

*Draft Regulations laid before Parliament under paragraph 2(2) of Schedule 2 to the European Communities Act 1972, for approval by resolution of each House of Parliament.*

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## DRAFT STATUTORY INSTRUMENTS

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**2008 No.**

# TRADE DESCRIPTIONS

## The Business Protection from Misleading Marketing Regulations 2008

Made	-	-	-	-	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 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

### DEFINITIONS AND PROHIBITIONS

#### Citation and Commencement

1. These Regulations may be cited as the Business Protection from Misleading Marketing Regulations 2008 and shall come into force on 26th May 2008.

#### Interpretation

2.—(1) In these Regulations—

“advertising” means any form of representation which is made in connection with a trade, business, craft or profession in order to promote the supply or transfer of a product and “advertiser” shall be construed accordingly;

“code owner” means a trader or a body responsible for—

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(1) [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 \(c.51\)](#).

- (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;
- “comparative advertising” means advertising which in any way, either explicitly or by implication, identifies a competitor or a product offered by a competitor;
- “court”, in relation to England and Wales and Northern Ireland, means a county court or the High Court, and, in relation to Scotland, the sheriff or the Court of Session;
- “enforcement authority” means the OFT, every local weights and measures authority in Great Britain (within the meaning of section 69 of the Weights and Measure 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;
- “OFT” means the Office of Fair Trading;
- “premises” includes any place and any stall, vehicle, ship or aircraft;
- “product” means any goods or services and includes immovable property, rights and obligations;
- “ship” includes any boat and any other description of vessel used in navigation; and
- “trader” means any person who is acting for purposes relating to his trade, craft, business or profession and anyone acting in the name of or on behalf of a trader.

(2) In the application of these Regulations to Scotland for references to an “injunction” or an “interim injunction” there shall be substituted references to an “interdict” or an “interim interdict” respectively.

### **Prohibition of advertising which misleads traders**

3.—(1) Advertising which is misleading is prohibited.

(2) Advertising is misleading which—

- (a) in any way, including its presentation, deceives or is likely to deceive the traders to whom it is addressed or whom it reaches; and by reason of its deceptive nature, is likely to affect their economic behaviour; or
- (b) for those reasons, injures or is likely to injure a competitor.

(3) In determining whether advertising is misleading, account shall be taken of all its features, and in particular of any information it contains concerning—

- (a) the characteristics of the product (as defined in paragraph (4));
- (b) the price or manner in which the price is calculated;
- (c) the conditions on which the product is supplied or provided; and
- (d) the nature, attributes and rights of the advertiser (as defined in paragraph (5)).

(4) In paragraph (3)(a) the “characteristics of the product” include—

- (a) availability of the product;
- (b) nature of the product;
- (c) execution of the product;
- (d) composition of the product;
- (e) method and date of manufacture of the product;

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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).

- (f) method and date of provision of the product;
- (g) fitness for purpose of the product;
- (h) uses of the product;
- (i) quantity of the product;
- (j) specification of the product;
- (k) geographical or commercial origin of the product;
- (l) results to be expected from use of the product; or
- (m) results and material features of tests or checks carried out on the product.

(5) In paragraph (3)(d) the “nature, attributes and rights” of the advertiser include the advertiser’s—

- (a) identity;
- (b) assets;
- (c) qualifications;
- (d) ownership of industrial, commercial or intellectual property rights; or
- (e) awards and distinctions.

### **Comparative advertising**

**4.** Comparative advertising shall, as far as the comparison is concerned, be permitted only when the following conditions are met—

- (a) it is not misleading under regulation 3;
- (b) it is not a misleading action under regulation 5 of the Consumer Protection from Unfair Trading Regulations 2008(5) or a misleading omission under regulation 6 of those Regulations;
- (c) it compares products meeting the same needs or intended for the same purpose;
- (d) it objectively compares one or more material, relevant, verifiable and representative features of those products, which may include price;
- (e) it does not create confusion among traders—
  - (i) between the advertiser and a competitor, or
  - (ii) between the trade marks, trade names, other distinguishing marks or products of the advertiser and those of a competitor;
- (f) it does not discredit or denigrate the trade marks, trade names, other distinguishing marks, products, activities, or circumstances of a competitor;
- (g) for products with designation of origin, it relates in each case to products with the same designation;
- (h) it does not take unfair advantage of the reputation of a trade mark, trade name or other distinguishing marks of a competitor or of the designation of origin of competing products;
- (i) it does not present products as imitations or replicas of products bearing a protected trade mark or trade name.

### **Promotion of misleading advertising and comparative advertising which is not permitted**

**5.** A code owner shall not promote in a code of conduct—

- (a) advertising which is misleading under regulation 3; or
- (b) comparative advertising which is not permitted under regulation 4.

## PART 2

### OFFENCES

#### **Misleading advertising**

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

#### **Penalty for offence under regulation 6**

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

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

- 8.—(1) Where an offence under these Regulations committed by a body corporate is proved—
- (a) to have been committed with the consent or connivance of an officer of the body, or
  - (b) to be attributable to any neglect on his part,
- the officer as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.
- (2) In paragraph (1) a reference to an officer of a body corporate includes a reference to—
- (a) a director, manager, secretary or other similar officer; and
  - (b) a person purporting to act as a director, manager, secretary or other similar officer.
- (3) Where an offence under these Regulations committed by a Scottish partnership is proved—
- (a) to have been committed with the consent or connivance of a partner, or
  - (b) to be attributable to any neglect on his part,
- the partner as well as the partnership is guilty of the offence and liable to be proceeded against and punished accordingly.
- (4) In paragraph (3) a reference to a partner includes a person purporting to act as a partner.

#### **Offence due to the default of another person**

- 9.—(1) This regulation applies where a person “X”—
- (a) commits an offence under regulation 6, or
  - (b) would have committed an offence under regulation 6 but for a defence under regulation 11 or 12,
- and the commission of the offence, or of what would have been an offence but for X being able to rely on a defence under regulations 11 or 12, is due to the act or default of some other person “Y”.
- (2) Where this regulation applies Y shall be guilty of the offence subject to regulations 11 and 12 whether or not Y is a trader and whether or not Y’s act or default is advertising.

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

### **Time limit for prosecution**

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

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

whichever is earlier.

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

(3) Notwithstanding anything in section 127(1) of the Magistrates' Courts Act 1980<sup>(6)</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>(7)</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 section.

(6) Notwithstanding anything in Article 19(1) of the Magistrates' Courts (Northern Ireland) Order 1981<sup>(8)</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.

### **Due diligence defence**

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

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

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<sup>(6)</sup> 1980 c.43.

<sup>(7)</sup> 1995 c.46.

<sup>(8)</sup> S.I. 1981/1675 (N.I. 26).

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

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

### **Innocent publication defence**

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

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

## **PART 3**

### **ENFORCEMENT**

#### **Duty to enforce**

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

(2) Where an 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 advertising which is misleading under regulation 3 and comparative advertising which is not permitted under regulation 4 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.

#### **Notice to OFT of intended prosecution**

**14.—**(1) Where an enforcement authority is a local weights and measures authority in England and Wales it may bring proceedings for an offence under regulation 6 only if—

- (a) it has notified the OFT of its intention to bring proceedings at least fourteen days before the date on which proceedings are brought; or
- (b) the OFT consents to proceedings being brought in a shorter period.

(2) The enforcement authority must also notify the OFT of the outcome of the proceedings after they are finally determined.

(3) Such proceedings are not invalid by reason only of the failure to comply with this regulation.

## **Injunctions to secure compliance with the Regulations**

**15.**—(1) This regulation applies where an enforcement authority considers that there has been or is likely to be a breach of regulation 3, 4 or 5.

(2) Where this regulation applies an enforcement authority may, subject to paragraph (3), if it thinks it appropriate to do so, bring proceedings for an injunction (in which proceedings it may also apply for an interim injunction) against any person appearing to it to be concerned or likely to be concerned with the breach.

(3) Where the enforcement authority is a local weights and measures authority in Great Britain it may apply for an injunction only if—

(a) it has notified the OFT of its intention to apply for an injunction at least fourteen days before the date on which the application is made; or

(b) the OFT consents to the application for an injunction being made within a shorter period.

(4) Proceedings referred to in paragraph (2) are not invalid by reason only of the failure to comply with paragraph (3).

## **Undertakings**

**16.** Where an enforcement authority considers that there has been or is likely to be a breach of regulation 3, 4 or 5 it may accept from the person concerned or likely to be concerned with the breach an undertaking that he will comply with those regulations.

## **Co-ordination**

**17.**—(1) If more than one local weights and measures authority in Great Britain is contemplating bringing proceedings under regulation 15 in any particular case, the OFT may direct which enforcement authority is to bring the proceedings or decide that only it may do so.

(2) Where the OFT directs that only it may bring such proceedings it may take into account whether compliance with regulation 3, 4 or 5 could be achieved by other means in deciding whether to bring proceedings.

## **Powers of the court**

**18.**—(1) The court on an application by an enforcement authority may grant an injunction on such terms as it may think fit to secure compliance with regulation 3, 4 or 5.

(2) Before granting an injunction the court shall have regard to all the interests involved and in particular the public interest.

(3) An injunction may relate not only to particular advertising but to any advertising in similar terms or likely to convey a similar impression.

(4) The court may also require any person against whom an injunction (other than an interim injunction) is granted to publish in such form and manner and to such extent as the court thinks appropriate for the purpose of eliminating any continuing effects of the advertising—

(a) the injunction; and

(b) a corrective statement.

(5) In considering an application for an injunction 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 the advertising 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.

(6) If, having been required under paragraph (5) 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.

(7) The court may grant an injunction even where there is no evidence of proof of actual loss or damage or of intention or negligence on the part of the advertiser.

#### **Notifications of undertakings and orders to the OFT**

**19.** An enforcement authority, other than the OFT, shall notify the OFT—

- (a) of any undertaking given to it under regulation 16;
- (b) of the outcome of any application made by it under regulation 15 and the terms of any order made by the court; and
- (c) of the outcome of any application made by it to enforce a previous order of the court.

#### **Publication, information and advice**

**20.—(1)** The OFT must arrange for the publication, in such form and manner as it considers appropriate, of—

- (a) details of any undertaking or order notified to it under regulation 19;
- (b) details of any undertaking given to it under regulation 16;
- (c) details of any application made by it under regulation 15 and of the terms of any undertaking given to, or order made by, the court;
- (d) details of any application made by it to enforce a previous order of the court.

(2) The OFT may arrange for the dissemination, in such form and manner as it considers appropriate, of such information and advice concerning the operation of these Regulations as appear to it to be expedient to give to the public and to all persons likely to be affected by these Regulations.

## **PART 4**

### **INVESTIGATION POWERS**

#### **Powers of Enforcement Authorities to obtain information**

**21.—(1)** For the purpose of determining whether to bring proceedings for an injunction under regulation 15, an enforcement authority may by notice in writing require a person to provide to it such information as may be specified or described in the notice or to produce to it any documents so specified or described.

(2) A notice under paragraph (1) may—

- (a) specify the way in which and the time within which it is to be complied with; and
- (b) be varied or revoked by a subsequent notice.

(3) Nothing in this regulation gives an enforcement authority any power to require another person to provide or produce any information or document which the other person would be entitled to refuse to provide or 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.

(4) In paragraph (3) “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.

(5) Nothing in this regulation shall be construed as requiring a person to provide information if to do so might incriminate him.

(6) If a person does not comply with a notice under paragraph (1) the court may, on the application of an enforcement authority, make such order as the court thinks fit for requiring the default to be made good, and any such order may provide that all the costs or expenses of and incidental to the application shall be borne by the person in default or by any officers of a company or other association who are responsible for its default.

### **Power to make test purchases**

**22.** 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.**

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

- (a) he may, for the purpose 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 trade, business, craft or profession 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 do so 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 vending machine as being the proprietor's, or
  - (ii) if there is no such name or address stated on the vending 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 24 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 regulation 24 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**

**24.—**(1) If a justice of the peace by a 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 23(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 occurred, is occurring or is about to occur 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**

**25.—**(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 23; 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.

(4) Paragraph (1)(a) does not apply in relation to the exercise by an enforcement authority of its power to require information under regulation 21.

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

**26.**—(1) Where goods purchased by an officer pursuant to regulation 22 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 23(3)(b);

of the result of the test.

(2) Where goods seized by an officer pursuant to regulation 23 are submitted to a test then the officer shall inform the person mentioned in regulation 23(3) of the result of the test.

(3) Where, as a result of the test, proceedings for 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**

**27.**—(1) Where an officer of an enforcement authority seizes and detains goods in exercise of the powers under regulation 23 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.

### **Crown**

**28.**—(1) The powers conferred by regulations 23 and 24 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.

Department for Business, Enterprise &  
Regulatory Reform

## EXPLANATORY NOTE

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

These Regulations implement Directive [2006/114/EC](#) of the European Parliament and of the Council concerning misleading and comparative advertising (OJ No L376 27.12.2006, p 21) (“the Directive”). The Directive replaces Council Directive [84/450/EEC](#) concerning misleading and comparative advertising (OJ No L250 19.9.84, p 17) and codifies the amendments made to that directive. Council Directive [84/450/EEC](#) was implemented by the Control of Misleading Advertising Regulations 1988 ([S.I. 1988/915](#)). Those Regulations are revoked by the Consumer Protection from Unfair Trading Regulations 2008 (S.I. 2008/ ).

Part 1 prohibits advertising which misleads traders. This Part also sets out the conditions under which comparative advertising (namely advertising which identifies a competitor or a competitor’s product) is permitted. In addition this Part requires code owners (namely traders and bodies responsible for codes of conduct or monitoring compliance with such codes) not to promote misleading advertising and comparative advertising which is not permitted.

Part 2 provides for criminal offences and defences that apply where a trader engages in misleading advertising

Part 3 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 (“the enforcement authorities”). The enforcement authorities are given the power to take proceedings for an injunction to secure compliance with the Regulations.

Part 4 gives the enforcement authorities 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.

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.