
DRAFT STATUTORY INSTRUMENTS

2008 No.

**The Consumer Protection from
Unfair Trading Regulations 2008**

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

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

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

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

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

(1) 1980 c.43.

(2) 1995 c.46.

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

(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”.

(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.