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STATUTORY INSTRUMENTS

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**2008 No. 1277**

**CONSUMER PROTECTION**

The Consumer Protection from  
Unfair Trading Regulations 2008

*Made* - - - - 8th May 2008

*Coming into force* - - 26th May 2008

The Secretary of State, being a Minister designated<sup>(1)</sup> for the purposes of section 2(2) of the European Communities Act 1972<sup>(2)</sup> in relation to measures relating to consumer protection and to the control of advertising, makes the following Regulations in exercise of the powers conferred upon him by section 2(2) of that Act;

In accordance with paragraph 2(2) of Schedule 2 to that Act<sup>(3)</sup>, a draft of this instrument was laid before Parliament and approved by a resolution of each House of Parliament.

PART 1

GENERAL

**Citation and commencement**

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

**Interpretation**

2.—(1) In these Regulations—

“average consumer” shall be construed in accordance with paragraphs (2) to (6);

“business” includes a trade, craft or profession;

“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;

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(1) [S.I. 1993/2661](#) and [S.I. 1985/749](#).

(2) [1972 c.68](#); section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act [2006 \(c.51\)](#).

(3) Paragraph 2(2) of Schedule 2 was amended by section 27(2)(a) of the Legislative and Regulatory Reform Act [2006 \(c.51\)](#).

“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 any individual who in relation to a commercial practice is acting for purposes which are outside his business;

“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<sup>(4)</sup>) and the Department of Enterprise, Trade and Investment in Northern Ireland;

“goods” includes ships, aircraft, animals, things attached to land and growing crops;

“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 any goods or service and includes immovable property, rights and obligations;

“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” means any person who in relation to a commercial practice is acting for purposes relating to his business, and anyone 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.

(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.

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(4) 1985 c.72; section 69 was amended by paragraph 75 of Schedule 16 to the Local Government (Wales) Act 1994 (c.19) and by paragraph 144 of Schedule 13 to the Local Government etc (Scotland) Act 1994 (c.39).

(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

#### **Prohibition of unfair commercial practices**

3.—(1) Unfair commercial practices are prohibited.

(2) Paragraphs (3) and (4) set out the circumstances when a commercial practice is unfair.

(3) A commercial practice is unfair if—

(a) it contravenes the requirements of professional diligence; and

(b) it materially distorts or is likely to materially distort the economic behaviour of the average consumer with regard to the product.

(4) A commercial practice is unfair if—

(a) it is a misleading action under the provisions of regulation 5;

(b) it is a misleading omission under the provisions of regulation 6;

(c) it is aggressive under the provisions of regulation 7; or

(d) it is listed in Schedule 1.

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

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

#### **Misleading actions**

5.—(1) A commercial practice is a misleading action if it satisfies the conditions in either paragraph (2) or paragraph (3).

(2) A commercial practice satisfies the conditions of this paragraph—

(a) if it contains false information and is therefore untruthful in relation to any of the matters in paragraph (4) or if it or its overall presentation in any way deceives or is likely to deceive the average consumer in relation to any of the matters in that paragraph, even if the information is factually correct; and

(b) it causes or is likely to cause the average consumer to take a transactional decision 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<sup>(5)</sup> or Part 1B of the Supply of Goods and Services Act 1982<sup>(6)</sup>.

### **Misleading omissions**

6.—(1) A commercial practice is a misleading omission if, in its factual context, taking account of the matters in paragraph (2)—

- (a) the commercial practice omits material information,
- (b) the commercial practice hides material information,
- (c) the commercial practice provides material information in a manner which is unclear, unintelligible, ambiguous or untimely, or
- (d) the commercial practice fails to identify its commercial intent, unless this is already apparent from the context,

and as a result it causes or is likely to cause the average consumer to take a transactional decision he 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)—

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<sup>(5)</sup> 1979 c.54; Part 5A was inserted by S.I. 2002/3045.

<sup>(6)</sup> 1982 c.29. Part 1B was inserted by S.I.2002/3045.

- (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.

### **Aggressive commercial practices**

7.—(1) A commercial practice is aggressive if, in its factual context, taking account of all of its features and circumstances—

- (a) it significantly impairs or is likely significantly to impair the average consumer’s freedom of choice or conduct in relation to the product concerned through the use of harassment, coercion or undue influence; and
- (b) it thereby causes or is likely to cause 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

#### **Offences relating to unfair commercial practices**

**8.—**(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.

**9.** A trader is guilty of an offence if he engages in a commercial practice which is a misleading action under regulation 5 otherwise than by reason of the commercial practice satisfying the condition in regulation 5(3)(b).

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

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

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

#### **Penalty for offences**

**13.** A person guilty of an offence under regulation 8, 9, 10, 11 or 12 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.

#### **Time limit for prosecution**

**14.—**(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<sup>(7)</sup>, 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<sup>(8)</sup> 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 subsection.

(6) Notwithstanding anything in Article 19(1) of the Magistrates' Courts (Northern Ireland) Order 1981<sup>(9)</sup> 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.

#### **Offences committed by bodies of persons**

**15.**—(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**

**16.**—(1) This regulation applies where a person "X"—

- (a) commits an offence under regulation 9, 10, 11 or 12, or
- (b) would have committed an offence under those regulations but for a defence under regulation 17 or 18,

and the commission of the offence, or of what would have been an offence but for X being able to rely on a defence under regulation 17 or 18, is due to the act or default of some other person "Y".

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(7) 1980 c.43.

(8) 1995 c.46.

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



(2) Where this regulation applies Y is guilty of the offence, subject to regulations 17 and 18, whether or not Y is a trader and whether or not Y's act or default is a commercial practice.

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

### **Due diligence defence**

**17.**—(1) In any proceedings against a person for an offence under regulation 9, 10, 11 or 12 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;
- (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 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 of advertisement defence**

**18.**—(1) In any proceedings against a person for an offence under regulation 9, 10, 11 or 12 committed by the publication of an advertisement it shall be a defence for a person to prove that—

- (a) he is a person whose business it is to publish or to arrange for the publication of advertisements;
- (b) he received the advertisement 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 the regulation to which the proceedings relate.

(2) In paragraph (1) “advertisement” includes a catalogue, a circular and a price list.

## **PART 4**

### **ENFORCEMENT**

#### **Duty to enforce**

**19.**—(1) It shall be the duty of every enforcement authority to enforce these Regulations.

(2) Where the enforcement authority is a local weights and measures authority the duty referred to in paragraph (1) shall apply to the enforcement of these Regulations within the authority's area.

(3) Where the enforcement authority is the Department of Enterprise, Trade and Investment in Northern Ireland the duty referred to in paragraph (1) shall apply to the enforcement of these Regulations within Northern Ireland.

(4) In determining how to comply with its duty of enforcement every enforcement authority shall have regard to the desirability of encouraging control of unfair commercial practices by such established means as it considers appropriate having regard to all the circumstances of the particular case.

(5) Nothing in this regulation shall authorise any enforcement authority to bring proceedings in Scotland for an offence.

**Power to make test purchases**

**20.** An enforcement authority may or may authorise any of its officers on its behalf to—

- (a) make a purchase of a product, or
- (b) enter into an agreement to secure the provision of a product,

for the purposes of determining whether these Regulations are being complied with.

**Power of entry and investigation, etc.**

**21.—(1)** A duly authorised officer of an enforcement authority may at all reasonable hours exercise the following powers—

- (a) he may, for the purposes of ascertaining whether a breach of these Regulations has been committed, inspect any goods and enter any premises other than premises used only as a dwelling;
- (b) if he has reasonable cause to suspect that a breach of these Regulations has been committed, he may, for the purpose of ascertaining whether it has been committed, require any trader to produce any documents relating to his business and may take copies of, or of any entry in, any such document;
- (c) if he has reasonable cause to believe that a breach of these Regulations has been committed, he may seize and detain any goods for the purpose of ascertaining, by testing or otherwise, whether the breach has been committed; and
- (d) he may seize and detain goods or documents which he has reason to believe may be required as evidence in proceedings for a breach of these Regulations.

(2) If and to the extent that it is reasonably necessary to secure that the provisions of these Regulations are observed, the officer may for the purpose of exercising his powers under paragraphs (1)(c) and (d) to seize goods or documents—

- (a) require any person having authority to do so to break open any container or open any vending machine; and
- (b) himself open or break open any such container or open any vending machine where a requirement made under sub-paragraph (a) in relation to the container or vending machine has not been complied with.

(3) An officer seizing any goods or documents in exercise of his powers under this regulation shall—

- (a) inform the person from whom they are seized, and,
- (b) where goods are seized from a vending machine, inform—
  - (i) the person whose name and address are stated on the machine as being the proprietor's; or
  - (ii) if there is no such name or address stated on the machine the occupier of the premises on which the machine stands or to which it is affixed,

that the goods or documents have been so seized.

(4) In this regulation “document” includes information recorded in any form.

(5) The reference in paragraph (1)(b) to the production of documents is, in the case of a document which contains information recorded otherwise than in legible form, a reference to the production of a copy of the information in legible form.

(6) An officer seeking to exercise a power under this regulation must produce evidence of his identity and authority to a person (if there is one) who appears to the officer to be the occupier of the premises.

(7) Where an officer seizes goods or documents in exercise of a power under this regulation they may not be detained—

- (a) for a period of more than 3 months; or
- (b) where the goods or documents are reasonably required by the enforcement authority in connection with the enforcement of these Regulations, for longer than they are so required.

(8) An officer entering any premises under this regulation may take with him such other persons and such equipment as may appear to him to be necessary.

(9) Nothing in this regulation or in regulation 22 gives any power to an officer of an enforcement authority—

- (a) to require any person to produce, or
- (b) to seize from another person,

any document which the other person would be entitled to refuse to produce in proceedings in the High Court on the grounds of legal professional privilege or (in Scotland) in proceedings in the Court of Session on the grounds of confidentiality of communications.

(10) In paragraph (9) “communications” means—

- (a) communications between a professional legal adviser and his client; or
- (b) communications made in connection with or in contemplation of legal proceedings and for the purposes of those proceedings.

(11) If any person who is not an officer of an enforcement authority purports to act as such under this regulation or under regulation 22 he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

### **Power to enter premises with a warrant**

**22.**—(1) If a justice of the peace by any written information on oath is satisfied—

- (a) that there are reasonable grounds for believing that Condition A or B is met, and
- (b) that Condition C, D or E is met,

the justice may by warrant under his hand authorise an officer of an enforcement authority to enter the premises at all reasonable times, if necessary by force.

(2) Condition A is that there are on any premises goods or documents which a duly authorised officer of the enforcement authority has power under regulation 21(1) to inspect and that their inspection is likely to disclose evidence of a breach of these Regulations.

(3) Condition B is that a breach of these Regulations has been, is being or is about to be committed on any premises.

(4) Condition C is that the admission to the premises has been or is likely to be refused and that notice of intention to apply for a warrant under this regulation has been given to the occupier.

(5) Condition D is that an application for admission, or the giving of a notice of intention to apply for a warrant, would defeat the object of the entry.

(6) Condition E is that the premises are unoccupied or that the occupier is absent and it might defeat the object of the entry to await his return.

(7) A warrant under paragraph (1)—

- (a) ceases to have effect at the end of the period of one month beginning with the day it is issued;
- (b) must be produced for inspection to the person (if there is one) who appears to the officer to be the occupier of the premises.

(8) An officer entering any premises under this regulation may take with him such other persons and such equipment as may appear to him to be necessary.

(9) On leaving any premises which an officer is authorised to enter by warrant under this regulation the officer shall, if the premises are unoccupied or the occupier is temporarily absent, leave the premises as effectively secured against trespassers as he found them.

(10) In its application to Scotland, this regulation has effect as if—

- (a) the references in paragraph (1) to a justice of the peace included references to a sheriff; and
- (b) the reference in paragraph (1) to information on oath were a reference to evidence on oath.

(11) In its application to Northern Ireland, this regulation has effect as if the references in paragraph (1) to a justice of the peace were references to a lay magistrate.

### **Obstruction of authorised officers**

**23.**—(1) Any person who—

- (a) intentionally obstructs an officer of an enforcement authority acting in pursuance of these Regulations,
- (b) intentionally fails to comply with any requirement properly made of him by such an officer under regulation 21, or
- (c) without reasonable cause fails to give such an officer any other assistance or information which he may reasonably require of him for the purpose of the performance of his functions under these Regulations,

is guilty of an offence and liable, on summary conviction, to a fine not exceeding level 5 on the standard scale.

(2) Any person who, in giving any information which is required of him under paragraph (1) (c), makes any statement which he knows to be false in a material particular is guilty of an offence and 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.

(3) Nothing in this regulation shall be construed as requiring a person to answer any question or give any information if to do so might incriminate him.

### **Notice of test and intended proceedings**

**24.**—(1) Where goods purchased by an officer pursuant to regulation 20 are submitted to a test and the test leads to the institution of any proceedings for a breach of these Regulations the officer shall inform—

- (a) the person from whom the goods were purchased, or
- (b) where the goods were sold through a vending machine, the person mentioned in regulation 21(3)(b),

of the result of the test.

(2) Where goods seized by an officer pursuant to regulation 21 are submitted to a test then the officer shall inform the person mentioned in regulation 21(3) of the result of the test.

(3) Where, as a result of the test, any proceedings in respect of a breach of these Regulations are taken against any person, the officer shall allow him to have the goods tested on his behalf if it is reasonably practicable to do so.

### **Compensation**

**25.**—(1) Where an officer of an enforcement authority seizes and detains goods in exercise of the powers under regulation 21 the enforcement authority shall be liable to pay compensation to any person having an interest in the goods in respect of any loss or damage caused by reason of the exercise of the power if—

- (a) there has been no breach of these Regulations in relation to the goods, and
- (b) the exercise of that power is not attributable to any neglect or default by that person.

(2) Any disputed question as to the right to or the amount of any compensation payable under this provision shall be determined by arbitration or, in Scotland, by a single arbiter appointed, failing agreement between the parties, by the sheriff.

### **Application of Part 8 of Enterprise Act 2002**

**26.** In Schedule 13 to the Enterprise Act 2002(**10**)(listed Directives and Regulations), after paragraph 9B insert—

“**9C.** Directive [2005/29/EC](#) of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market.”.

### **Evidence as to factual claims**

**27.** After section 218 of the Enterprise Act 2002 insert—

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

**218A.**—(1) This section applies where an application for an enforcement order or for an interim enforcement order is made in respect of a Community infringement involving a contravention of Directive [2005/29/EC](#) of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market.

(2) For the purposes of considering the application the court may require the person named in the application to provide evidence as to the accuracy of any factual claim made as part of a commercial practice of that person if, taking into account the legitimate interests of that person and any other party to the proceedings, it appears appropriate in the circumstances.

(3) If, having been required under subsection (2) to provide evidence as to the accuracy of a factual claim, a person—

- (a) fails to provide such evidence, or
- (b) provides evidence as to the accuracy of the factual claim that the court considers inadequate,

the court may consider that the factual claim is inaccurate.

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(10) [2002 c.40](#); paragraph 9B of Schedule 13 was inserted by [S.I. 2006/3363](#).

(4) In this section “commercial practice” has the meaning given by regulation 2 of the Consumer Protection from Unfair Trading Regulations 2008.”.

## PART 5

### SUPPLEMENTARY

#### **Crown**

**28.**—(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.

#### **Validity of agreements**

**29.** An agreement shall not be void or unenforceable by reason only of a breach of these Regulations.

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

**30.**—(1) Schedule 2 (which contains amendments) shall have effect.

(2) Schedule 3 (which contains transitional and saving provisions) shall have effect.

(3) Schedule 4 (which contains repeals and revocations) shall have effect.

*Gareth Thomas*  
Parliamentary Under Secretary of State for Trade  
and Consumer Affairs  
Department for Business, Enterprise &  
Regulatory Reform

8th May 2008

## SCHEDULE 1

Regulation 3(4)(d)

Commercial practices which are in all circumstances considered unfair

1. Claiming to be a signatory to a code of conduct when the trader is not.
2. Displaying a trust mark, quality mark or equivalent without having obtained the necessary authorisation.
3. Claiming that a code of conduct has an endorsement from a public or other body which it does not have.
4. Claiming that a trader (including his commercial practices) or a product has been approved, endorsed or authorised by a public or private body when the trader, the commercial practices or the product have not or making such a claim without complying with the terms of the approval, endorsement or authorisation.
5. Making an invitation to purchase products at a specified price without disclosing the existence of any reasonable grounds the trader may have for believing that he will not be able to offer for supply, or to procure another trader to supply, those products or equivalent products at that price for a period that is, and in quantities that are, reasonable having regard to the product, the scale of advertising of the product and the price offered (bait advertising).
6. Making an invitation to purchase products at a specified price and then—
  - (a) refusing to show the advertised item to consumers,
  - (b) refusing to take orders for it or deliver it within a reasonable time, or
  - (c) demonstrating a defective sample of it,with the intention of promoting a different product (bait and switch).
7. Falsely stating that a product will only be available for a very limited time, or that it will only be available on particular terms for a very limited time, in order to elicit an immediate decision and deprive consumers of sufficient opportunity or time to make an informed choice.
8. Undertaking to provide after-sales service to consumers with whom the trader has communicated prior to a transaction in a language which is not an official language of the EEA State where the trader is located and then making such service available only in another language without clearly disclosing this to the consumer before the consumer is committed to the transaction.
9. Stating or otherwise creating the impression that a product can legally be sold when it cannot.
10. Presenting rights given to consumers in law as a distinctive feature of the trader's offer.
11. Using editorial content in the media to promote a product where a trader has paid for the promotion without making that clear in the content or by images or sounds clearly identifiable by the consumer (advertorial).
12. Making a materially inaccurate claim concerning the nature and extent of the risk to the personal security of the consumer or his family if the consumer does not purchase the product.
13. Promoting a product similar to a product made by a particular manufacturer in such a manner as deliberately to mislead the consumer into believing that the product is made by that same manufacturer when it is not.
14. Establishing, operating or promoting a pyramid promotional scheme where a consumer gives consideration for the opportunity to receive compensation that is derived primarily from the introduction of other consumers into the scheme rather than from the sale or consumption of products.
15. Claiming that the trader is about to cease trading or move premises when he is not.

16. Claiming that products are able to facilitate winning in games of chance.
17. Falsely claiming that a product is able to cure illnesses, dysfunction or malformations.
18. Passing on materially inaccurate information on market conditions or on the possibility of finding the product with the intention of inducing the consumer to acquire the product at conditions less favourable than normal market conditions.
19. Claiming in a commercial practice to offer a competition or prize promotion without awarding the prizes described or a reasonable equivalent.
20. Describing a product as ‘gratis’, ‘free’, ‘without charge’ or similar if the consumer has to pay anything other than the unavoidable cost of responding to the commercial practice and collecting or paying for delivery of the item.
21. Including in marketing material an invoice or similar document seeking payment which gives the consumer the impression that he has already ordered the marketed product when he has not.
22. Falsely claiming or creating the impression that the trader is not acting for purposes relating to his trade, business, craft or profession, or falsely representing oneself as a consumer.
23. Creating the false impression that after-sales service in relation to a product is available in an EEA State other than the one in which the product is sold.
24. Creating the impression that the consumer cannot leave the premises until a contract is formed.
25. Conducting personal visits to the consumer’s home ignoring the consumer’s request to leave or not to return, except in circumstances and to the extent justified to enforce a contractual obligation.
26. Making persistent and unwanted solicitations by telephone, fax, e-mail or other remote media except in circumstances and to the extent justified to enforce a contractual obligation.
27. Requiring a consumer who wishes to claim on an insurance policy to produce documents which could not reasonably be considered relevant as to whether the claim was valid, or failing systematically to respond to pertinent correspondence, in order to dissuade a consumer from exercising his contractual rights.
28. Including in an advertisement a direct exhortation to children to buy advertised products or persuade their parents or other adults to buy advertised products for them.
29. Demanding immediate or deferred payment for or the return or safekeeping of products supplied by the trader, but not solicited by the consumer, except where the product is a substitute supplied in accordance with regulation 19(7) of the Consumer Protection (Distance Selling) Regulations 2000 (inertia selling)(11).
30. Explicitly informing a consumer that if he does not buy the product or service, the trader’s job or livelihood will be in jeopardy.
31. Creating the false impression that the consumer has already won, will win, or will on doing a particular act win, a prize or other equivalent benefit, when in fact either—
  - (a) there is no prize or other equivalent benefit, or
  - (b) taking any action in relation to claiming the prize or other equivalent benefit is subject to the consumer paying money or incurring a cost.

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(11) [S.I.2000/2334](#), to which there are amendments not relevant to these Regulations.



## SCHEDULE 2

Regulation 30(1)

### Amendments

## PART 1

### Amendments to Acts

#### **Anglo-Portuguese Commercial Treaty Act 1914**

1. In section 1 of the Anglo-Portuguese Commercial Treaty Act 1914<sup>(12)</sup> (meaning of “port” and “madeira” as applied to wine) omit the words from “Provided that” to the end.

#### **Anglo-Portuguese Commercial Treaty Act 1916**

2. In section 1(1) of the Anglo-Portuguese Commercial Treaty Act 1916<sup>(13)</sup> (further limitation of the use of the description “port”) omit the words from “Provided that” to the end.

#### **Fraudulent Mediums Act 1951**

3. The Fraudulent Mediums Act 1951<sup>(14)</sup> shall cease to have effect.

#### **Trading Representations (Disabled Persons) Act 1958**

4. The Trading Representations (Disabled Persons) Act 1958<sup>(15)</sup> shall cease to have effect.

#### **Trading Representations (Disabled Persons) Act (Northern Ireland) 1958**

5. The Trading Representations (Disabled Persons) Act (Northern Ireland) 1958<sup>(16)</sup> shall cease to have effect.

#### **Mock Auctions Act 1961**

6. The Mock Auctions Act 1961<sup>(17)</sup> shall cease to have effect.

#### **Trade Descriptions Act 1968**

7. The Trade Descriptions Act 1968<sup>(18)</sup> is amended as follows.

8. The following provisions shall cease to have effect—

- (a) section 1(1) (prohibition of false trade descriptions);
- (b) section 5 (trade descriptions used in advertisements);
- (c) section 6 (offer to supply);
- (d) sections 7 to 10 (power to define terms and to require display etc. of information);
- (e) sections 13 to 15 (false representations or statements concerning services etc);

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<sup>(12)</sup> 1914 c.1; section 1 was amended by paragraph 1 of Schedule 1 to the Trade Descriptions Act 1968 (c.29).

<sup>(13)</sup> 1916 c.39; section 1 was amended by paragraph 2 of Schedule 1 to the Trade Descriptions Act 1968 (c.29).

<sup>(14)</sup> 1951 c.33.

<sup>(15)</sup> 1958 c.49.

<sup>(16)</sup> 1958 c.24 (N.I.).

<sup>(17)</sup> 1961 c.47.

<sup>(18)</sup> 1968 c.29.

- (f) section 21(1) and (2) (accessories to offences committed abroad);
- (g) section 22 (restrictions on institution of proceedings and admission of evidence);
- (h) section 32 (power to exempt goods sold for export, etc);
- (i) section 37 (market research experiments);
- (j) section 39(2) (interpretation).

9. In section 1, for subsection (2) substitute—

“(2) Sections 2 to 4 shall have effect for the interpretation of expressions used in this Act

10. In section 12 (false representations as to royal approval or award, etc), after subsection (2) add—

“(3) A person shall not be guilty of an offence under subsection (1) or (2) by reason of doing anything that is a commercial practice unless the commercial practice is unfair.

In this subsection “commercial practice” and “unfair” have the same meaning as in the Consumer Protection from Unfair Trading Regulations 2008.”.

11. In section 38 (orders), in subsection (3), for the words from “section 7” to “thereof” substitute “section 36 of this Act”.

12. In section 39 (interpretation), in subsection (1), for “2 to 6” substitute “2 to 4”.

#### **Administration of Justice Act 1970**

13. In section 40 of the Administration of Justice Act 1970(19) (punishment for unlawful harassment of debtors), after subsection (3) insert—

“(3A) Subsection (1) above does not apply to anything done by a person to another in circumstances where what is done is a commercial practice within the meaning of the Consumer Protection from Unfair Trading Regulations 2008 and the other is a consumer in relation to that practice.”.

#### **Greater London Council (General Powers) Act 1972**

14. In section 17 of the Greater London Council (General Powers) Act 1972(20) (duty to give information in certain cases), in subsection (5)—

(a) at the end of paragraph (b) omit “or”, and

(b) after paragraph (c) insert—

“(d) the Business Protection from Misleading Marketing Regulations 2008; or  
(e) the Consumer Protection from Unfair Trading Regulations 2008.”.

#### **Fair Trading Act 1973**

15. Sections 29 to 33 of the Fair Trading Act 1973(21) shall cease to have effect, except in so far as they are applied by section 123 of that Act.

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(19) 1970 c.31..

(20) 1972 c.xl.

(21) 1973 c.41.

### **Hallmarking Act 1973**

**16.**—(1) Section 1 of the Hallmarking Act 1973<sup>(22)</sup> (prohibited descriptions of unhallmarked articles) is amended as follows.

(2) Subsection (4) is omitted.

(3) Before subsection (5) insert—

“(4A) Subsection (4B) applies in any case where—

- (a) the giving of a description of the fineness (whether in parts per thousand or otherwise) of any precious metal constitutes advertising within the meaning of the Business Protection from Misleading Marketing Regulations 2008, and
- (b) the description is false to any extent or degree (except by understating the fineness).

(4B) In any such case, the giving of the description is to be treated as satisfying the requirements of regulation 3(2) of those Regulations (requirements for advertising to be misleading).

(4C) Subsection (4D) applies in any case where—

- (a) the giving of a description of the fineness (whether in parts per thousand or otherwise) of any precious metal constitutes a commercial practice within the meaning of the Consumer Protection from Unfair Trading Regulations 2008, and
- (b) the description is false to any extent or degree (except by understating the fineness).

(4D) In any such case, the giving of the description is to be treated as satisfying the conditions in regulation 5(2) of those Regulations (conditions for a commercial practice to be a misleading action).”.

(4) In Part 3 of Schedule 1 (use of the words “carats”, etc), in paragraph 1, for “and the Act of 1968” substitute “, the Business Protection from Misleading Marketing Regulations 2008 and the Consumer Protection from Unfair Trading Regulations 2008”.

### **Consumer Credit Act 1974**

**17.** The Consumer Credit Act 1974<sup>(23)</sup> is amended as follows.

**18.** Section 46 (false or misleading advertisements) shall cease to have effect.

**19.** In section 77 (duty to give information to debtor under fixed-sum credit agreement), in subsection (4), omit paragraph (b) and the “and” preceding it.

**20.** In section 78 (duty to give information to debtor under running-account credit agreement), in subsection (6), omit paragraph (b) and the “and” preceding it.

**21.** In section 79 (duty to give hirer information), in subsection (3), omit paragraph (b) and the “and” preceding it.

**22.** In section 85 (duty on issue of new credit tokens), in subsection (2), omit paragraph (b) and the “and” preceding it.

**23.** In section 97 (duty to give information), in subsection (3), omit paragraph (b) and the “and” preceding it.

**24.** In section 103 (termination statements)—

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<sup>(22)</sup> 1973 c.43.

<sup>(23)</sup> 1974 c.39.

- (a) omit subsection (5), and
- (b) at the end insert—

“(6) A breach of the duty imposed by subsection (1) is actionable as a breach of statutory duty.”.

**25.** In section 107 (duty to give information to surety under fixed-sum credit agreement), in subsection (4), omit paragraph (b) and the “and” preceding it.

**26.** In section 108 (duty to give information to surety under running-account credit agreement), in subsection (4), omit paragraph (b) and the “and” preceding it.

**27.** In section 109 (duty to give information to surety under consumer hire agreement), in subsection (3), omit paragraph (b) and the “and” preceding it.

**28.** In section 110 (duty to give information to debtor or hirer), in subsection (3), omit paragraph (b) and the “and” preceding it.

#### **Telecommunications Act 1984**

**29.** In section 101 of the Telecommunications Act 1984(**24**) (general restrictions on disclosure of information), in subsection (3)—

- (a) omit the paragraph (i) relating to the Control of Misleading Advertisements Regulations 1988, and
- (b) after paragraph (t) insert—

“(u) the Business Protection from Misleading Marketing Regulations 2008;  
(v) the Consumer Protection from Unfair Trading Regulations 2008.”.

#### **Companies Act 1985**

**30.** In Schedule 15D to the Companies Act 1985(**25**) (disclosures), in paragraph 17—

- (a) omit paragraph (h), and
- (b) after paragraph (i) insert—

“(j) the Business Protection from Misleading Marketing Regulations 2008;  
(k) the Consumer Protection from Unfair Trading Regulations 2008.”.

#### **Weights and Measures Act 1985**

**31.** Section 29 of the Weights and Measures Act 1985(**26**) (misrepresentation) shall cease to have effect.

#### **Airports Act 1986**

**32.** In section 74 of the Airports Act 1986(**27**) (restrictions on disclosure of information), in subsection (3)—

- (a) omit paragraph (j), and
- (b) after paragraph (t) insert—

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(24) 1984 c.12; section 103(3)(s) and (t) were inserted by S.I. 2006/3336 (N.I. 21).

(25) 1985 c.6; schedule 15D was inserted by section 25(1) of and paragraphs 16 and 25 of Schedule 2 to the Companies (Audit, Investigations and Community Enterprise) Act 2004 (c.27).

(26) 1985 c.72.

(27) 1986 c.31; section 74(3)(t) was inserted by S.I. 2006/3336 (N.I.21).

- “(u) the Business Protection from Misleading Marketing Regulations 2008;
- (v) the Consumer Protection from Unfair Trading Regulations 2008.”.

### **Consumer Protection Act 1987**

- 33.** The Consumer Protection Act 1987(**28**) is amended as follows.
- 34.** Sections 20 to 26 (misleading price indications) shall cease to have effect.
- 35.** In section 39 (defence of due diligence), in subsection (5), for “, 14(6) or 20(1)” substitute “or 14(6)”.
- 36.** In section 46 (meaning of “supply”), in subsection (7), for “Parts II to IV” substitute “Part 2 or Part 4”.
- 37.** In section 49 (Northern Ireland), in subsection (1)(a), for “Parts I and III” substitute “Part 1”.

### **County of Cleveland Act 1987**

- 38.** In section 23 of the County of Cleveland Act 1987(**29**) (control of occasional sales), subsections (6) and (7) shall cease to have effect.

### **Copyright, Designs and Patents Act 1988**

- 39.** The Copyright, Designs and Patents Act 1988(**30**) is amended as follows.
- 40.** In section 114A (forfeiture of infringing copies, etc: England and Wales or Northern Ireland), in subsection (2), for the “or” at the end of paragraph (b) substitute—
  - “(ba) an offence under the Business Protection from Misleading Marketing Regulations 2008,
  - (bb) an offence under the Consumer Protection from Unfair Trading Regulations 2008, or”.
- 41.** In section 114B (forfeiture of infringing copies, etc: Scotland), in subsection (15), for the definition of “relevant offence” substitute—
  - ““relevant offence” means—
  - (a) an offence under section 107(1), (2) or (2A) (criminal liability for making or dealing with infringing articles, etc),
  - (b) an offence under the Trade Descriptions Act 1968,
  - (c) an offence under the Business Protection from Misleading Marketing Regulations 2008,
  - (d) an offence under the Consumer Protection from Unfair Trading Regulations 2008, or
  - (e) any offence involving dishonesty or deception;”.
- 42.** In section 204A (forfeiture of illicit recordings: England and Wales or Northern Ireland), in subsection (2), for the “or” at the end of paragraph (b) substitute—
  - “(ba) an offence under the Business Protection from Misleading Marketing Regulations 2008,

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(28) 1987 c.43.

(29) 1987 c.ix.

(30) 1988 c.25; sections 114A and 114B were inserted by section 3 of the Copyright, etc and Trade Marks (Offences and Enforcement) Act 2002 (c.22). Sections 204A and 204B were inserted by section 4 of that Act. Sections 297C and 297D were inserted by section 5 of that Act.

(bb) an offence under the Consumer Protection from Unfair Trading Regulations 2008, or”.

**43.** In section 204B (forfeiture: Scotland), in subsection (15), for the definition of “relevant offence” substitute—

““relevant offence” means—

- (a) an offence under section 198(1) or (1A) (criminal liability for making or dealing with illicit recordings),
- (b) an offence under the Trade Descriptions Act 1968,
- (c) an offence under the Business Protection from Misleading Marketing Regulations 2008,
- (d) an offence under the Consumer Protection from Unfair Trading Regulations 2008, or
- (e) any offence involving dishonesty or deception;”.

**44.** In section 297C (forfeiture of unauthorised decoders: England and Wales or Northern Ireland), in subsection (2), for the “or” at the end of paragraph (b) substitute—

- “(ba) an offence under the Business Protection from Misleading Marketing Regulations 2008,
- (bb) an offence under the Consumer Protection from Unfair Trading Regulations 2008, or”.

**45.** In section 297D (forfeiture of unauthorised decoders: Scotland), in subsection (15), for the definition of “relevant offence” substitute—

““relevant offence” means—

- (a) an offence under section 297A(1) (criminal liability for making, importing, etc unauthorised decoders),
- (b) an offence under the Trade Descriptions Act 1968,
- (c) an offence under the Business Protection from Misleading Marketing Regulations 2008,
- (d) an offence under the Consumer Protection from Unfair Trading Regulations 2008, or
- (e) any offence involving dishonesty or deception;”.

### **Road Traffic Act 1988**

**46.** In section 80 of the Road Traffic Act 1988<sup>(31)</sup> (approval marks) —

- (a) in subsection (1), omit the words from “, and any markings” to the end;
- (b) in subsection (2), omit the words from “, whether or not” to the end.

### **Water Act 1989**

**47.** In section 174 of the Water Act 1989<sup>(32)</sup> (general restrictions on disclosure of information), in subsection (3)—

(a) after paragraph (lo) insert—

“(lp) any subordinate legislation made for the purpose of securing compliance with Directive [2005/29/EC](#) of the European Parliament and of the Council of 11 May 2005 concerning

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<sup>(31)</sup> 1988 c.52.

<sup>(32)</sup> 1989 c.15.

unfair business-to-consumer commercial practices in the internal market;”

(b) for paragraph (m) substitute—

“(m) any subordinate legislation made for the purpose of securing compliance with Directive [2006/114/EC](#) of the European Parliament and of the Council of 12 December 2006 concerning misleading and comparative advertising.”

### **Courts and Legal Services Act 1990**

**48.** In section 50 of the Courts and Legal Services Act 1990(**33**) (exceptions from restrictions on disclosure), in subsection (2)(m)—

(a) omit sub-paragraph (viii), and

(b) after sub-paragraph (xi) insert—

“(xii) the Business Protection from Misleading Marketing Regulations 2008;

(xiii) the Consumer Protection from Unfair Trading Regulations 2008;”.

### **Water Industry Act 1991**

**49.** In Schedule 15 to the Water Industry Act 1991(**34**) (enactments etc in respect of which disclosure may be made), in Part 2—

(a) omit the words from “Any subordinate legislation” to the end, and

(b) at the end insert—

“Any subordinate legislation made for the purpose of securing compliance with Directive [2005/29/EC](#) of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market.

Any subordinate legislation made for the purpose of securing compliance with Directive [2006/114/EC](#) of the European Parliament and of the Council of 12 December 2006 concerning misleading and comparative advertising.”.

### **Water Resources Act 1991**

**50.** In Schedule 24 to the Water Resources Act 1991(**35**) (enactments etc in respect of which disclosure may be made), in Part 2—

(a) omit the words “Any subordinate legislation” to the end, and

(b) at the end insert—

“Any subordinate legislation made for the purpose of securing compliance with Directive [2005/29/EC](#) of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market.

Any subordinate legislation made for the purpose of securing compliance with Directive [2006/114/EC](#) of the European Parliament and of the Council of 12 December 2006 concerning misleading and comparative advertising.”.

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(33) [1990 c.41](#).

(34) [1991 c.56](#).

(35) [1991 c.57](#).

### North Yorkshire County Council Act 1991

**51.** In section 6 of the North Yorkshire County Council Act 1991(**36**) (control of occasional sales), subsections (6) and (7) shall cease to have effect.

### Railways Act 1993

**52.** In section 145 of the Railways Act 1993(**37**) (general restrictions on disclosure of information), in subsection (3)—

(a) after paragraph (qt) insert—

“(qu) any subordinate legislation made for the purpose of securing compliance with Directive [2005/29/EC](#) of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market”;

(b) for paragraph (r) substitute—

“(r) any subordinate legislation made for the purpose of securing compliance with Directive [2006/114/EC](#) of the European Parliament and of the Council of 12 December 2006 concerning misleading and comparative advertising.”.

### Trade Marks Act 1994

**53.** The Trade Marks Act 1994(**38**) is amended as follows.

**54.** In section 91 (power of Commissioners for Revenue and Customs to disclose information), for the words from “an offence under” to the end substitute “an offence under—

- “(a) section 92 below (unauthorised use of trade mark, &c in relation to goods),
- (b) the Trade Descriptions Act 1968,
- (c) the Business Protection from Misleading Marketing Regulations 2008, or
- (d) the Consumer Protection from Unfair Trading Regulations 2008.”.

**55.** In section 97 (forfeiture: England and Wales or Northern Ireland), in subsection (8), for the words from “an offence under” to the end substitute—

- “(a) an offence under section 92 above (unauthorised use of trade mark, &c in relation to goods),
- (b) an offence under the Trade Descriptions Act 1968,
- (c) an offence under the Business Protection from Misleading Marketing Regulations 2008,
- (d) an offence under the Consumer Protection from Unfair Trading Regulations 2008, or
- (e) any offence involving dishonesty or deception.”.

**56.** In section 98 (forfeiture: Scotland), in subsection (14), in the definition of “relevant offence”, for the words from “an offence under” to the end substitute—

- “(a) an offence under section 92 above (unauthorised use of trade mark, &c in relation to goods),
- (b) an offence under the Trade Descriptions Act 1968,

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**(36)** 1991 c.xiv.

**(37)** 1993 c.43; section 145 was amended by paragraph 127(1) and (3) of Schedule 17 to the Communications Act 2003 (c.21).

**(38)** 1994 c.26; section 91 was amended by paragraph 58 of Schedule 4 to the Commissioners for Revenue and Customs Act 2005 (c.11).



- (c) an offence under the Business Protection from Misleading Marketing Regulations 2008,
- (d) an offence under the Consumer Protection from Unfair Trading Regulations 2008, or
- (e) any offence involving dishonesty or deception;”.

#### **Coal Industry Act 1994**

**57.** In section 59 of the Coal Industry Act 1994<sup>(39)</sup> (information to be kept confidential by the Authority), in subsection (4)—

- (a) omit paragraph (m), and
- (b) after paragraph (p) insert—
  - “(q) any subordinate legislation made for the purpose of securing compliance with Directive [2005/29/EC](#) of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market;
  - (r) any subordinate legislation made for the purpose of securing compliance with Directive [2006/114/EC](#) of the European Parliament and of the Council of 12 December 2006 concerning misleading and comparative advertising.”.

#### **London Local Authorities Act 1996**

**58.** Section 16 of the London Local Authorities Act 1996<sup>(40)</sup> (display of names, etc) shall cease to have effect.

#### **Greater London Authority Act 1999**

**59.** In section 235 of the Greater London Authority Act 1999<sup>(41)</sup> (restrictions on disclosure of information), in subsection (3)—

- (a) after paragraph (rt) insert—
  - “(ru) any subordinate legislation made for the purpose of securing compliance with Directive [2005/29/EC](#) of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market;”;
- (b) for paragraph (s) substitute—
  - “(s) any subordinate legislation made for the purpose of securing compliance with Directive [2006/114/EC](#) of the European Parliament and of the Council of 12 December 2006 concerning misleading and comparative advertising.”.

#### **Postal Services Act 2000**

**60.** In Schedule 7 to the Postal Services Act 2000<sup>(42)</sup> (disclosure of information), in paragraph 3(3)—

- (a) after sub-paragraph (pp) insert—

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<sup>(39)</sup> [1994 c.21](#).

<sup>(40)</sup> [1996 c.ix](#).

<sup>(41)</sup> [1999 c.29](#).

<sup>(42)</sup> [2000 c.26](#); paragraph 3(3) of Schedule 7 was substituted by article 2(4) of [S.I. 2001/3617](#).

“(ppa) any subordinate legislation made for the purpose of securing compliance with Directive [2005/29/EC](#) of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market,”

(b) for sub-paragraph (qq) substitute—

“(qq) any subordinate legislation made for the purpose of securing compliance with Directive [2006/114/EC](#) of the European Parliament and of the Council of 12 December 2006 concerning misleading and comparative advertising.”

### Utilities Act 2000

**61.** In section 105 of the Utilities Act 2000(**43**) (general restrictions on disclosure of information), in subsection (6)—

(a) omit paragraph (k), and

(b) after paragraph (u) insert—

“(v) the Business Protection from Misleading Marketing Regulations 2008;

(w) the Consumer Protection from Unfair Trading Regulations 2008.”.

### Transport Act 2000

**62.** In Schedule 9 to the Transport Act 2000(**44**) (air traffic: information), in paragraph 3(3)—

(a) after paragraph (s) insert—

“(sa) any subordinate legislation made for the purpose of securing compliance with Directive [2005/29/EC](#) of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market;”;

(b) for paragraph (t) substitute—

“(t) any subordinate legislation made for the purpose of securing compliance with Directive [2006/114/EC](#) of the European Parliament and of the Council of 12 December 2006 concerning misleading and comparative advertising;”.

### Criminal Justice and Police Act 2001

**63.** In section 66 of the Criminal Justice and Police Act 2001(**45**) (general interpretation of Part 2), in subsection (4), after paragraph (p) insert—

“(q) regulation 23 of the Business Protection from Misleading Marketing Regulations 2008 (power of entry and investigation, etc.);

(r) regulation 21 of the Consumer Protection from Unfair Trading Regulations 2008 (power of entry and investigation, etc.).”.

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(43) [2000 c.27](#); section 105(6)(u) was inserted by section 59(1) of, and paragraph 16 of Schedule 12 to, the Railways Act [2005 c.14](#).

(44) [2000 c.38](#).

(45) [2001 c.16](#); section 66(4)(o) was inserted by regulation 47(2) and (3) of [S.I. 2005/1803](#) and section 66(4)(p) was inserted by paragraph 14(2) of Schedule 3 to the Animal Welfare Act [2006 c.45](#); paragraph 731 of Schedule 1 was inserted by paragraph 14(3) of Schedule 3 to the Animal Welfare Act 2006; paragraphs 4A and 9A of Schedule 2 were inserted by regulation 47(2) and (5) of [S.I. 2005/1803](#).

**64.** In Schedule 1 to that Act, in Part 1 (powers to which section 50 applies), after paragraph 73I insert—

*“Business Protection from Misleading Marketing Regulations 2008*

**73J.** Each of the powers of seizure conferred by the provisions of regulation 23(1)(c) and (d) of the Business Protection from Misleading Marketing Regulations 2008 (seizure of evidence of breach of regulations, etc).

*Consumer Protection from Unfair Trading Regulations 2008*

**73K.** Each of the powers of seizure conferred by the provisions of regulation 21(1)(c) and (d) of the Consumer Protection from Unfair Trading Regulations 2008 (seizure of evidence of breach of regulations, etc).”.

**65.**—(1) In Schedule 2 to that Act, Part 1 (application of enactments) is amended as follows.

(2) After paragraph 4A insert—

**“4B.** Regulation 26 of the Business Protection from Misleading Marketing Regulations 2008 (notice of test and intended proceedings) shall apply in relation to items seized under section 50 of this Act in reliance on the power of seizure conferred by regulation 23 of those Regulations as it applies in relation to items seized in pursuance of regulation 23 of those Regulations.

**4C.** Regulation 24 of the Consumer Protection from Unfair Trading Regulations 2008 (notice of test and intended proceedings) shall apply in relation to items seized under section 50 of this Act in reliance on the power of seizure conferred by regulation 21 of those Regulations as it applies in relation to items seized in pursuance of regulation 21 of those Regulations.”.

(3) After paragraph 9A insert—

**“9B.** Regulation 27 of the Business Protection from Misleading Marketing Regulations 2008 (compensation for seizure and detention) shall apply in relation to the seizure of items under section 50 of this Act in reliance on the power of seizure conferred by regulation 23 of those Regulations, and the retention of those items, as it applies in relation to the seizure and detention of goods under regulation 23 of those Regulations.

**9C.** Regulation 25 of the Consumer Protection from Unfair Trading Regulations 2008 (compensation for seizure and detention) shall apply in relation to the seizure of items under section 50 of this Act in reliance on the power of seizure conferred by regulation 21 of those Regulations, and the retention of those items, as it applies in relation to the seizure and detention of goods under regulation 21 of those Regulations.”.

**Kent County Council Act 2001**

**66.** Section 13 of the Kent County Council Act 2001(46) (display of name and address) shall cease to have effect.

**Medway Council Act 2001**

**67.** Section 13 of the Medway Council Act 2001(47) (display of name and address) shall cease to have effect.

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(46) 2001 c.iii.

(47) 2001 c.iv.

### Enterprise Act 2002

68. The Enterprise Act 2002(48) is amended as follows.

69. Section 10(2) (saving of section 22 of the Fair Trading Act 1973 and orders made under it) shall cease to have effect (and accordingly the provisions of the Fair Trading Act 1973 referred to in Schedule 4 are repealed to the extent specified there, subject to any provision of that Schedule).

70. In Schedule 13 (listed Directives and Regulations)—

- (a) omit paragraph 1 (Council Directive [84/450/EEC](#) concerning misleading advertising);
- (b) omit paragraph 7A (Directive [97/55/EC](#) of the European Parliament and of the Council amending Directive [84/450/EEC](#));
- (c) in paragraph 11, for “Articles 83 to 100” substitute “Articles 86 to 100”.

### Licensing Act 2003

71. In Schedule 4 to the Licensing Act 2003(49) (personal licence: relevant offences), at the end insert—

“22. An offence under regulation 6 of the Business Protection from Misleading Marketing Regulations 2008 (offence of misleading advertising) in circumstances where the advertising in question relates to alcohol or to goods that include alcohol.

23. An offence under regulation 8, 9, 10, 11 or 12 of the Consumer Protection from Unfair Trading Regulations 2008 (offences relating to unfair commercial practices) in circumstances where the commercial practice in question is directly connected with the promotion, sale or supply of alcohol or of a product that includes alcohol.”.

### Communications Act 2003

72. In section 393 of the Communications Act 2003(50) (general restrictions on disclosure of information), in subsection (5), for paragraph (p) substitute—

- “(p) the Business Protection from Misleading Marketing Regulations 2008;
- (q) the Consumer Protection from Unfair Trading Regulations 2008.”.

### Nottingham City Council Act 2003

73. Section 12 of the Nottingham City Council Act 2003(51) (display of name and address) shall cease to have effect.

### Wireless Telegraphy Act 2006

74. In section 111 of the Wireless Telegraphy Act 2006(52) (disclosure of information), in subsection (6), for paragraph (n) substitute—

- “(n) the Business Protection from Misleading Marketing Regulations 2008;
- (o) the Consumer Protection from Unfair Trading Regulations 2008.”.

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(48) [2002 c.40](#); paragraph 7A was inserted by regulation 22(2)(b) of [S.I. 2006/3363](#) and paragraph 11 was substituted by paragraph 19 of the Schedule to [S.I. 2005/2759](#).

(49) [2003 c.17](#).

(50) [2003 c.21](#).

(51) [2003 c.ii](#).

(52) [2006 c.36](#).

### **Companies Act 2006**

75. In Part 2 of Schedule 2 to the Companies Act 2006(53) (specified descriptions of disclosures), in paragraph 34—

- (a) omit paragraph (h);
- (b) after paragraph (i) insert—
  - “(j) the Business Protection from Misleading Marketing Regulations 2008;
  - (k) the Consumer Protection from Unfair Trading Regulations 2008.”.

## **PART 2**

### **Amendments to other legislation**

#### **Tourism (Sleeping Accommodation Price Display) Order 1977**

76. The Tourism (Sleeping Accommodation Price Display) Order 1977(54) is revoked.

#### **Weights and Measures (Northern Ireland) Order 1981**

77. Article 22(2) of the Weights and Measures (Northern Ireland) Order 1981(55) is revoked.

#### **Road Vehicles (Construction and Use) Regulations 1986**

78. Regulation 5 of the Road Vehicles (Construction and Use) Regulations 1986(56) (Trade Descriptions Act 1968) is revoked.

#### **The Companies (Northern Ireland) Order 1986**

79. In Schedule 15D(57) (Disclosures) to the Companies (Northern Ireland) Order 1986 in paragraph 16—

- (a) omit sub-paragraph (h), and
- (b) after sub-paragraph (i) insert—
  - “(j) the Business Protection from Misleading Marketing Regulations 2008;
  - (k) the Consumer Protection from Unfair Trading Regulations 2008.”.

#### **Consumer Protection (Northern Ireland) Order 1987**

80. Articles 13 to 27, 30 and 33 of the Consumer Protection (Northern Ireland) Order 1987(58) are revoked.

#### **Control of Misleading Advertisements Regulations 1988**

81. The Control of Misleading Advertisements Regulations 1988(59) are revoked.

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(53) 2006 c.46.

(54) S.I.1977/1877, amended by S.I. 1985/1778.

(55) S.I. 1981/231 (N.I.10) to which there are amendments not relevant to these Regulations..

(56) S.I. 1986/1078, to which there are amendments not relevant to these Regulations.

(57) S.I. 1986/1032 (N.I.6), amended by S.I. 2005/1967 (N.I.17).

(58) S.I. 1987/2049 (N.I.20).

(59) S.I. 1988/915, amended by S.I. 2000/914, 2003/3183.

### Road Vehicles Lighting Regulations 1989

**82.** Regulation 10 of the Road Vehicles Lighting Regulations 1989(**60**) (provision as respects the Trade Descriptions Act 1968) is revoked.

### Estate Agents (Specified Offences) (No. 2) Order 1991

**83.**—(1) The Schedule to the Estate Agents (Specified Offences) (No.2) Order 1991(**61**) (specified offences) is amended as follows.

- (2) Omit the entry for the Consumer Protection Act 1987.
- (3) Omit the entry for the Consumer Protection (Northern Ireland) Order 1987.
- (4) Immediately before the entry for the Property Misdescriptions Act 1991 insert—

“Business Protection from Misleading Marketing Regulations 2008	Regulation 6	Misleading advertisements
	Regulation 25	Obstruction of authorised officers”

- (5) In the entry for the Trade Descriptions Act 1968—
  - (a) in the column headed “Provision” omit “Section 1(1)”, “Section 13” and “Section 14(1)(b)”;
  - (b) in the column headed “Description of Offence” omit “Applying false trade description in relation to goods”, “False representations as to supply of goods or services”, “False or misleading statements as to services etc”.
- (6) Add at the end—

“Consumer Protection from Unfair Trading Regulations 2008	Regulation 8	Offences relating to unfair commercial practices
	Regulation 9	
	Regulation 10	
	Regulation 11	
	Regulation 12	
	Regulation 23	Obstruction of authorised officers ”

### Airports (Northern Ireland) Order 1994

**84.** In Article 49 of the Airports (Northern Ireland) Order 1994(**62**) (restriction on disclosure of information), in paragraph (3)—

- (a) omit sub-paragraph (l), and
- (b) after sub-paragraph (u) add—
  - “(v) the Business Protection from Misleading Marketing Regulations 2008;
  - (w) the Consumer Protection from Unfair Trading Regulations 2008.”.

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**(60)** S.I. 1989/1796, to which there are amendments not relevant to these Regulations..

**(61)** S.I. 1991/1091, amended by S.I. 1992/2833; there are other amending instruments but none is relevant.

**(62)** S.I. 1994/426 (N.I.1).

### **Motor Cycle Silencer and Exhaust Systems Regulations 1995**

85. Regulation 7 of the Motor Cycle Silencer and Exhaust Systems Regulations 1995<sup>(63)</sup> (the Trade Descriptions Act 1968) is revoked.

### **Energy Information (Washing Machines) Regulations 1996**

86. In Schedule 5 to the Energy Information (Washing Machines) Regulations 1996<sup>(64)</sup> (offences, enforcement and other matters), in paragraph 15(3)—

- (a) omit paragraph (i), and
- (b) after paragraph (h) insert—
  - “(k) any subordinate legislation made for the purpose of securing compliance with Directive [2005/29/EC](#) of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market;
  - (l) any subordinate legislation made for the purpose of securing compliance with Directive [2006/114/EC](#) of the European Parliament and of the Council of 12 December 2006 concerning misleading and comparative advertising.”

### **Energy Information (Tumble Driers) Regulations 1996**

87. In Schedule 5 to the Energy Information (Tumble Driers) Regulations 1996<sup>(65)</sup> (offences, enforcement and other matters), in paragraph 15(3)—

- (a) omit paragraph (i), and
- (b) after paragraph (h) insert—
  - “(k) any subordinate legislation made for the purpose of securing compliance with Directive [2005/29/EC](#) of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market;
  - (l) any subordinate legislation made for the purpose of securing compliance with Directive [2006/114/EC](#) of the European Parliament and of the Council of 12 December 2006 concerning misleading and comparative advertising.”

### **Energy Information (Combined Washer-Driers) Regulations 1997**

88. In Schedule 5 to the Energy Information (Combined Washer-Driers) Regulations 1997<sup>(66)</sup> (offences, enforcement and other matters), in paragraph 15(3)—

- (a) omit paragraph (i), and
- (b) after paragraph (h) insert—
  - “(k) any subordinate legislation made for the purpose of securing compliance with Directive [2005/29/EC](#) of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market;
  - (l) any subordinate legislation made for the purpose of securing compliance with Directive [2006/114/EC](#) of the European Parliament and of the Council of 12 December 2006 concerning misleading and comparative advertising.”

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<sup>(63)</sup> S.I. 1995/2370.

<sup>(64)</sup> S.I. 1996/600, amended by S.I. 2001/3142; there are other amending instruments but none is relevant.

<sup>(65)</sup> S.I. 1996/601, amended by S.I. 2001/3142; there are other amending instruments but none is relevant.

<sup>(66)</sup> S.I. 1997/1624, amended by S.I. 2001/3142; there are other amending instruments but none is relevant.

### **Motor Cycles (Protective Helmets) Regulations 1998**

**89.** In regulation 6 of the Motor Cycle (Protective Helmets) Regulations 1998(**67**) (saving for the Trade Descriptions Act 1968 and the Consumer Protection Act 1987) omit the words “the Trade Descriptions Act 1968 or”.

### **Motor Cycles (Protective Headgear) Regulations (Northern Ireland) 1999**

**90.** In regulation 4 of the Motor Cycles (Protective Headgear) Regulations (Northern Ireland) 1999(**68**) (saving for the Trade Descriptions Act 1968, the Consumer Protection Act 1987 and the Consumer Protection (Northern Ireland) Order 1987) omit the words “the Trade Descriptions Act 1968”.

### **Motor Vehicles (Construction and Use) Regulations (Northern Ireland) 1999**

**91.** Regulation 4 of the Motor Vehicles (Construction and Use) Regulations (Northern Ireland) 1999(**69**) (Trade Descriptions Act 1968) is revoked.

### **Energy Information (Lamps) Regulations 1999**

**92.** In Schedule 4 to the Energy Information (Lamps) Regulations 1999(**70**) (offences, enforcement and other matters), in paragraph 12(3)—

(a) omit paragraph (i), and

(b) after paragraph (h) insert—

“(j) any subordinate legislation made for the purpose of securing compliance with Directive [2005/29/EC](#) of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market;

(k) any subordinate legislation made for the purpose of securing compliance with Directive [2006/114/EC](#) of the European Parliament and of the Council of 12 December 2006 concerning misleading and comparative advertising.”.

### **Energy Information (Dishwashers) Regulations 1999**

**93.** In Schedule 5 to the Energy Information (Dishwashers) Regulations 1999(**71**) (offences, enforcement and other matters), in paragraph 12(3)—

(a) omit paragraph (i), and

(b) after paragraph (h) insert—

“(j) any subordinate legislation made for the purpose of securing compliance with Directive [2005/29/EC](#) of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market;

(k) any subordinate legislation made for the purpose of securing compliance with Directive [2006/114/EC](#) of the European Parliament and of the Council of 12 December 2006 concerning misleading and comparative advertising.”.

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(67) [S.I. 1998/1807](#), to which there are amendments not relevant to these Regulations.

(68) [S.R. \(NI\) 1999 No 170](#).

(69) [S.R. \(NI\) 1999 No 454](#), to which there are amendments not relevant to these Regulations.

(70) [S.I. 1999/1517](#), to which there are amendments not relevant to these Regulations..

(71) [S.I. 1999/1676](#), to which there are amendments not relevant to these Regulations.



### **Road Vehicles Lighting Regulations (Northern Ireland) 2000**

94. Regulation 12 of the Road Vehicles Lighting Regulations (Northern Ireland) 2000(72) is revoked.

### **Control of Misleading Advertisements (Amendment) Regulations 2000**

95. The Control of Misleading Advertisements (Amendment) Regulations 2000(73) are revoked.

### **Consumer Protection (Distance Selling) Regulations 2000**

96. In regulation 24 of the Consumer Protection (Distance Selling) Regulations 2000(74) (inertia selling) omit paragraphs (4), (5), (7), (8) and (9).

### **Sale and Supply of Goods to Consumers Regulations 2002**

97. In regulation 15 of the Sale and Supply of Goods to Consumers Regulations 2002(75) (consumer guarantees), after paragraph (2), insert—

“(2A) The guarantor shall also ensure that the guarantee contains a statement that the consumer has statutory rights in relation to the goods which are sold or supplied and that those rights are not affected by the guarantee.”.

### **Energy (Northern Ireland) Order 2003**

98. In Article 63 of the Energy (Northern Ireland) Order 2003(76) (general restrictions on disclosure of information), in paragraph (6)—

(a) omit paragraph (m);

(b) after paragraph (u) insert—

“(v) the Business Protection from Misleading Marketing Regulations 2008;

(w) the Consumer Protection from Unfair Trading Regulations 2008.”.

### **Energy Information (Household Electric Ovens) Regulations 2003**

99. In Schedule 6 to the Energy Information (Household Electric Ovens) Regulations 2003(77) (offences, enforcement and other matters), in paragraph 12(3)—

(a) omit paragraph (i), and

(b) after paragraph (h) insert—

“(j) any subordinate legislation made for the purpose of securing compliance with Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market;

(k) any subordinate legislation made for the purpose of securing compliance with Directive 2006/114/EC of the European Parliament and of the Council of 12 December 2006 concerning misleading and comparative advertising.”.

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(72) S.R. (NI) 2000 No 169 to which there are amendments not relevant to these Regulations.

(73) S.I. 2000/914.

(74) S.I. 2000/2334, amended by S.I. 2005/55; there are other amending instruments but none is relevant.

(75) S.I. 2002/3045.

(76) S.I. 2003/419 (N.I. 6).

(77) S.I. 2003/751.

### Enterprise Act 2002 (Part 8 Community Infringements Specified UK Laws) Order 2003

**100.**—(1) The Enterprise Act 2002 (Part 8 Community Infringements Specified UK Laws) Order 2003(78) is amended as follows.

(2) In the Schedule (listed directives)—

- (a) omit the entry for Council Directive [84/450/EEC](#) of 10th September 1984 relating to the approximation of the laws, regulations and administrative provisions of the Member States concerning misleading advertising;
- (b) in the entry in the column headed “Specified UK laws” in respect of Directive [1999/44/EC](#) omit from sub-paragraph (iv) “and articles 4 and 5 of the Consumer Transactions (Restrictions on Statements) Order 1976 (consumer guarantees)”;
- (c) after the entry for Directive [2002/65/EC](#) insert—

“Directive <a href="#">2005/29/EC</a> of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market	Consumer Protection from Unfair Trading Regulations 2008”.
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### Enterprise Act 2002 (Part 8 Notice to OFT of Intended Prosecution, Specified Enactments, Revocation and Transitional Provision) Order 2003

**101.**—(1) In the Schedule to the Enterprise Act 2002 (Part 8 Notice to OFT of Intended Prosecution, Specified Enactments, Revocation and Transitional Provision) Order 2003(79) the table is amended as follows.

- (2) In the entry in the column headed “Extent of Specification” in respect of the Consumer Protection Act 1987(80) omit “and all offences under Part III (misleading price indications)”.
- (3) Omit the entry for the Fair Trading Act 1973(81).
- (4) Omit the entry for the Mock Auctions Act 1961(82).
- (5) After the entry for the Trade Marks Act 1994(83) insert—

“Consumer Protection from Unfair Trading Regulations 2008.	All offences under those Regulations.”.
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(6) In the entry in the column headed “Extent of Specification” in respect of the Weights and Measures Act 1985(84) omit “29 misrepresentation”.

### Enterprise Act 2002 (Part 8 Domestic Infringements) Order 2003

**102.**—(1) The Enterprise Act 2002 (Part 8 Domestic Infringements) Order 2003(85) is amended as follows.

- (2) In the Schedule (specified acts or omissions)—
  - (a) omit the entries for—

(78) S.I. 2003/1374, amended by S.I. 2004/2095; there are other amending instruments but none is relevant.

(79) S.I. 2003/1376, to which there are amendments not relevant to these Regulations.

(80) 1987 c.43.

(81) 1973 c.41

(82) 1987 c.47.

(83) 1994 c.26.

(84) 1985 c.72.

(85) S.I. 2003/1593.

- (i) the Business Advertisements (Disclosure) Order 1977(86);
- (ii) the Consumer Protection Act 1987(87);
- (iii) the Consumer Transactions (Restrictions on Statements) Order 1976(88);
- (iv) the Control of Misleading Advertisements Regulations 1988(89);
- (v) the Mock Auctions Act 1961;
- (vi) the Consumer Protection (Northern Ireland) Order 1987(90);
- (b) in the column headed “Extent” in respect of the Weights and Measures Act 1985 omit “29 (misrepresentation),”;
- (c) in the column headed “Extent” in respect of the Weights and Measures (Northern Ireland) Order 1981, for the words “Articles 19(1) to (6)” to the end, substitute “Articles 19(1) to (6), 20, 22(1) and (3) to (9) (requirements to sell goods by particular quantities, short weight, quantity less than stated, incorrect statements, etc), 25(2) (offences due to default of third person) and 32(5) (possession for sale, etc, of inadequate regulated package).”

### **Enterprise Act 2002 (Part 9 Restrictions on Disclosure of Information) (Amendment and Specification) Order 2003**

**103.**—(1) The Enterprise Act 2002 (Part 9 Restrictions on Disclosure of Information) (Amendment and Specification) Order 2003(91) is amended as follows.

(2) In Schedule 3—

- (a) omit the words “Control of Misleading Advertisements Regulations 1988”;
- (b) add after “General Product Safety Regulations 2005”—

“Consumer Protection from Unfair Trading Regulations 2008.

Business Protection from Misleading Marketing Regulations 2008.”.

(3) In Schedule 4—

- (a) omit the words “Control of Misleading Advertisements Regulations 1988”;
- (b) add after “Parts 2 and 3 of the Railways and Other Guided Transport Systems (Safety) Regulations 2006”—

“Consumer Protection from Unfair Trading Regulations 2008.

Business Protection from Misleading Marketing Regulations 2008.”.

### **Price Marking (Food and Drink) Services Order 2003**

**104.** The Price Marking (Food and Drink) Services Order 2003(92) is revoked.

### **Control of Misleading Advertisements (Amendment) Regulations 2003**

**105.** The Control of Misleading Advertisements (Amendment) Regulations 2003(93) are revoked.

(86) S.I. 1977/1918.

(87) 1987 c.43.

(88) S.I. 1976/1813.

(89) S.I. 1988/915.

(90) S.I. 1987/2049 (N.I.20).

(91) S.I. 2003/1400; relevant amending instruments are S.I. 2005/1803, 2006/1057.

(92) S.I. 2003/2253.

(93) S.I. 2003/3183.

### **Price Marking (Food and Drink) Services Order (Northern Ireland) 2004**

**106.** The Price Marking (Food and Drink) Services Order (Northern Ireland) 2004<sup>(94)</sup> is revoked.

### **Energy Information (Household Refrigerators and Freezers) Regulations 2004**

**107.** In Schedule 6 to the Energy Information (Household Refrigerators and Freezers) Regulations 2004<sup>(95)</sup> (offences, enforcement and other matters), in paragraph 12(3)—

- (a) omit paragraph (h); and
- (b) after paragraph (g) insert—
  - “(i) any subordinate legislation made for the purpose of securing compliance with Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market;
  - (j) any subordinate legislation made for the purpose of securing compliance with Directive 2006/114/EC of the European Parliament and of the Council of 12 December 2006 concerning misleading and comparative advertising.”

### **Consumer Credit (Advertisements) Regulations 2004**

**108.**—(1) The Consumer Credit (Advertisements) Regulations 2004<sup>(96)</sup> are amended as follows.

- (2) In regulation 1(2) (citation, commencement and interpretation) omit the definitions of “hire advertisement” and of “hire payment”.
- (3) In regulation 2 (duty to comply) omit “or a hire advertisement”.
- (4) In regulation 3 (general requirements) omit “or hire advertisement”.
- (5) In regulation 4 (content of advertisements)—
  - (a) in paragraph 1 omit “, and where a hire advertisement includes any of the amounts referred to in paragraph 4 or 5 of Schedule 3 to these Regulations,”;
  - (b) in paragraph 2 omit “in the case of credit advertisement, and the items of information listed in Schedule 3 in the case of a hire advertisement,”;
  - (c) in paragraph 3(b) omit “or hire advertisement, as the case may be,”.
- (6) In regulation 7 (security)—
  - (a) in paragraph 1 omit “or hire advertisement”;
  - (b) omit paragraph 5;
  - (c) omit paragraph 7;
  - (d) in paragraph 8 for “Paragraphs (2)-(7)” substitute “Paragraphs (2), (3), (4) and (6)”.
- (7) In regulation 9(2) (restrictions on certain expressions in credit advertisements) omit “, and a hire advertisement shall not include in relation to any hire payment,”.
- (8) Omit Schedule 3.

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<sup>(94)</sup> S.R. (NI) 2004 No 369.

<sup>(95)</sup> S.I. 2004/1468.

<sup>(96)</sup> S.I. 2004/1484, amended by S.I. 2004/2619.

### **Contracting Out (Functions relating to Broadcast Advertising) and Specification of Relevant Functions Order 2004**

**109.**—(1) The Contracting Out (Functions relating to Broadcast Advertising) and Specification of Relevant Functions Order 2004<sup>(97)</sup> is amended as follows.

- (2) In article 2 (interpretation), in paragraph (1), omit the definition of “the 1988 Regulations”.
- (3) Omit article 6.
- (4) In article 8 (exercise of functions by an authorised person), in paragraph (3), omit sub-paragraph (e) and the “and” preceding it.

### **Financial Services (Distance Marketing) Regulations 2004**

**110.**—(1) The Financial Services (Distance Marketing) Regulations 2004<sup>(98)</sup> are amended as follows.

- (2) In regulation 15 (unsolicited services) omit paragraphs (2), (3), (5), (6) and (7).
- (3) In regulation 22 (offences)—
  - (a) in paragraph (2) omit “, or under regulation 15(2) or (3),”;
  - (b) in paragraph (4) omit “, or under regulation 15(2) or (3),”;
  - (c) in paragraph (5) omit “or under regulation 15(2) or (3),”.

### **Duty Stamps Regulations 2006**

**111.** In regulation 10 of the Duty Stamps Regulations 2006<sup>(99)</sup> (disqualification from being registered), in paragraph (7)(b)—

- (a) after “Forgery and Counterfeiting Act 1981” insert—

“an offence under regulation 6 of the Business Protection from Misleading Marketing Regulations 2008 (but only if the goods to which the advertising in question related were, or included, dutiable alcoholic liquor);”;
- (b) at the end add—

“an offence under regulation 8, 9, 10, 11 or 12 of the Consumer Protection from Unfair Trading Regulations 2008 (but only if the product to which the unfair commercial practice related was, or included, dutiable alcoholic liquor);”.

### **The Water and Sewerage Services (Northern Ireland) Order 2006**

**112.** In Article 265 of the Water and Sewerage Services (Northern Ireland) Order 2006<sup>(100)</sup> (restriction on disclosure of information), in paragraph (5)—

- (a) omit sub-paragraph (h);
- (b) after sub-paragraph (q) add—
  - “(r) the Business Protection from Misleading Marketing Regulations 2008;
  - (s) the Consumer Protection from Unfair Trading Regulations 2008.”.

<sup>(97)</sup> S.I. 2004/1975.

<sup>(98)</sup> S.I. 2004/2095.

<sup>(99)</sup> S.I. 2006/202.

<sup>(100)</sup> S.I. 2006/3336 (N.I.21).

### **Enterprise Act 2002 (Part 8 Community Infringements Specified UK Laws) Order 2006**

**113.** In the Schedule to the Enterprise Act 2002 (Part 8 Community Infringements Specified UK Laws) Order 2006(**101**) (listed Directives and Regulation) omit the entry for Directive [97/55/EC](#) of the European Parliament and of the Council of 6 October 1997.

### **Licensing (Relevant Offences) (Scotland) Regulations 2007**

**114.** In the Schedule to the Licensing (Relevant Offences) (Scotland) Regulations 2007(**102**) (relevant offences), at the end insert—

“**45.** An offence under regulation 6 of the Business Protection from Misleading Marketing Regulations 2008 (offence of misleading advertising) in circumstances where the advertising in question relates to alcohol or to goods that include alcohol.

**46.** An offence under regulation 8, 9, 10, 11 or 12 of the Consumer Protection from Unfair Trading Regulations 2008 (offences relating to unfair commercial practices) in circumstances where the commercial practice in question is directly connected with the promotion, sale or supply of alcohol or of a product that includes alcohol.”.

### **Legislative and Regulatory Reform (Regulatory Functions) Order 2007**

**115.**—(1) In the Schedule to the Legislative and Regulatory Reform (Regulatory Functions) Order 2007(**103**), Part 3 is amended as follows.

(2) In the heading “Consumer and business protection”—

- (a) omit the words “Textile Products (Determination of Composition) Regulations 2006”;
- (b) after the entry for the Electromagnetic Compatibility Regulations 2006(**104**) insert—

“Textile Products (Determination of Composition) Regulations 2008  
Business Protection from Misleading Marketing Regulations 2008  
Consumer Protection from Unfair Trading Regulations 2008.”.

## SCHEDULE 3

Regulation 30(2)

### Transitional and Saving Provisions

#### **Trade Descriptions Act 1968**

**1.** Notwithstanding the repeal by these Regulations of section 5 of the Trade Descriptions Act 1968—

- (a) section 5(3) shall continue to apply for the purposes of section 1(8) of the Hallmarking Act 1973(**105**) as it applied before that repeal, and
- (b) section 5 shall continue to apply for the purposes of regulation 8(1) of the Crystal Glass (Descriptions) Regulations 1973(**106**) as it applied before that repeal.

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(**101**) S.I. 2006/3372.

(**102**) S.I. 2007/513.

(**103**) S.I. 2007/3544.

(**104**) S.I. 2006/3418.

(**105**) 1973 c.43.

(**106**) S.I. 1973/1952.

2. The repeal of section 19(4)(b) and (c) of the Trade Descriptions Act 1968 shall not have effect in relation to the references to section 19 in—

- (a) regulation 8(2) of the Crystal Glass (Descriptions) Regulations 1973;
- (b) regulation 11(1) of the Textile Products (Indications of Fibre Content) Regulations 1986<sup>(107)</sup>;
- (c) regulation 4(1) of the Electro-medical Equipment (EEC Requirements) Regulations 1988<sup>(108)</sup>; and
- (d) regulation 10(1) of the Footwear (Indication of Composition) Labelling Regulations 1995<sup>(109)</sup>.

3. The repeal of section 24(3) of the Trade Descriptions Act 1968 shall not have effect in relation to the references to section 24 in—

- (a) regulation 8(2) of the Crystal Glass (Descriptions) Regulations 1973;
- (b) regulation 11(1) of the Textile Products (Indications of Fibre Content) Regulations 1986;
- (c) regulation 4(1) of the Electro-medical Equipment (EEC Requirements) Regulations 1988; and
- (d) regulation 10(1) of the Footwear (Indication of Composition) Labelling Regulations 1995.

4. Notwithstanding the repeal by these Regulations of section 39(2) of the Trade Descriptions Act 1968, that subsection shall continue to apply for the purposes of section 1 of the Hallmarking Act 1973 as it applied before that repeal.

#### **Application of the Consumer Protection Act 1987 to the Price Indications (Bureaux de Change) (No. 2) Regulations 1992**

5.—(1) Despite the repeal by these Regulations of section 26 of the Consumer Protection Act 1987, the Price Indications (Bureaux de Change) (No. 2) Regulations 1992<sup>(110)</sup> shall continue in force, and that section shall continue to have effect as it had effect immediately before the coming into force of these Regulations for the purposes of amending or revoking those Regulations.

(2) Where these Regulations repeal a provision of the Consumer Protection Act 1987 that, immediately before the coming into force of these Regulations, was applied by the Price Indications (Bureaux de Change) (No. 2) Regulations 1992 to an offence under those Regulations, that provision shall continue to apply to that offence as it applied immediately before the coming into force of these Regulations, notwithstanding that repeal.

6. Notwithstanding the repeals and amendments made by these Regulations to the provisions of Parts 4 and 5 of the Consumer Protection Act 1987 those provisions shall continue to apply in relation to the Price Indications (Bureaux de Change) (No. 2) Regulations 1992 as they applied before the coming into force of these Regulations.

#### **Application of the Consumer Protection (Northern Ireland) Order 1987 to the Price Indications (Bureaux de Change) Regulations (Northern Ireland) 1992**

7.—(1) Despite the repeal by these Regulations of Article 19 of the Consumer Protection (Northern Ireland) Order 1987<sup>(111)</sup>, the Price Indications (Bureaux de Change) Regulations (Northern Ireland) 1992<sup>(112)</sup> shall continue in force, and that Article shall continue to have effect

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<sup>(107)</sup>S.I. 1986/26.

<sup>(108)</sup>S.I. 1988/1586.

<sup>(109)</sup>S.I. 1995/2489.

<sup>(110)</sup>S.I. 1992/737.

<sup>(111)</sup>S.I. 1987/2049 (N.I. 20).

<sup>(112)</sup>S.R. (NI) 1992 No 272.



as it had effect immediately before the coming into force of these Regulations for the purpose of amending or revoking those Regulations.

(2) Where these Regulations repeal a provision of the Consumer Protection (Northern Ireland) Order 1987 that, immediately before the coming into force of these Regulations, was applied by the Price Indications (Bureaux de Change) Regulations (Northern Ireland) 1992 to an offence under that Order, that provision shall continue to apply to that offence as it applied immediately before the coming into force of these Regulations, notwithstanding that repeal.

**8.** Notwithstanding the repeals and amendments made by these Regulations to the provisions of Parts IV and V of the Consumer Protection (Northern Ireland) Order 1987 those provisions shall continue to apply in relation to the Price Indications (Bureaux de Change) Regulations (Northern Ireland) 1992 as they applied before the coming into force of these Regulations.

#### **Enterprise Act 2002 (Part 8 Notice to OFT of Intended Prosecution, Specified Enactments, Revocation and Transitional Provision) Order 2003**

**9.**—(1) This paragraph applies to offences under the following provisions—

- (a) Part 3 of the Consumer Protection Act 1987(**113**);
- (b) section 23 of the Fair Trading Act 1973(**114**);
- (c) the Mock Auctions Act 1961;
- (d) section 29 of the Weights and Measures Act 1985(**115**).

(2) Notwithstanding the omission of the references to these provisions in the Enterprise Act 2002 (Part 8 Notice to OFT of Intended Prosecution, Specified Enactments, Revocation and Transitional Provision) Order 2003(**116**) by these Regulations section 230 of the Enterprise Act 2002 shall continue to apply in relation to an intention by a local weights and measures authority in England and Wales to start proceedings for an offence to which paragraph (1) applies.

**10.** Notwithstanding the amendments made by these Regulations to the Enterprise Act 2002 (Part 8 Notice to OFT of Intended Prosecution, Specified Enactments, Revocation and Transitional Provision) Order 2003 that Order shall continue to apply in relation to the Price Indications (Bureaux de Change) (No. 2) Regulations 1992 as it applied before the coming into force of these Regulations.

#### **Enterprise Act 2002 (Part 8 Domestic Infringements) Order 2003**

**11.**—(1) This paragraph applies to an act or omission which immediately before the date on which these Regulations come into force is a domestic infringement under section 211 of the Enterprise Act 2002 in respect of the provisions of—

- (a) the Business Advertisements (Disclosure) Order 1977(**117**);
- (b) Part 3 of the Consumer Protection Act 1987(**118**);
- (c) Part III of the Consumer Protection (Northern Ireland) Order 1987;
- (d) the Consumer Transactions (Restrictions on Statements) Order 1976(**119**);
- (e) the Control of Misleading Advertisements Regulations 1988(**120**);

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(113) 1987 c.43.

(114) 1973 c.41.

(115) 1985 c.72.

(116) S.I. 2003/1376.

(117) S.I. 1977/1918.

(118) 1987 c.43.

(119) S.I. 1976/1813.

(120) S.I.1988/915 amended by SI 2000/914, 2003/1400 and 2003/3183; there are other amending instruments but none is relevant.



- (f) the Mock Auctions Act 1961(121);
- (g) section 29 of the Weights and Measures Act 1985(122);
- (h) Article 22(2) of the Weights and Measures (Northern Ireland) Order 1981(123).

(2) Notwithstanding the omission of the references to these provisions in the Enterprise Act 2002 (Part 8 Domestic Infringements) Order 2003(124) by these Regulations an act or omission to which paragraph (1) applies shall continue to be a domestic infringement.

12. Notwithstanding the amendments made by these Regulations to the Enterprise Act 2002 (Part 8 Domestic Infringements) Order 2003 that Order shall continue to apply in relation to the Price Indications (Bureaux de Change) (No. 2) Regulations 1992(125) as it applied before the coming into force of these Regulations.

### **Enterprise Act 2002 (Part 8 Community Infringements Specified UK Laws) Order 2003**

13.—(1) This paragraph applies to an act or omission which immediately before the date on which these Regulations come into force is a Community infringement under section 212 of the Enterprise Act 2002(126) by contravening the provisions of—

- (a) Council Directive 84/450/EEC of 10 September 1984 relating to the approximation of the laws, regulations and administrative provisions of the Member States concerning misleading advertising(127);
- (b) the Control of Misleading Advertisements Regulations 1988 except regulation 4A (comparative advertisements); or
- (c) regulation 4 or 5 of the Consumer Transactions (Restrictions on Statements) Order 1976(128).

(2) Notwithstanding the omission of the references to these provisions in the Enterprise Act 2002 (Part 8 Community Infringements Specified UK Laws) Order 2003 by these Regulations an act or omission to which paragraph (1) applies shall continue to be a Community infringement.

### **Enterprise Act 2002 (Part 8 Community Infringements Specified UK Laws) Order 2006**

14.—(1) This paragraph applies to an act or omission which immediately before the date on which these Regulations come into force is a Community infringement under section 212 of the Enterprise Act 2002 by contravening the provisions of—

- (a) Directive 97/55/EC of the European Parliament and of the Council of 6 October 1997 amending Directive 84/450/EEC concerning misleading advertising so as to include comparative advertising(129); or
- (b) regulation 4A of the Control of Misleading Advertisements Regulations 1988.

(2) Notwithstanding the omission of the reference to these provisions in the Enterprise Act 2002 (Part 8 Community Infringements Specified UK Laws) Order 2006(130) by these Regulations an act or omission to which paragraph (1) applies shall continue to be a Community infringement.

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(121) 1961 c.47.

(122) 1985 c.72.

(123) S.I. 1981/231 (N.I. 10).

(124) S.I.2003/1593.

(125) S.I. 1992/737.

(126) 2002 c.40.

(127) OJ No L250, 19.9.84, p17.

(128) S.I. 1976/1813.

(129) OJ No L290, 23.10.1997, p18.

(130) S.I. 2006/3372.

### Disclosure of information

15.—(1) This paragraph applies in relation to information which immediately before the date on which these Regulations come into force was subject to the provisions of any enactment which permitted the disclosure of information for the purposes of any function under, or proceedings brought under or by virtue of—

- (a) the Control of Misleading Advertisements Regulations 1988; or
- (b) Part 2 of the Fair Trading Act 1973.

(2) Notwithstanding the repeal of such provisions by these Regulations such disclosure shall continue to be permitted.

## SCHEDULE 4

Regulation 30(3)

### Repeals and Revocations

#### PART 1

#### Repeals

<i>Short title</i>	<i>Chapter</i>	<i>Extent of repeal</i>
Anglo-Portuguese Commercial Treaty Act 1914	c.1	In section 1, the words from “Provided that” to the end.
Anglo-Portuguese Commercial Treaty Act 1916	c.39	In section 1(1), the words from “Provided that” to the end.
Agricultural Produce (Grading and Marking) Act 1928	c.19	In section 4(2), the words “or an order under section 8 of the Trade Descriptions Act 1968”.
Fraudulent Mediums Act 1951	c.33	The whole Act.
Trading Representations (Disabled Persons) Act 1958	c.49	The whole Act.
The Trading Representations (Disabled Persons) Act (Northern Ireland) 1958	c.24 (N.I.)	The whole Act.
Mock Auctions Act 1961	c.47	The whole Act.
Trade Descriptions Act 1968	c.29	Section 1(1). Sections 5 to 10. Sections 13 to 15. Section 19(4)(b) and (c). Section 21(1) and (2). Section 22.

The repeal of sections 29 to 33 of the Fair Trading Act 1973 has effect in accordance with paragraph 15 of Schedule 2.

<i>Short title</i>	<i>Chapter</i>	<i>Extent of repeal</i>
		Section 24(3).  Section 32.  Section 37.  Section 39(2).
Trading Representations (Disabled Persons) Amendment Act 1972	c.45	The whole Act.
Local Government Act 1972	c.70	In Schedule 29, paragraph 44(2).
Greater London Council (General Powers) Act 1972	c.xl	In section 17(5), the word “or” at the end of paragraph (b).
Fair Trading Act 1973	c.41	Sections 23 to 33.  In section 132(1), the words “section 23,”.
Hallmarking Act 1973	c.43	Section 1(4).
Consumer Credit Act 1974	c.39	Section 46.  In section 47, the words “or 46”.  Section 77(4)(b) and the word “and” preceding it.  Section 78(6)(b) and the word “and” preceding it.  Section 79(3)(b) and the word “and” preceding it.  Section 85(2)(b) and the word “and” preceding it.  Section 97(3)(b) and the word “and” preceding it.  Section 103(5).  Section 107(4)(b) and the word “and” preceding it.  Section 108(4)(b) and the word “and” preceding it.  Section 109(3)(b) and the word “and” preceding it.  Section 110(3)(b) and the word “and” preceding it.  In section 151, the words “, 46”.  In Schedule 1, the entries for sections 46(1), 77(4), 78(6), 79(3), 85(2), 97(3), 103(5), 107(4), 108(4), 109(3) and 110(3).

The repeal of sections 29 to 33 of the Fair Trading Act 1973 has effect in accordance with paragraph 15 of Schedule 2.

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<i>Short title</i>	<i>Chapter</i>	<i>Extent of repeal</i>
Customs and Excise Management Act 1979	c.2	In Schedule 4, in paragraph 12, the entry relating to the Trade Descriptions Act 1968.
Telecommunications Act 1984	c.12	In section 101(3), the paragraph (i) relating to the Control of Misleading Advertisements Regulations 1988.
Companies Act 1985	c.6	In Schedule 15D, paragraph 17(h).
Weights and Measures Act 1985	c.72	Section 29. In Schedule 12, paragraphs 3 and 4.
Airports Act 1986	c.31	Section 74(3)(j).
Consumer Protection Act 1987	c.43	Sections 20 to 26. In section 27(1)(a), the words “and the provisions made by or under Part III of this Act”. In section 28— <ul style="list-style-type: none"> <li>(a) in subsection (1), the words “or any provision made by or under Part III of this Act” , and</li> <li>(b) in subsection(2)(b)(i), the words “or of any provision made by or under Part III of this Act”.</li> </ul> In section 29, in each of subsections (2), (5) (6)(a) and (7), the words “or of any provision made by or under Part III of this Act”. In section 30, in each of subsections (2)(a)(i) and (6)(a), the words “or of any provision made by or under Part III of this Act”. In section 33, in each of subsections (2)(a)(i) and (3)(a)(i), the words “or of any provision made by or under Part III of this Act”. In section 34(1)(a), the words “or of any provision made by or under Part III of this Act”. In section 35(1)(a), the words “or of any provision made by or under Part III of this Act”. In section 41, in each of subsections (2) and (3), the words “or of a provision made by or under Part III of this Act”. In section 46(4), the words “or any provision made by or under Part III of this Act”.

The repeal of sections 29 to 33 of the Fair Trading Act 1973 has effect in accordance with paragraph 15 of Schedule 2.

<i>Short title</i>	<i>Chapter</i>	<i>Extent of repeal</i>
County of Cleveland Act 1987	c.ix	Section 23(6) and (7).
Road Traffic Act 1988	c.52	In section 80(1)— <ul style="list-style-type: none"> <li>(a) the words from “, and any markings” to the end, and</li> <li>(b) in subsection (2), the words from “, whether or not” to the end.</li> </ul>
Courts and Legal Services Act 1990	c.41	In section 50(2)(m)— <ul style="list-style-type: none"> <li>(a) in sub-paragraph (ii), the words “(other than Part II)”, and</li> <li>(b) sub-paragraph (viii).</li> </ul>
Broadcasting Act 1990	c.42	In Schedule 20, paragraphs 48 and 49.
Water Industry Act 1991	c.56	In Schedule 15, in Part 2, the words from “Any subordinate legislation” to the end.
Water Resources Act 1991	c.57	In Schedule 24, in Part 2, the words from “Any subordinate legislation” to the end.
North Yorkshire County Council Act 1991	c.xiv	Section 6(6) and (7).
Local Government (Wales) Act 1994	c.19	In Schedule 16, paragraph 13.
Coal Industry Act 1994	c.21	Section 59(4)(m).
Local Government (Scotland) Act 1994	c.39	In Schedule 13, paragraph 51.
Employment Rights Act 1996	c.18	In Schedule 1, paragraph 34.
London Local Authorities Act 1996	c.ix	Section 16. Section 18(3).
Utilities Act 2000	c.27	Section 105(6)(k).
Abolition of Feudal Tenure etc (Scotland) Act 2000	asp 5	In Schedule 12, paragraph 49.
Criminal Justice and Police Act 2001	c.16	Section 66(4)(i). In Schedule 1, paragraph 46. In Schedule 2, paragraphs 4 and 9.
Kent County Council Act 2001	c.iii	Section 13.
Medway Council Act 2001	c.iv	Section 13.

The repeal of sections 29 to 33 of the Fair Trading Act 1973 has effect in accordance with paragraph 15 of Schedule 2.

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<i>Short title</i>	<i>Chapter</i>	<i>Extent of repeal</i>
Enterprise Act 2002	c.40	Section 10(2) to (4).  In Schedule 13, paragraphs 1 and 7A.  In Schedule 14, in the entry in respect of the Fair Trading Act 1973, the word “2”.  In Schedule 25, paragraphs 16 and 17.
Nottingham City Council Act 2003	c.ii	Section 12.
Companies Act 2006	c.46	In Schedule 2, paragraph 34(h).

The repeal of sections 29 to 33 of the Fair Trading Act 1973 has effect in accordance with paragraph 15 of Schedule 2.

## PART 2

### Revocations

<i>Title</i>	<i>Reference</i>	<i>Extent of revocation</i>
Tourism (Sleeping Accommodation Price Display) Order 1977	S.I. 1977/1877	The whole Order.
Weights and Measures (Northern Ireland) Order 1981	S.I. 1981/231 (N.I. 10)	Article 22(2).  In Schedule 10, paragraph 2.
Road Vehicles (Construction and Use) Regulations 1986	S.I. 1986/1078	Regulation 5
The Companies (Northern Ireland) Order 1986	S.I. 1986/1032 (N.I. 6)	In Schedule 15D, paragraph 16(h).
Consumer Protection (Northern Ireland) Order 1987	S.I. 1987/2049 (N.I. 20)	Articles 13 to 27, 30 and 33.
Control of Misleading Advertising Regulations 1988	S.I. 1988/915	The whole Regulations.
Road Vehicles Lighting Regulations 1989	S.I. 1989/1796	Regulation 10.
Estate Agents (Specified Offences) (No.2) Order 1991	S.I. 1991/1091	In the Schedule, the entries for the Consumer Protection Act 1987 and the Consumer Protection (Northern Ireland) Order 1987; and in the entry for the Trade Descriptions Act 1968—  in the column headed “Provision”, the words “Section 1(1)”, “Section 13” and “Section 14(1)(b)”, and

<i>Title</i>	<i>Reference</i>	<i>Extent of revocation</i>
		in the column headed "Description of Offence", the words "Applying false trade description in relation to goods", "False representations as to supply of goods or services", "False or misleading statements as to services etc".
Airports (Northern Ireland) Order 1994	<a href="#">S.I. 1994/426 (N.I.1)</a>	Article 49(3)(1).
Motor Cycle Silencer and Exhaust Systems Regulations 1995	<a href="#">S.I. 1995/2370</a>	Regulation 7.
Energy Information (Washing Machines) Regulations 1996	<a href="#">S.I. 1996/600</a>	In Schedule 5, paragraph 15(3)(i).
Energy Information (Tumble Driers) Regulations 1996	<a href="#">S.I. 1996/601</a>	In Schedule 5, paragraph 15(3)(i).
Energy Information (Combined Washer-Driers) Regulations 1997	<a href="#">S.I. 1997/1624</a>	In Schedule 5, paragraph 15(3)(i).
Motor Cycles (Protective Helmets) Regulations 1998	<a href="#">S.I. 1998/1807</a>	In regulation 6, the words "the Trade Descriptions Act 1968 or".
Motor Cycles (Protective Headgear) Regulations (Northern Ireland) 1999	<a href="#">S.R. (NI) 1999 No 170</a>	In regulation 4, the words "the Trade Descriptions Act 1968".
Motor Vehicles (Construction and Use) Regulations (Northern Ireland) 1999	<a href="#">S.R. (NI) 1999 No 454</a>	Regulation 4.
Energy Information (Lamps) Regulations 1999	<a href="#">S.I. 1999/1517</a>	In Schedule 4, paragraph 12(3)(i).
Energy Information (Dishwashers) Regulations 1999	<a href="#">S.I. 1999/1676</a>	In Schedule 5, paragraph 12(3)(i).
The Road Vehicles Lighting Regulations (Northern Ireland) 2000	<a href="#">S.R. (NI) 2000 No 169</a>	Regulation 12.
Control of Misleading Advertisements (Amendment) Regulations 2000	<a href="#">S.I. 2000/914</a>	The whole Regulations.
Consumer Protection (Distance Selling) Regulations 2000	<a href="#">S.I. 2000/2334</a>	Regulation 24(4), (5), (7), (8) and (9).
Energy (Northern Ireland) Order 2003	<a href="#">S.I. 2003/419 (N.I.6)</a>	Article 63(6)(m).

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<i>Title</i>	<i>Reference</i>	<i>Extent of revocation</i>
Energy Information (Household Electric Ovens) Regulations 2003	<a href="#">S.I. 2003/752</a>	In Schedule 6, paragraph 12(3)(i).
Enterprise Act 2002 (Part 8 Community Infringements Specified UK Laws) Order 2003	<a href="#">S.I. 2003/1374</a>	In the Schedule, the entry for Council Directive <a href="#">84/450/EEC</a> , and in the entry for Directive <a href="#">1999/44/EC</a> , in the column headed “Specified UK laws”, in sub-paragraph (iv), the words “and articles 4 and 5 of the Consumer Transactions (Restrictions on Statements) Order 1976 (consumer guarantees)”.
Enterprise Act 2002 (Part 8 Notice to OFT of Intended Prosecution, Specified Enactments, Revocation and Transitional Provision) Order 2003	<a href="#">S.I. 2003/1376</a>	In the Schedule, the entries for—  the Fair Trading Act 1973; and  the Mock Auctions Act 1961; and  in the entry for the Consumer Protection Act 1987, in the column headed “Extent of Specification”, the words “and all offences under Part III (misleading price indications)”; and  in the entry for the Weights and Measures Act 1985, in the column headed “Extent of Specification”, the words “29 misrepresentation”.
Enterprise Act 2002 (Part 9 Restrictions on Disclosure of Information (Amendment and Specification) Order 2003	<a href="#">S.I. 2003/1400</a>	In Schedule 3, the words “Control of Misleading Advertisements Regulations 1988”.  In Schedule 4 the words “Control of Misleading Advertisements Regulations 1988”.
Enterprise Act 2002 (Part 8 Domestic Infringements) Order 2003	<a href="#">S.I. 2003/1593</a>	In the Schedule the entries for—  the Business Advertisements (Disclosure) Order 1977;  the Consumer Protection Act 1987;  the Consumer Transactions (Restriction on Statements) Order 1976;  the Control of Misleading Advertisements Regulations 1988;  the Mock Auctions Act 1961;



<i>Title</i>	<i>Reference</i>	<i>Extent of revocation</i>
		the Consumer Protection (Northern Ireland) Order 1987, and  in the entry for the Weights and Measures Act 1985, the words “29 (misrepresentation)”.
Price Marking (Food and Drink) Services Order 2003	<a href="#">S.I. 2003/2253</a>	The whole Order.
Control of Misleading Advertisements (Amendment) Regulations 2003	<a href="#">S.I. 2003/3183</a>	The whole Regulations.
Price Marking (Food and Drink) Services Order (Northern Ireland) 2004	<a href="#">S.R.(NI) 2004 No 369</a>	The whole Order.
Energy Information (Household Refrigerators and Freezers) Regulations 2004	<a href="#">S.I. 2004/1468</a>	In Schedule 6, paragraph 12(3)(h).
Consumer Credit (Advertisements) Regulations 2004	<a href="#">S.I. 2004/1484</a>	In regulation 1(2) the definitions of “hire advertisement” and of “hire payment”.  In regulation 2, the words “or a hire advertisement”.  In regulation 3, the words “or hire advertisement”.  In regulation 4— (a) in paragraph (1), the words from “, and where a hire advertisement” to “Schedule 3 to these Regulations,”. (b) in paragraph (2), the words from “in the case of credit advertisement” to “in the case of a hire advertisement,” (c) in paragraph (3)(b), the words “or hire advertisement, as the case may be,”.  In regulation 7— (a) in paragraph (1), the words “or hire advertisement”. (b) paragraphs (5) and (7).  In regulation 9(2), the words “, and a hire advertisement shall not include in relation to any hire payment,”.  Schedule 3.
Contracting Out (Functions relating to Broadcast Advertising) and Specification	<a href="#">S.I. 2004/1975</a>	In article 2(1), the definition of “the 1988 Regulations”.

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<i>Title</i>	<i>Reference</i>	<i>Extent of revocation</i>
of Relevant Functions Order 2004		Article 6.  Article 8(3)(e) and the word “and” preceding it.  In article 12, in each of paragraphs (1)(a) and (2), the word “,6”.
Financial Services (Distance Marketing) Regulations 2004	<a href="#">S.I. 2004/2095</a>	Regulation 15(2), (3), (5), (6) and (7).  In regulation 22, in each of paragraphs (2), (4) and (5), the words “, or under regulation 15(2) or (3),”.
Water and Sewerage Services (Northern Ireland) Order 2006	<a href="#">S.I. 2006/3336 (N.I.21)</a>	Article 265(5)(h).
Legislative and Regulatory Reform (Regulatory Functions) Order 2007	<a href="#">S.I. 2007/3544</a>	In the Schedule, in Part 3, the words “Textile Products (Determination of Composition) Regulations 2006”.

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## EXPLANATORY NOTE

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

These Regulations implement Directive [2005/29/EC](#) of the European Parliament and of the Council concerning unfair business-to-consumer commercial practices (OJ No L 149, 11.6.2005, p22) (“the Directive”). These Regulations also implement article 6.2 of Directive [1999/44/EC](#) of the European Parliament and of the Council on certain aspects of the sale of consumer goods and associated guarantees (OJ No L171, 7.7.1999, p12) (“the Sale of Goods Directive”).

Part 2 sets out the prohibition on unfair commercial practices. The prohibition relates to commercial practices that contravene the requirements of professional diligence, misleading actions, misleading omissions, aggressive commercial practices and commercial practices of the type specified in Schedule 1. Part 2 also imposes a prohibition on the promotion of unfair commercial practices by persons responsible for codes of conduct for traders. The prohibitions will be enforceable through the procedure for the enforcement of Community infringements in Part 8 of the Enterprise Act 2002.

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

Part 4 places a duty to enforce the Regulations on the OFT, local weights and measures authorities and the Department of Enterprise, Trade and Investment in Northern Ireland. These bodies are also given powers to investigate whether there has been a breach of the Regulations including a power to make test purchases and powers to enter premises with or without a warrant. Regulation 26 amends Schedule 13 to the Enterprise Act 2002 so that contravention of the Directive can be enforced under that Act as Community infringements. Regulation 27 inserts section 218A into the Act which

provides for traders to substantiate claims where an application is made under the Act in relation to a Community infringement involving a contravention of the Directive.

Schedule 2 makes amendments to other enactments in order to ensure that enactments do not provide for requirements or prohibitions on commercial practices which exceed the level permitted by the Directive. The Schedule also makes amendments to accommodate the Directive and these Regulations. In addition the Schedule makes amendments to accommodate Directive [2006/114/EC](#) of the European Parliament and the Council concerning misleading and comparative advertising (OJ No L. 376, 27.12.2006, p21) and the Business Protection from Misleading Marketing Regulations 2008 (S.I. [2008/1276](#)) which implement that Directive. Paragraph 97 of Schedule 2 amends the Sale and Supply of Goods to Consumers Regulations 2002 in order to implement article 6.2 of the Sale of Goods Directive which was implemented by article 4 of the Consumer Transactions (Restrictions on Statements) Order 1976. This Order no longer has effect as a result of the repeal of section 10(2) of the Enterprise Act 2002 in paragraph 69 as a result of which section 22 of the Fair Trading Act 1973, under which the Order was made, is no longer saved.

Schedule 3 contains transitional and saving provisions.

Schedule 4 contains repeals and revocations.

A transposition note and an impact assessment of the effect that this instrument will have on the costs to business and the voluntary sector are available from the BERR website ([www.berr.gov.uk](http://www.berr.gov.uk)). They are also annexed to the Explanatory Memorandum which is available alongside the instrument on the OPSI website ([www.opsi.gov.uk](http://www.opsi.gov.uk)). Copies have also been placed in the Libraries of both Houses of Parliament.