

The Consumer Protection from Unfair Trading Regulations 2008

as amended by the *Consumer Protection (Amendment) Regulations 2014*

PART 1 GENERAL

1. - Citation and commencement

These Regulations may be cited as the Consumer Protection from Unfair Trading Regulations 2008 and shall come into force on 26th May 2008.

2.- Interpretation

(1) In these Regulations—

"AVERAGE CONSUMER" shall be construed in accordance with paragraphs (2) to (6);

"BUSINESS" includes

(a) a trade, craft or profession

and

(b) the activities of any government department or local or public 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 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 which are that are wholly or mainly outside that individual's business;

"DIGITAL CONTENT" means data which are produced and supplied in digital form;

"ENFORCEMENT AUTHORITY" means the OFT, every local weights and measures authority in Great Britain (within the meaning of section 69 of the Weights and Measures Act 1985(4)) and the Department of Enterprise, Trade and Investment in Northern Ireland;

"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 him to take a transactional decision that he would not have taken otherwise;

"OFT" means the 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 (1A) and (1B),

but the application of this definition to Part 4A is subject to regulations 27C and 27D;

"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.

"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 4A is subject to regulation 27B(2).

(1A) A trader ("T") who demands payment from a consumer ("C") in full or partial settlement of C's liabilities or purported liabilities to T is to be treated for the purposes of these Regulations as offering to supply a product to C.

(1B) In such a case the product that T offers to supply comprises the full or partial settlement of those liabilities or purported liabilities.

(2) 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 shall be taken of the material characteristics of such an average consumer including his being reasonably well informed, reasonably observant and circumspect.

(3) Paragraphs (4) and (5) set out the circumstances in which a reference to the average consumer shall be read as in addition referring to the average member of a particular group of consumers.

(4) 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 shall be read as referring to the average member of that group.

(5) 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 shall be read as referring to the average member of that group.

(6) Paragraph (5) 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

(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

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

5.—Misleading actions

(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 he 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 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 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);
(k) the consumer's rights or the risks he 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.

(7) In paragraph (4)(k) "consumer's rights" include rights the consumer may have under Part 5A of the Sale of Goods Act 1979(5) or Part 1B of the Supply of Goods and Services Act 1982(6).

6.– Misleading omissions

(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 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 Community obligation.

(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 his 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,
(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

(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 him to take a transactional decision he would not have taken otherwise.

(2) In determining whether a commercial practice uses harassment, coercion or undue influence account shall 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

(1) A trader is guilty of an offence if—

- (a) he 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 shall be deemed recklessly to engage in the practice, whether or not the trader has reason for believing that the practice might contravene those requirements.

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PART 4 ENFORCEMENT

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PART 4A CONSUMERS' RIGHTS TO REDRESS

27A - When does a consumer have a right to redress?

(1) A consumer has a right to redress under this Part if—

- (a) the conditions in this regulation are met, and
- (b) the conditions (if any) in the following provisions of this Part for the availability of that right are met.

(2) The first condition is that—

- (a) the consumer enters into a contract with a trader for the sale or supply of a product by the trader (a “business to consumer contract”),
- (b) the consumer enters into a contract with a trader for the sale of goods to the trader (a “consumer to business contract”), or
- (c) the consumer makes a payment to a trader for the supply of a product (a “consumer payment”).

(3) Paragraph (2)(b) does not apply if, under the contract, the trader supplies or agrees to supply a product to the consumer as well as paying or agreeing to pay the consumer.

(4) The second condition is that—

- (a) the trader engages in a prohibited practice in relation to the product, or
- (b) in a case where a consumer enters into a business to consumer contract for goods or digital content—
 - (i) a producer engages in a prohibited practice in relation to the goods or digital content, and
 - (ii) when the contract is entered into, the trader is aware of the commercial practice that constitutes the prohibited practice or could reasonably be expected to be aware of it.

(5) In paragraph (4)(b) “producer” means—

- (a) a manufacturer of the goods or digital content,
 - (b) an importer of the goods or digital content into the European Economic Area, or
 - (c) a person who purports to be a producer by placing the person’s name, trade mark or other distinctive sign on the goods or using it in connection with the digital content,
- and includes a producer acting personally or through another person acting in the producer’s name or on the producer’s behalf.

(6) The third condition is that the prohibited practice is a significant factor in the consumer’s decision to enter into the contract or make the payment.

27B - What does “prohibited practice” mean in this Part?

(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.”

27C - What immovable property is covered by this Part?

(1) In this Part “product” does not include immovable property other than a relevant lease.

(2) In this regulation “relevant lease” in relation to England and Wales means—

- (a) an assured tenancy within the meaning of Part 1 of the Housing Act 1988(1), or
- (b) a lease under which accommodation is let as holiday accommodation.

(3) But none of the following are relevant leases for the purposes of paragraph (2)(a)—

- (a) a lease granted by—
 - (i) a private registered provider of social housing(2), or
 - (ii) a registered social landlord within the meaning of Part 1 of the Housing Act 1996(3);
- (b) a lease of a dwelling-house or part of a dwelling-house—
 - (i) granted on payment of a premium calculated by reference to a percentage of the value of the dwelling-house or part or of the cost of providing it, or
 - (ii) under which the lessee (or the lessee’s personal representatives) will or may be entitled to a sum calculated by reference, directly or indirectly, to the value of the dwelling-house or part;
- (c) a lease granted to a person as a result of the exercise by a local housing authority within the meaning of the Housing Act 1996 of its functions under Part 7 (homelessness) of that Act.

(4) In this regulation “relevant lease” in relation to Scotland means—

- (a) an assured tenancy within the meaning of Part 2 of the Housing (Scotland) Act 1988(4), or
- (b) a lease under which accommodation is let as holiday accommodation.

(5) In this regulation “relevant lease” in relation to Northern Ireland means—

- (a) a private tenancy within the meaning of Article 3 of the Private Tenancies (Northern Ireland) Order 2006, or
- (b) a lease under which accommodation is let as holiday accommodation.

(6) But neither of the following are relevant leases for the purposes of paragraph (5)(a)—

- (a) a lease of a dwelling-house or part of a dwelling-house—
 - (i) granted on payment of a premium calculated by reference to a percentage of the value of the dwelling-house or part or of the cost of providing it, or
 - (ii) under which the lessee (or the lessee’s personal representatives) will or may be entitled to a sum calculated by reference, directly or indirectly, to the value of the dwelling-house or part;
- (b) a private tenancy resulting from the exercise by the Northern Ireland Housing Executive of its functions under Part 2 (homelessness) of the Housing (Northern Ireland) Order 1988.

27D - What financial services are covered by this Part?

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

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

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

(4) In paragraph (3)—

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

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

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

27E - When does the right to unwind apply to a business to consumer contract?

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

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

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

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

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

(b) the relevant day.

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

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

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

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

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

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

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

- (a) the goods have not been fully consumed,
 - (b) the service has not been fully performed,
 - (c) the digital content has not been fully consumed,
 - (d) the lease has not expired, or
 - (e) the right has not been fully exercised,
- (as the case may be).

(9) For the purposes of paragraph (8)—

- (a) goods have been fully consumed only if nothing is left of them, and
- (b) digital content has been fully consumed only if the digital content was available to the consumer for a fixed period and that period has expired.

(10) A consumer does not have the right to unwind in respect of a business to consumer contract if the consumer has exercised the right to a discount in respect of that contract and the same prohibited practice.

27F - How does the right to unwind work in the case of a business to consumer contract?

(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.

27G - How does the right to unwind work in the case of a consumer to business contract?

(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.

27H - How does the right to unwind work if payments are demanded which are not due?

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

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

(a) the same amount of money as the consumer paid to the trader, or

(b) in a case where the consumer was required to make part of the payment, an amount equal to the part of the payment the consumer was not required to make.

27I - How does the right to a discount work?

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

(a) the consumer has made one or more payments for the product to the trader or one or more payments under the contract have not been made, and

(b) the consumer has not exercised the right to unwind in respect of the contract.

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

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

(a) to reduce by the relevant percentage as many of those payments as is appropriate having regard to the seriousness of the prohibited practice, or

(b) in a case within paragraph (6), to reduce all of those payments by the relevant percentage.

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

(a) if the prohibited practice is more than minor, it is 25%,

(b) if the prohibited practice is significant, it is 50%,

(c) if the prohibited practice is serious, it is 75%, and

(d) if the prohibited practice is very serious, it is 100%.

(5) The seriousness of the prohibited practice is to be assessed by reference to—

(a) the behaviour of the person who engaged in the practice,

(b) the impact of the practice on the consumer, and

(c) the time that has elapsed since the prohibited practice took place.

(6) Paragraph (5) does not apply if—

(a) the amount payable for the product under the contract exceeds £5,000,

(b) the market price of the product, at the time that the consumer entered into the contract, is lower than the amount payable for it under the contract, and

(c) there is clear evidence of the difference between the market price of the product and the amount payable for it under the contract.

(7) In such a case, the relevant percentage is the percentage difference between the market price of the product and the amount payable for it under the contract.

(8) The application of this regulation does not affect any of the other rights and liabilities under the contract.

27J - How does the right to damages work?

(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.

27K - How can a consumer enforce the rights to redress?

(1) A consumer with a right to redress under this Part may bring a claim in civil proceedings to enforce that right.

(2) In Scotland, proceedings to enforce the right to unwind may be brought before the sheriff or in the Court of Session.

(3) Paragraph (4) applies if in proceedings under this regulation the consumer establishes that the consumer has—

- (a) the right to unwind,
- (b) the right to a discount, or
- (c) the right to damages.

(4) The court must make an order that gives effect to—

- (a) that right, and
- (b) any associated obligations of the consumer under this Part.

(5) The Limitation Act 1980 applies to a claim under this regulation in England and Wales as if it were an action founded on simple contract.

(6) The Limitation (Northern Ireland) Order 1989 applies to a claim under this regulation in Northern Ireland as if it were an action founded on simple contract.

27L - How does this Part relate to the existing law?

(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⁽¹⁾.

(2) But a consumer may not—

- (a) make a claim to be compensated under a rule of law or equity, or under an enactment, in respect of such conduct if the consumer has been compensated under this Part in respect of the conduct, or
- (b) make a claim to be compensated under this Part in respect of such conduct if the consumer has been compensated under a rule of law or equity, or under an enactment, in respect of the conduct.

(3) In this regulation “enactment” includes—

- (a) an enactment contained in subordinate legislation within the meaning of the Interpretation Act 1978,
- (b) an enactment contained in, or in an instrument made under, a Measure or Act of the National Assembly for Wales,
- (c) an enactment contained in, or in an instrument made under, an Act of the Scottish Parliament, and
- (d) an enactment contained in, or in an instrument made under, Northern Ireland legislation.

¹ 5. In section 2 of the Misrepresentation Act 1967 (damages for misrepresentation), after subsection (3) insert—
“(4) This section does not entitle a person to be paid damages in respect of a misrepresentation if the person has a right to redress under Part 4A of the Consumer Protection from Unfair Trading Regulations 2008 (SI 2008/1277) in respect of the conduct constituting the misrepresentation.

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

PART 5 SUPPLEMENTARY

27M - Inertia selling

(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.

28.- Crown

(1) The powers conferred by regulations 21 and 22 are not exercisable in relation to premises occupied by the Crown.

(2) The Crown is not criminally liable as a result of any provision of these Regulations.

(3) Paragraph (2) does not affect the application of any provision of these Regulations in relation to a person in the public service of the Crown.

29. - Validity of agreements

Except as provided by Part 4A, an agreement shall not be void or unenforceable by reason only of a breach of these Regulations.

Misrepresentation Act 1967

as amended by the *Consumer Protection (Amendment) Regulations 2014*

1 - Removal of certain bars to rescission for innocent misrepresentation.

Where a person has entered into a contract after a misrepresentation has been made to him, and—

(a) the misrepresentation has become a term of the contract; or

(b) the contract has been performed;

or both, then, if otherwise he would be entitled to rescind the contract without alleging fraud, he shall be so entitled, subject to the provisions of this Act, notwithstanding the matters mentioned in paragraphs (a) and (b) of this section.

2 - Damages for misrepresentation

(1) Where a person has entered into a contract after a misrepresentation has been made to him by another party thereto and as a result thereof he has suffered loss, then, if the person making the misrepresentation would be liable to damages in respect thereof had the misrepresentation been made fraudulently, that person shall be so liable notwithstanding that the misrepresentation was not made fraudulently, unless he proves that he had reasonable ground to believe and did believe up to the time the contract was made the facts represented were true.

(2) Where a person has entered into a contract after a misrepresentation has been made to him otherwise than fraudulently, and he would be entitled, by reason of the misrepresentation, to rescind the contract, then, if it is claimed, in any proceedings arising out of the contract, that the contract ought to be or has been rescinded, the court or arbitrator may declare the contract subsisting and award damages in lieu of rescission, if of opinion that it would be equitable to do so, having regard to the nature of the misrepresentation and the loss that would be caused by it if the contract were upheld, as well as to the loss that rescission would cause to the other party.

(3) Damages may be awarded against a person under subsection (2) of this section whether or not he is liable to damages under subsection (1) thereof, but where he is so liable any award under the said subsection (2) shall be taken into account in assessing his liability under the said subsection (1).

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

(5) Subsection (4) does not prevent a debtor from bringing a claim under section 75(1) of the *Consumer Credit Act 1974* against a creditor under a debtor-creditor-supplier agreement in a case where, but for subsection (4), the debtor would have a claim against the supplier in respect of a misrepresentation (and, where section 75 of that Act would

otherwise apply, it accordingly applies as if the debtor had a claim against the supplier).