
DRAFT STATUTORY INSTRUMENTS

2008 No.

**The Business Protection from
Misleading Marketing Regulations 2008**

PART 2

OFFENCES

Misleading advertising

6. A trader is guilty of an offence if he engages in advertising which is misleading under regulation 3.

Penalty for offence under regulation 6

7. A person guilty of an offence under regulation 6 shall be liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum; or
 - (b) on conviction on indictment, to a fine or imprisonment for a term not exceeding two years or both.

Offences committed by bodies of persons

8.—(1) Where an offence under these Regulations committed by a body corporate is proved—

- (a) to have been committed with the consent or connivance of an officer of the body, or
- (b) to be attributable to any neglect on his part,

the officer as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.

- (2) In paragraph (1) a reference to an officer of a body corporate includes a reference to—
- (a) a director, manager, secretary or other similar officer; and
 - (b) a person purporting to act as a director, manager, secretary or other similar officer.

(3) Where an offence under these Regulations committed by a Scottish partnership is proved—

- (a) to have been committed with the consent or connivance of a partner, or
- (b) to be attributable to any neglect on his part,

the partner as well as the partnership is guilty of the offence and liable to be proceeded against and punished accordingly.

- (4) In paragraph (3) a reference to a partner includes a person purporting to act as a partner.

Offence due to the default of another person

- 9.—(1) This regulation applies where a person “X”—
- (a) commits an offence under regulation 6, or

- (b) would have committed an offence under regulation 6 but for a defence under regulation 11 or 12,

and the commission of the offence, or of what would have been an offence but for X being able to rely on a defence under regulations 11 or 12, is due to the act or default of some other person “Y”.

(2) Where this regulation applies Y shall be guilty of the offence subject to regulations 11 and 12 whether or not Y is a trader and whether or not Y’s act or default is advertising.

(3) Y may be charged with and convicted of the offence by virtue of paragraph (2) whether or not proceedings are taken against X.

Time limit for prosecution

10.—(1) No proceedings for an offence under these Regulations shall be commenced after—

- (a) the end of the period of three years beginning with the date of the commission of the offence; or
- (b) the end of the period of one year beginning with the date of discovery of the offence by the prosecutor,

whichever is earlier.

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

(3) Notwithstanding anything in section 127(1) of the Magistrates’ Courts Act 1980⁽¹⁾, an information relating to an offence under these Regulations which is triable by a magistrates’ court in England and Wales may be so tried if it is laid at any time before the end of the period of twelve months beginning with the date of the commission of the offence.

(4) Notwithstanding anything in section 136 of the Criminal Procedure (Scotland) Act 1995⁽²⁾ summary proceedings in Scotland for an offence under these Regulations may be commenced at any time before the end of the period of twelve months beginning with the date of the commission of the offence.

(5) For the purposes of paragraph (4), section 136(3) of the Criminal Procedure (Scotland) Act 1995 shall apply as it applies for the purposes of that section.

(6) Notwithstanding anything in Article 19(1) of the Magistrates’ Courts (Northern Ireland) Order 1981⁽³⁾ a complaint charging an offence under these Regulations which is triable by a magistrates’ court in Northern Ireland may be so tried if it is made at any time before the end of the period of twelve months beginning with the date of the commission of the offence.

Due diligence defence

11.—(1) In any proceedings against a person for an offence under regulation 6 it is a defence for that person to prove—

- (a) that the commission of the offence was due to—
 - (i) a mistake;
 - (ii) reliance on information supplied to him by another person;
 - (iii) the act or default of another person;

(1) 1980 c.43.

(2) 1995 c.46.

(3) S.I. 1981/1675 (N.I. 26).

- (iv) an accident; or
- (v) another cause beyond his control;

and

- (b) that he took all reasonable precautions and exercised all due diligence to avoid the commission of such an offence by himself or any person under his control.

(2) A person shall not be entitled to rely on the defence provided by paragraph (1) by reason of the matters referred to in paragraph (ii) or (iii) of paragraph (1)(a) without the leave of the court unless—

- (a) he has served on the prosecutor a notice in writing giving such information identifying or assisting in the identification of that other person as was in his possession; and
- (b) the notice is served on the prosecutor at least seven clear days before the date of the hearing.

Innocent publication defence

12. In any proceedings against a person for an offence under regulation 6 committed by the publication of advertising it is a defence for that person to prove that—

- (a) he is a person whose business it is to publish or to arrange for the publication of advertising;
- (b) he received the advertising for publication in the ordinary course of business; and
- (c) he did not know and had no reason to suspect that its publication would amount to an offence under regulation 6.