

STATUTORY INSTRUMENT

S.I. No. 207 of 2001

EUROPEAN COMMUNITIES (PROTECTION OF CONSUMERS IN RESPECT OF CONTRACTS MADE BY MEANS OF DISTANCE COMMUNICATION) REGULATIONS, 2001

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European Communities (Protection of Consumers in Respect of Contracts Made by Means of Distance Communication) Regulations, 2001

I, MARY HARNEY, Minister for Enterprise, Trade and Employment, in exercise of the powers conferred on me by section 3 of the European Communities Act, 1972 (No. 27 of 1972), and for the purpose of giving effect to Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997¹ on the protection of consumers in respect of distance contracts hereby make the following regulations:

1. These Regulations may be cited as the European Communities (Protection of Consumers in Respect of Contracts Made by Means of Distance Communication) Regulations, 2001.

2. (1) In these Regulations -

"authorised officer" means a person who, for the time being, stands appointed under Regulation 14;

"consumer" means a natural person who, as regards a distance contract, is acting for purposes which are outside that person's trade, business or profession;

"consumer organisation" means -

(a) a company, the memorandum of association of which states the company's main object or objects to be the protection of consumer interests,

or

(b) a body corporate (other than a company) or an unincorporated body of persons in relation to which there exists a constitution or a deed of trust which states the body's main object or objects to be the protection of consumer interests;

¹ O.J. No. L 144, 4.6.97, p.19

"Directive" means Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts;

"Director" means the Director of Consumer Affairs;

"distance contract" has the meaning assigned to it by Regulation 3;

"means of distance communication" means any method which, without the simultaneous physical presence of the supplier and the consumer, may be used for making a contract between those parties, including any method referred to in Annex I of the Directive which, for convenience of reference, is set out in Schedule 1;

"operator of a means of communication" means a natural or legal person, whose trade, business, profession or (in the case of a public body) functions involves or includes making one or more means of distance communication available to suppliers;

"premises" includes any building, dwelling, temporary construction, vehicle, ship or aircraft;

"supplier" means a natural or legal person, who, in relation to the distance contract is acting in his or her commercial or professional capacity.

(2) A reference in these Regulations to -

(a) a Regulation or a Schedule is a reference to a Regulation of, or a Schedule to, these Regulations, unless it is indicated that reference to some other provision is intended, and

(b) a paragraph or subparagraph is a reference to the paragraph or subparagraph of the provision in which the reference occurs, unless it is indicated that reference to some other provision is intended.

(3) A word or expression that is used in these Regulations and is also used in the Directive has, unless the contrary intention appears, the same meaning in these Regulations that it has in the Directive.

3. In these Regulations "distance contract" means a contract between a supplier and a consumer which -

(a) relates to goods or services,

(b) is made under an organised distance sales or service-provision scheme run by the supplier, and,

(c) is made by the supplier making exclusive use of one or more means of distance communication up to and including the moment at which the contract is made,

other than -

(i) in the case of any provision of these Regulations (including a provision referred to in paragraph (ii)) a contract which -

(1) relates to financial services, including financial services referred to in Annex II of the Directive which, for convenience of reference, is set out in Schedule 2,

(II) is made by means of automatic vending machines or automated commercial premises,

(III) is made with telecommunications operators through the use of public payphones,

(IV) is made in respect of the construction and sale of immovable property or relating to other immovable property rights, other than the rental of such property or rights in such property,

or,

(V) is made at an auction,

(ii) in the case of Regulations 4, 5 and 6 and 7(1), a contract-

(I) for the supply of foodstuffs, beverages or other goods intended for everyday consumption supplied to the home, residence or workplace of the consumer by regular roundsmen,

or,

(II) for the provision of accommodation, transport, catering or leisure services where the supplier undertakes, when the contract is made, to provide those services on a specific date or within a specific period.

4. (1) A distance contract shall not be enforceable by the supplier against the consumer unless, in good time prior to making the contract, the supplier has-

(a) provided the information set out in Schedule 3,

(b) made the commercial purpose of both the proposed contract, and the information referred to in subparagraph (a), clear to the consumer,

(c) provided the information referred to in subparagraph (a) in a clear and comprehensible manner in a way which is appropriate to the means of distance communication used, with due regard to any enactment or rule of law requiring good faith in commercial transactions or governing protection of those who are unable to give their consent, such as minors.

(2) Without prejudice to paragraph (1), where contact is made by the supplier with the consumer by means of telephone communication, the identity of the supplier and the commercial purpose of the call shall be made explicitly clear and a distance contract made by such means, accordingly, shall not be enforceable by the supplier against the consumer unless such identity and commercial purpose have been made clear.

(3) A person who fails to comply with this Regulation is guilty of an offence.

5. (1) Without prejudice to Regulation 4 but subject to paragraph (3), a distance contract shall not be enforceable by the supplier against the consumer unless the consumer has received written confirmation, or confirmation in

another durable medium available and accessible to him or her, of the information referred to in paragraphs 1 to 6 of Schedule 3 in good time during the performance of the contract, and at the latest at the time of delivery where goods not for delivery to third parties are concerned, unless the information has already been given to the consumer prior to making the contract, in writing or on another durable medium available and accessible to him or her.

(2) The following information and particulars shall accompany the information referred to in paragraph (1) (and in the case of the information referred to in subparagraph (a) shall be in writing)

(a) information on conditions and procedures for exercising a right of cancellation referred to in Regulation 6, (including cancellation of distance contracts referred to in subparagraph (a) of paragraph (3) of that Regulation),

(b) the geographical address of the place of business of the supplier to which the consumer may address any complaints,

(c) information on after-sales services and guarantees which exist, and

(d) conditions for cancelling the contract in the event that it is of unspecified duration or its duration exceeds one year.

(3) Paragraph (1) shall not apply to a distance contract for supply of services where these services are supplied on one occasion, and are invoiced by the operator of the means of distance communication.

(4) A distance contract referred to in paragraph (3) shall not be enforceable by the supplier against the consumer unless the consumer has been furnished with the geographical address of the place of business of the supplier to which the consumer may address complaints.

(5) A person who fails to comply with this Regulation is guilty of an offence.

6. (1) There is an implied condition in a distance contract that -

(a) the consumer has a period of 7 working days in which to cancel the distance contract without giving a reason, and,

(b) if the consumer exercises that right of cancellation, he or she shall not incur any charges or penalties for so doing except the direct cost of returning the goods.

(2) Subject to paragraph (3), the period referred to in paragraph (1) shall begin -

(a) in the case of goods, from the day of receipt by the consumer of those goods where the requirements of Regulation 5 have been complied with,

(b) in the case of services, from the day of making the distance contract or from the day on which the requirements of Regulation 5 have been complied with (if those requirements are complied with after the day of making of the contract) but this subparagraph shall apply in the period beginning from and no later than the day referred to in paragraph (3).

(3) If the supplier has not complied with the requirements of Regulation 5 the period referred to in paragraph (1) shall begin -

- (a) (i) in the case of goods, 3 months from the day of receipt of those goods by the consumer, and
- (ii) in the case of services, 3 months from the day of making the distance contract,

or,

- (b) in either case, if those requirements are eventually complied with within the period referred to in clause (i) or (ii) of subparagraph (a), from the day on which those requirements are complied with, as the case may be.

(4) Unless there is agreement between the supplier and the consumer to the contrary, the consumer may not exercise the right of cancellation referred to in paragraph (1) in respect of a distance contract:

- (a) for the provision of services if performance has begun, with the consumer's agreement, before the end of the cancellation period referred to in the preceding paragraphs of this Regulation,
- (b) for the supply of goods and 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 which were unsealed by the consumer,
- (e) for the supply of newspapers, periodicals and magazines, and
- (f) for gaming and lottery services.

(5) A person who fails to comply with this Regulation is guilty of an offence.

7. (1) If the consumer exercises his or her right of cancellation in accordance with Regulation 6, the supplier shall be obliged to reimburse any sums paid by the consumer without deduction of costs, interest or penalties (other than the direct cost of returning any goods).

(2) The reimbursement referred to in paragraph (1) shall be made as soon as possible after the exercise of the right of cancellation by the consumer and, in any event, not later than 30 days after that exercise.

(3) A person who fails to comply with this Regulation is guilty of an offence.

8. (1) If the price of goods or services, the subject of a distance contract, is fully or partly covered by credit granted by the supplier, or if that price is fully or partly covered by credit granted to the consumer by a third party on the basis of an agreement between the third party and the supplier, the credit agreement shall stand cancelled, without any penalty, if the consumer exercises his or her right to cancel the distance contract in accordance with Regulation 6.

(2) If the credit agreement is so cancelled the supplier shall reimburse any sum paid by or on behalf of the consumer under or in relation to the distance contract to the person by whom it was made, free of charge less any charge made in accordance with paragraph (5).

(3) The supplier shall make the reimbursement referred to in paragraph (2) 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 6, be treated as never having had effect and any property lodged with the supplier or the third party solely for the purposes of the security as so provided shall be returned by them immediately.

(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 or she cancels the contract under Regulation 6 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 or she has the right to reject the goods under a term of the contract, including a term implied by virtue of any enactment, or,

(b) a term requiring the consumer to return any goods supplied if he or she cancels the contract is an "unfair term" within the meaning of the European Communities (Unfair Terms in Consumer Contracts) Regulations, 1995 (S.I. No. 27 of 1995).

(7) Paragraph (5) shall not apply to the cost of recovering any goods which were supplied as substitutes, pursuant to Regulation 9, for the goods ordered by the consumer.

(8) A person who fails to comply with this Regulation is guilty of an offence.

9. (1) Unless otherwise agreed between the supplier and the consumer, the supplier shall perform the distance contract within a period of 30 days from the day following that on which the consumer forwarded his or her order to the supplier.

(2) Subject to paragraph (4), where a supplier fails to perform his or her side of a distance contract, on the grounds that the goods or services, the subject matter of the contract are unavailable, the consumer shall be informed of that fact and shall be entitled to a refund of any moneys paid to him or her as soon as possible and in any case not later than 30 days after being so informed.

(3) Where goods or services, the subject matter of the distance contract, are unavailable, the supplier may provide the consumer with goods and services of equivalent quality and price if prior to making the contract the consumer is notified in a clear and comprehensible manner that -

(a) the consumer may, in these circumstances, be furnished with equivalent goods or services,

and,

(b) if he or she is furnished with equivalent goods and he or she chooses to exercise his or her right of cancellation in accordance with Regulation 6 the cost of returning the goods shall be borne by the supplier.

(4) If it has been agreed between the supplier and the consumer prior to making a distance contract in respect of outdoor leisure events which by their nature cannot be rescheduled, that paragraph (2) shall not apply to the contract, paragraph (2) shall not apply accordingly.

(5) Supply of equivalent goods in accordance with this Regulation shall not constitute inertia selling within the meaning of Regulation 11.

(6) A person who fails to comply with this Regulation is guilty of an offence.

10. (1) The consumer may request cancellation of any payment made under a distance contract or, as appropriate, the recredit or return of such a payment, where fraudulent use had been made of his or her payment card.

(2) Such a request shall be complied with immediately.

(3) A person who fails to comply with this Regulation is guilty of an offence.

(4) For the purposes of this Regulation "payment card" includes credit cards, charge cards, debit cards and store cards.

11. (1) 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 or she knows is an unsolicited service supplied to another person is guilty of an offence.

(2) 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 or she knows is an unsolicited service supplied as mentioned in paragraph (1) -

(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

(c) invokes or causes to be invoked any other collection procedure or threatens to do so,

is guilty of an offence.

(3) In this Regulation -

"service" has the same meaning that it has in the Sale of Goods and Supply of Services Act, 1980 (No. 16 of 1980),

"unsolicited" means, in relation to a service supplied to a person that it is supplied without any prior request made by him or her or on his or her behalf.

12. (1) A distance contract shall not be enforceable against the consumer by the supplier if made -

(a) by means of an automated calling system such as an automatic calling machine without human intervention or by a facsimile machine unless the consumer gives his or her prior consent to such means being so used,

or,

(b) by any means of distance communication, other than one referred to in paragraph (a), which allows individual communications unless there has been no clear objection from the consumer to such means being so used.

(2) A person who fails to comply with this Regulation is guilty of an offence.

13. (1) The Director or a consumer organisation may apply to the High Court for an order requiring a person to do or to refrain from doing anything the doing or refraining from doing of which is necessary to ensure compliance by that person with the provisions of these Regulations.

(2) On the hearing of such an application the High Court may grant or refuse to grant such an order.

(3) The Director or the consumer organisation shall cause to be published notice of their intention to apply to the High Court for an order under paragraph (1) in *Iris Oifigiúil* and at least two national newspapers and in such further or other manner as the Court may direct.

(4) Every person claiming to have an interest in any such application shall be entitled to appear before and be heard by the Court on the hearing of the application.

(5) On any such application it shall not be necessary for the Director, the consumer organisation or any such person to prove -

(a) actual loss or damage, or

(b) recklessness or negligence on the part of the supplier or operator of a means of communication.

(6) On any such application the onus of proving compliance with the requirements of these Regulations shall be on the person against whom the proceedings are instituted.

(7) In the exercise of its jurisdiction under paragraph (1) the Court shall take account of all the interests involved and in particular the public interest.

(8) Paragraph (1) is without prejudice to the right of a consumer to rely on the provisions of these Regulations in any case before a court of competent jurisdiction.

(9) Without prejudice to the power of the High Court to enforce an order made pursuant to paragraph (2), a person who fails to comply with an order made pursuant to that paragraph is guilty of an offence.

14. (1) The Director may appoint persons to be authorised officers for the purposes of these Regulations.

(2) An authorised officer when exercising a power under these Regulations shall, if requested by a person affected, produce evidence in writing of his or her appointment as an authorised officer.

(3) An appointment of an authorised officer shall cease where the Director revokes the appointment, or, where it is for a fixed period, upon the expiry of that period.

(4) An authorised officer may, for the purpose of these Regulations and the Directive -

(a) at all reasonable times enter a premises, at which there are reasonable grounds to believe that any trade, business or profession involving distance contracts, or supply of services pursuant to Regulation 11, is carried on and search and inspect the premises and any records on the premises,

(b) secure for later inspection any premises or any part of any premises in which such records are kept or there are reasonable grounds for believing that such records are kept,

(c) require a person who carries on such trade, business or profession or their employee to produce to the officer such records and in the case of such information in a non-legible form to reproduce it in a permanent legible form or to give to the officer such information as he or she may reasonably require in relation to any entries in such records,

(d) inspect and take copies of or extracts from any such records (including in the case of information in a non-legible form a copy of or extract from such information in a permanent legible form),

(e) inspect and copy or extract information from any data (within the meaning of the Data Protection Act, 1988 (No. 25 of 1988)), found or produced to the officer under this Regulation,

(f) remove and retain the records for such period as may be reasonable for further examination, subject to a warrant being issued for that purpose by the District Court,

(g) require a person to give to the officer any information which the officer may reasonably require in regard to the trade, business or profession or in regard to the persons carrying on such trade, business or profession or their employees,

(h) require any person by or on whose behalf data equipment is or has been used or any person having charge of, or otherwise concerned with the operation of, the data equipment or any associated apparatus or material, to afford the officer all reasonable assistance in relation thereto,

(i) summon, at any reasonable time, any other person employed in connection with the trade, business or profession to give to the officer any information which the officer may reasonably require in regard to such trade, business or profession and to produce to the officer any records which are in that person's power or control,

(j) carry out or have carried out such examinations, tests, inspections and checks of any books, records or other documents (including in the case of information in non-legible form a copy of or extract from such information in permanent legible form) or any other data (within the meaning of the Data Protection Act, 1988) found there as he or she reasonably considers necessary.

(5) An authorised officer shall not, other than with the consent of the occupier, enter a private dwelling unless he or she has obtained a warrant from the District Court under Regulation 15 authorising such entry.

(6) Where an authorised officer in the exercise of his or her powers under these Regulations is prevented from entering any premises an application for a warrant may be made under Regulation 15 authorising such entry.

(7) An authorised officer appointed under these Regulations where he or she considers it necessary, may be accompanied by a member of the Garda Síochána when exercising any powers conferred on an authorised officer by these Regulations.

(8) A person who obstructs or interferes with an authorised officer in the exercise of his or her powers under these Regulations or gives to an authorised officer information which is false or misleading or who does not comply with any request or requirement of an authorised officer under these Regulations is guilty of an offence.

15. If a judge of the District Court is satisfied on the sworn information of an authorised officer that there are reasonable grounds for suspecting that there is information required by an authorised officer under these Regulations held on any premises or any part of any premises, the judge may issue a warrant authorising an authorised officer, accompanied, if appropriate, by other authorised officers, or a member or members of the Garda Síochána at any time or times within one month from the date of issue of the warrant, on production if so requested of the warrant, to enter, if need be by reasonable force, and exercise all or any of the powers conferred on an authorised officer under Regulation 14.

16. Where an offence under these Regulations has been committed by a body corporate and is proved to have been committed with the consent or connivance of or to be attributable to any neglect on the part of a person being a director, manager, secretary or other officer of the body corporate, or a person who was purporting to act in any such capacity, that person as well as the body corporate shall be guilty of an offence and be liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.

17. (1) An offence under these Regulations may be prosecuted by the Director.

(2) A person guilty of an offence under these Regulations shall be liable on summary conviction to a fine not exceeding €3,000 (£2,362.69).

18. A consumer may not waive the rights conferred on him or her under these Regulations.

19. (1) A condition contained in a distance contract which applies or purports to apply the law of a state other than a Member State shall be void if the contract has a close connection with the territory of a Member State.

(2) For the purposes of this Regulation "Member State" means a State which is a contracting party to 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.

SCHEDULE 1

Regulation 2

ANNEX I

Means of communication covered by Article 2(4)

- Unaddressed printed matter
- Addressed printed matter
- Standard letter
- Press advertising with order form
- Catalogue
- Telephone with human intervention
- Telephone without human intervention (automatic calling machine, audiotext)
- Radio
- Videophone (telephone with screen)
- Videotex (microcomputer and television screen) with keyboard or touch screen
- Electronic mail
- Facsimile machine (fax)
- Television (teleshopping).

SCHEDULE 2

Regulation 3(i)(I)

ANNEX II

Financial services within the meaning of Article 3(1)

- Investment services
- Insurance and reinsurance operations
- Banking services
- Operations relating to dealings in futures or options.

Such services include in particular:

- investment services referred to in the Annex to Directive 93/22/EEC ⁽²⁾; services of collective investment undertakings,
- services covered by the activities subject to mutual recognition referred to in the Annex to Directive 89/646/EEC ⁽³⁾,
- operations covered by the insurance and reinsurance activities referred to in:
 - Article 1 of Directive 73/239/EEC ⁽⁴⁾,
 - the Annex to Directive 79/267/EEC ⁽⁵⁾,
 - Directive 64/225/EEC ⁽⁶⁾,
 - Directives 92/49/EEC ⁽⁷⁾ and 92/96/EEC ⁽⁸⁾.

² O.J. No. L 141, 11.6.1993, p. 27.

³ O.J. No. L 386, 30.12.1989, p. 1. Directive as amended by Directive 92/30/EEC (O.J. No. L 110, 28.4.1992, p. 52).

⁴ O.J. No. L 228, 16.8.1973, p. 3. Directive as last amended by Directive 92/49/EEC (O.J. No. L 228, 11.8.1992, p. 1).

⁵ O.J. No. L 63, 13.3.1979, p. 1. Directive as last amended by Directive 90/619/EEC (O.J. No. L 330, 29.11.1990, p. 50).

⁶ O.J. No. L 56, 4.4.1964, p. 878/64. Directive as amended by the 1973 Act of Accession.

⁷ O.J. No. L 228, 11.8.1992, p. 1.

⁸ O.J. No. L 360, 9.12.1992, p. 1.

SCHEDULE 3

Regulation 4(1)

Regulation 5(1)

1. The identity of the supplier and, in the case of contracts requiring payment in advance, his or her address.
2. The main characteristics of the goods or services.
3. The price of the goods or services including all taxes.
4. Delivery costs, where appropriate.
5. The arrangements for payment, delivery or performance.
6. The existence of a right of cancellation, except in the cases referred to in subparagraphs (a), (b), (c), (d), (e) and (f) of paragraph (4) of Regulation 6.
7. The cost of using the means of distance communication, where it is calculated other than at the basic rate.
8. The period for which the offer or the price remains valid.
9. 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.



GIVEN under my Official Seal,
this 15th day of May, 2001

MARY HARNEY

Minister for Enterprise, Trade and Employment

EXPLANATORY NOTE

These Regulations implement Directive 97/7/EC of the European Parliament and the Council on the protection of consumers in respect of distance contracts. The Regulations apply to contracts for goods or services (other than financial services) to be supplied to a consumer where the contract is made exclusively by means of distance communication, ie, without the simultaneous physical presence of the supplier and the consumer. Key provisions deal with the information which a consumer must be given before entering into a contract; subsequent written confirmation of that information; and a cooling-off period within which the consumer may cancel the contract.

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