) In paragraph (1) of Article 4 (demands and threats regarding payment), after "them" insert "for the purposes of his trade or business".

(4) The amendments made by this regulation apply only in relation to goods sent after the date on which it comes into force.

Inertia Selling

24. - (1) Paragraphs (2) and (3) apply if -

- (a) unsolicited goods are sent to a person ("the recipient") with a view to his acquiring them;
- (b) the recipient has no reasonable cause to believe that they were sent with a view to their being acquired for the purposes of a business; and
- (c) the recipient has neither agreed to acquire nor agreed to return them.

(2) The recipient may, as between himself and the sender, use, deal with or dispose of the goods as if they were an unconditional gift to him.

(3) The rights of the sender to the goods are extinguished.

(4) A person who, not having reasonable cause to believe there is a right to payment, in the course of any business makes a demand for payment, or asserts a present or prospective right to payment, for what he knows are -

- (a) unsolicited goods sent to another person with a view to his acquiring them for purposes other than those of his business, or
- (b) unsolicited services supplied to another person for purposes other than those of his business,
- (c) is guilty of an offence and liable, on summary conviction, to a fine not exceeding level 4 on the standard scale.

(5) A person who, not having reasonable cause to believe there is a right to payment, in the course of any business and with a view to obtaining payment for what he knows are unsolicited goods sent or services supplied as mentioned in paragraph (4) -

- (a) threatens to bring any legal proceedings, or
- (b) places or causes to be placed the name of any person on a list of defaulters or debtors or threatens to do so, or

¹² 1971 c. 30

¹³ S.I. 1976/57 (N.I.1)

(c) invokes or causes to be invoked any other collection procedure or threatens to do so,
is guilty of an offence and liable, on summary conviction, to a fine not exceeding level 5 on the standard scale.

(6) In this regulation -

"acquire" includes hire;

"send" includes deliver;

"sender", in relation to any goods, includes -

(a) any person on whose behalf or with whose consent the goods are sent;

(b) any other person claiming through or under the sender or any person mentioned in paragraph (a); and

(c) any person who delivers the goods; and

"unsolicited" means, in relation to goods sent or services supplied to any person, that they are sent or supplied without any prior request made by or on behalf of the recipient.

(7) For the purposes of this regulation, an invoice or similar document which -

(a) states the amount of a payment, and

(b) fails to comply with the requirements of regulations made under section 3A of the Unsolicited Goods and Services Act 1971 or, as the case may be, Article 6 of the Unsolicited Goods and Services (Northern Ireland) Order 1976 applicable to it,

is to be regarded as asserting a right to the payment.

(8) Section 3A of the Unsolicited Goods and Services Act 1971 applies for the purposes of this regulation in its application to England, Wales and Scotland as it applies for the purposes of that Act.

(9) Article 6 of the Unsolicited Goods and Services (Northern Ireland) Order 1976 applies for the purposes of this regulation in its application to Northern Ireland as it applies for the purposes of that Order.

(10) This regulation applies only to goods sent and services supplied after the date on which it comes into force.

No contracting-out

25. - (1) A term contained in any contract to which these Regulations apply is void if, and to the extent that, it is inconsistent with a provision for the protection of the consumer contained in these Regulations.

(2) Where a provision of these Regulations specifies a duty or liability of the consumer in certain circumstances, a term contained in a contract to which these Regulations apply, other than a term to which paragraph (3) applies, is inconsistent with that provision if it purports to impose, directly or indirectly, an additional duty or liability on him in those circumstances.

(3) This paragraph applies to a term which requires the consumer to return any goods supplied to him under the contract if he cancels it under regulation 10.

(4) A term to which paragraph (3) applies shall, in the event of cancellation by the consumer under regulation 10, have effect only for the purposes of regulation 14(5) and 17(8).

(5) These Regulations shall apply notwithstanding any contract term which applies or purports to apply the law of a non-Member State if the contract has a close connection with the territory of a Member State.

Consideration of complaints

26. - (1) It shall be the duty of an enforcement authority to consider any complaint made to it about a breach unless -

- (a) the complaint appears to the authority to be frivolous or vexatious; or
- (b) another enforcement authority has notified the Director that it agrees to consider the complaint.

(2) If an enforcement authority notifies the Director that it agrees to consider a complaint made to another enforcement authority, the first mentioned authority shall be under a duty to consider the complaint.

(3) An enforcement authority which is under a duty to consider a complaint shall give reasons for its decision to apply or not to apply, as the case may be, for an injunction under regulation 27.

(4) In deciding whether or not to apply for an injunction in respect of a breach an enforcement authority may, if it considers it appropriate to do so, have regard to any undertaking given to it or another enforcement authority by or on behalf of any person as to compliance with these Regulations.

Injunctions to secure compliance with these Regulations

27. - (1) The Director or, subject to paragraph (2), any other enforcement authority may apply for an injunction (including an interim injunction) against any person who appears to the Director or that authority to be responsible for a breach.

(2) An enforcement authority other than the Director may apply for an injunction only where -

- (a) it has notified the Director of its intention to apply at least fourteen days before the date on which the application is to be made, beginning with the date on which the notification was given; or
- (b) the Director consents to the application being made within a shorter period.

(3) The court on an application under this regulation may grant an injunction on such terms as it thinks fit to secure compliance with these Regulations.

Notification of undertakings and orders to the Director

28. An enforcement authority other than the Director shall notify the Director -

- (a) of any undertaking given to it by or on behalf of any person who appears to it to be responsible for a breach;
- (b) of the outcome of any application made by it under regulation 27 and of the terms of any undertaking given to or order made by the court;
- (c) of the outcome of any application made by it to enforce a previous order of the court.

Publication, information and advice

29. - (1) The Director shall arrange for the publication in such form and manner as he considers appropriate of -

- (a) details of any undertaking or order notified to him under regulation 28;
- (b) details of any undertaking given to him by or on behalf of any person as to compliance with these Regulations;
- (c) details of any application made by him under regulation 27, and of the terms of any undertaking given to, or order made by, the court;

(d) details of any application made by the Director to enforce a previous order of the court.

(2) The Director may arrange for the dissemination in such form and manner as he considers appropriate of such information and advice concerning the operation of these Regulations as it may appear to him to be expedient to give to the public and to all persons likely to be affected by these Regulations.

Helen Liddell

Minister of State, Department of Trade and Industry

31st August 2000

SCHEDULE 1
Regulation 3

Indicative list of means of distance communication

1. Unaddressed printed matter.
2. Addressed printed matter.
3. Letter.
4. Press advertising with order form.
5. Catalogue.
6. Telephone with human intervention.
7. Telephone without human intervention (automatic calling machine, audiotext).
8. Radio.
9. Videophone (telephone with screen).
10. Videotext (microcomputer and television screen) with keyboard or touch screen.
11. Electronic mail.
12. Facsimile machine (fax).
13. Television (teleshopping).

SCHEDULE 2

Regulation 5(1)(c)

Non-exhaustive list of financial services

1. Investment services.
2. Insurance and reinsurance operations.
3. Banking services.
4. Services relating to dealings in futures or options.

Such services include in particular:

- investment services referred to in the Annex to Directive 93/22/EEC^[14]; services of collective investment undertakings;
- services covered by the activities subject to mutual recognition referred to in the Annex to Directive 89/846/EEC^[15];
- operations covered by the insurance and reinsurance activities referred to in:
 - Article 1 of Directive 73/239/EEC^[16]; - the Annex to Directive 79/267/EEC^[17];
 - Directive 64/225/EEC^[18]; - Directives 92/49/EEC^[19] and 92/96/EEC^[20].

¹⁴ O.J. No. L141, 11.06.1993, p.27

¹⁵ O.J. No. L386, 30.12.1989, p.1, to which there are amendments not relevant to these Regulations

¹⁶ O.J. No. L228, 16.08.1973, p.3. Relevant amending instruments are Council Directive 84/641/EEC (O.J. No. L339, 27.12.84, p.21); Council Directive 87/343/EEC (O.J. No. L185, 4.7.87, p.72); Council Directive 87/344/EEC (O.J. No. L185, 4.7.87, p.77); Council Directive 90/618/EEC (O.J. No. L330, 29.11.90, p.44); Council Directive 92/49/EC (O.J. No. L228, 11.8.92, p.1.)

¹⁷ O.J. No. L63, 13.03.1979, p.1, to which there are amendments not relevant to these Regulations

¹⁸ O.J. No. L56, 04.04.1964, p.878/64 (O.J./S.E. 1st series 1963-64 p.131), to which there are amendments not relevant to these Regulations

¹⁹ O.J. No. L228, 11.08.1992, p.1

²⁰ O.J. No. L360, 09.12.1992, p.1

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement Directive 97/7/EC of the European Parliament and the Council of 20 May 1997 (O.J. No. L144, 4.6.97, p.19) on the protection of consumers in relation to distance contracts, with the exception of Article 10.

The Regulations apply to contracts for goods or services to be supplied to a consumer where the contract is made exclusively by means of distance communication, that is any means used without the simultaneous physical presence of the consumer and the supplier (regulations 3 and 4). Schedule 1 contains an indicative list of means of distance communication.

The Regulations do not apply to those distance contracts excluded by regulation 5(1), such as contracts relating to the supply of financial services.

The Regulations have limited application to contracts for the supply of groceries by regular delivery and contracts for the provision of accommodation, transport, catering or leisure services (regulation 6).

The Regulations require the supplier to provide the consumer with the information referred to in regulation 7 prior to the conclusion of the contract. This includes information on the right to cancel the distance contract, the main characteristics of the goods or services, and delivery costs where appropriate.

Regulation 8 requires the supplier to confirm in writing, or another durable medium which is available and accessible to the consumer, information already given and to give some additional information, including information on the conditions and procedures relating to the exercise of the right to cancel the contract. Regulation 8(3) requires the supplier to inform the consumer prior to conclusion of a contract for services that he will not be able to cancel once performance of the service has begun with his agreement.

Where the Regulations apply, they provide a "cooling off period" to enable the consumer to cancel the contract by giving notice of cancellation to the supplier. The effect of giving notice of cancellation under the Regulations is that the contract is treated as if it had not been made.

Where the supplier supplies the information to the consumer on time, the cooling-off period is 7 working days from the day after the date of the contract, in the case of services, or from the day after the date of delivery of the goods.

Where the supplier fails to comply with the information requirement at all, the cooling-off period is extended by 3 months.

Where the supplier complies with the information requirement later than he should have done but within 3 months the cooling-off begins from the date he provided the information (regulations 10-12).

Certain contracts are excluded from the right to cancel unless the parties agree otherwise, such as a contract for the supply of goods made to the consumer's specifications (regulation 13).

If the consumer cancels, the consumer must be reimbursed within a maximum period of 30 days (regulation 14). Where the consumer cancels the contract, any related credit agreement is automatically cancelled (regulation 15).

Regulation 17 provides that on cancellation of the contract the consumer is under a duty to restore goods to the supplier if he collects them and in the meantime to take reasonable care of them. The Regulations do not require the consumer to return goods but if he is required to under the contract and does not do so, he must pay the cost to the supplier of recovering them.

The Regulations provide that the contract must be performed within 30 days subject to agreement between the parties. However, where the supplier is not able to provide the goods or service ordered, substitutes may be offered if certain conditions are met (regulation 19).

The Regulations provide that where the consumer's payment card is used fraudulently in connection with a distance contract the consumer will be entitled to cancel the payment. If the payment has already been made the consumer will be entitled to a re-credit or to have all sums returned by the card issuer. The Regulations amend the Consumer Credit Act 1974 by removing the potential liability of the debtor under a regulated consumer credit agreement for the first £50 of loss to the creditor from misuse of a credit-token in connection with a distance contract.

The Regulations prohibit the supply of unsolicited goods and services to consumers. Regulation 24 replaces with amendments section 1 of the Unsolicited Goods and Services Act 1971 and Article 3 of the Unsolicited Goods and Services (Northern Ireland) Order 1976. It also creates an offence in similar terms to section 2 of the 1971 Act but extended to the supply of unsolicited services and limited to supply to consumers. The scope of section 2 of the 1971 Act and Article 4 of the 1976 Order (which apply only to goods) is amended to restrict their application to the unsolicited supply of goods to businesses.

The Director General of Fair Trading, Trading Standards Departments in Great Britain and the Department of Enterprise, Trade and Investment in Northern Ireland are enforcement authorities for the purposes of the Regulations. Regulation 26 provides that an enforcement authority must consider complaints about a breach of the requirements of the Regulations. Those bodies are given the power to take proceedings for an injunction against a business to prevent further breaches (regulation 27).

A Regulatory Impact Assessment is available, copies of which have been placed in the libraries of both Houses of Parliament. Copies are also available from the Consumer Affairs Directorate of the Department of Trade and Industry, Room 415, 1 Victoria Street, London SW1H 0ET.