
DRAFT STATUTORY INSTRUMENTS

2008 No.

**The Cancellation of Contracts made in a Consumer's
Home or Place of Work etc. Regulations 2008**

Citation and commencement

1. These Regulations may be cited as the Cancellation of Contracts made in a Consumer's Home or Place of Work etc. Regulations 2008 and shall come into force on 1st October 2008.

Interpretation

2.—(1) In these Regulations:

“the 1974 Act” means the Consumer Credit Act 1974(1);

“cancellable agreement” has the same meaning as in section 189(1) of the 1974 Act;

“cancellation notice” means a notice in writing given by the consumer which indicates that he wishes to cancel the contract;

“cancellation period” means the period of 7 days starting with the date of receipt by the consumer of a notice of the right to cancel;

“consumer” means a natural person who in making a contract to which these Regulations apply is acting for purposes which can be regarded as outside his trade or profession;

“consumer credit agreement” means an agreement between the consumer and any other person by which the other person provides the consumer with credit of any amount;

“credit” includes a cash loan and any other form of financial accommodation, and for this purpose “cash” includes money in any form;

“enforcement authority” means any person mentioned in regulation 21;

“fixed sum credit” has the same meaning as in section 10(1) of the 1974 Act(2);

“notice of the right to cancel” means a notice given in accordance with regulation 7;

“related credit agreement” means a consumer credit agreement under which fixed sum credit which fully or partly covers the price under a contract which may be cancelled under regulation 7 is granted—

(i) by the trader; or

(ii) by another person, under an arrangement made between that person and the trader;

“solicited visit” has the meaning given in regulation 6(3);

“specified contract” has the meaning given in regulation 9; and

“trader” means a person who, in making a contract to which these Regulations apply, is acting in his commercial or professional capacity and anyone acting in the name or on behalf of a trader.

(2) Paragraph 8(2) of Schedule 3 has effect for the purposes of paragraphs 7 and 8(1).

(1) 1974 c.39.

(2) Section 10 of the Consumer Credit Act 1974 was amended by section 5(2) of the Consumer Credit Act 2006 (c.14).

Consequential amendments, revocations and saving

3. Schedule 1 (Consequential Amendments) shall have effect.

4.—(1) Schedule 2 (Revocations) shall have effect.

(2) The Consumer Protection (Cancellation of Contracts Concluded away from Business Premises) Regulations 1987⁽³⁾ (“the 1987 Regulations”) shall continue to have effect in relation to a contract to which they applied before their revocation by these Regulations.

(3) These Regulations shall not apply to a contract to which the 1987 Regulations applied before their revocation.

Scope of application

5. These Regulations apply to a contract, including a consumer credit agreement, between a consumer and a trader which is for the supply of goods or services to the consumer by a trader and which is made—

- (a) during a visit by the trader to the consumer’s home or place of work, or to the home of another individual;
- (b) during an excursion organised by the trader away from his business premises; or
- (c) after an offer made by the consumer during such a visit or excursion.

6.—(1) These Regulations do not apply to—

- (a) any contracts listed in Schedule 3 (Excepted Contracts);
- (b) a cancellable agreement;
- (c) a consumer credit agreement which may be cancelled by the consumer in accordance with the terms of the agreement conferring upon him similar rights as if the agreement were a cancellable agreement; or
- (d) a contract made during a solicited visit or a contract made after an offer made by a consumer during a solicited visit where the contract is—
 - (i) a regulated mortgage, home purchase plan or home reversion plan if the making or performance of such a contract constitutes a regulated activity for the purposes of the Financial Services and Markets Act 2000⁽⁴⁾;
 - (ii) a consumer credit agreement secured on land which is—
 - (aa) regulated under the 1974 Act; or
 - (bb) to the extent that it is not regulated under the 1974 Act, exempt under that Act; or
 - (iii) any other consumer credit agreement regulated under the 1974 Act.

(2) Where any agreement referred to in paragraph (1)(b), (c) or (d)(iii) is a related credit agreement the provisions of regulations 11 and 12 shall apply to the cancellation of that agreement.

(3) A solicited visit means a visit by a trader, whether or not he is the trader who supplies the goods or services, to a consumer’s home or place of work or to the home of another individual, which is made at the express request of the consumer but does not include—

- (a) a visit by a trader which is made after he, or a person acting in his name or on his behalf—
 - (i) telephones the consumer (otherwise than at the consumer’s express request) and indicates during the course of the telephone call (either expressly or by implication)

⁽³⁾ S.I. 1987/2117 as amended by S.I. 1988/958, S.I. 1998/3050, S.I. 2001/3649, S.I. 2003/1400, S.I. 2006/3384.

⁽⁴⁾ 2000 c.8 to which there are amendments not relevant to these Regulations.

- that he, or the trader in whose name or on whose behalf he is acting, is willing to visit the consumer; or
- (ii) visits the consumer (otherwise than at the consumer's express request) and indicates during the course of that visit (either expressly or by implication) that he, or the trader in whose name or on whose behalf he is acting, is willing to make a subsequent visit to the consumer; or
- (b) a visit during which the contract which is made relates to goods and services other than those concerning which the consumer requested the visit of the trader, provided that when the visit was requested the consumer did not know, or could not reasonably have known, that the supply of such goods or services formed part of the trader's commercial or professional activities.

Right to cancel a contract to which these Regulations apply

7.—(1) A consumer has the right to cancel a contract to which these Regulations apply within the cancellation period.

(2) The trader must give the consumer a written notice of his right to cancel the contract and such notice must be given at the time the contract is made except in the case of a contract to which regulation 5(1)(c) applies in which case the notice must be given at the time the offer is made by the consumer.

(3) The notice must—

- (a) be dated;
- (b) indicate the right of the consumer to cancel the contract within the cancellation period;
- (c) be easily legible;
- (d) contain—
 - (i) the information set out in Part I of Schedule 4; and
 - (ii) a cancellation form in the form set out in Part II of that Schedule provided as a detachable slip and completed by or on behalf of the trader in accordance with the notes; and
- (e) indicate if applicable—
 - (i) that the consumer may be required to pay for the goods or services supplied if the performance of the contract has begun with his written agreement before the end of the cancellation period;
 - (ii) that a related credit agreement will be automatically cancelled if the contract for goods or services is cancelled.

(4) Where the contract is wholly or partly in writing the notice must be incorporated in the same document.

(5) If incorporated in the contract or another document the notice of the right to cancel must—

- (a) be set out in a separate box with the heading “Notice of the Right to Cancel”; and
- (b) have as much prominence as any other information in the contract or document apart from the heading and the names of the parties to the contract and any information inserted in handwriting.

(6) A contract to which these Regulations apply shall not be enforceable against the consumer unless the trader has given the consumer a notice of the right to cancel and the information required in accordance with this regulation.

Exercise of the right to cancel a contract

8.—(1) If the consumer serves a cancellation notice within the cancellation period then the contract is cancelled.

(2) A contract which is cancelled shall be treated as if it had never been entered into by the consumer except where these Regulations provide otherwise.

(3) The cancellation notice must indicate the intention of the consumer to cancel the contract and does not need to follow the form of cancellation notice set out in Part II of Schedule 4.

(4) The cancellation notice must be served on the trader or another person specified in the notice of the right to cancel as a person to whom the cancellation notice may be given.

(5) A cancellation notice sent by post is taken to have been served at the time of posting, whether or not it is actually received.

(6) Where a cancellation notice is sent by electronic mail it is taken to have been served on the day on which it is sent.

Cancellation of specified contracts commenced before expiry of the right to cancel

9.—(1) Where the consumer enters into a specified contract and he wishes the performance of the contract to begin before the end of the cancellation period, he must request this in writing.

(2) Where the consumer cancels a specified contract in accordance with regulation 8 he shall be under a duty to pay in accordance with the reasonable requirements of the cancelled contract for goods or services that were supplied before the cancellation.

(3) If the consumer fails to provide the request in writing referred to in paragraph (1) then—

(a) the trader is not obliged to begin performance of the specified contract before the end of the cancellation period; and

(b) the consumer is not bound by the duty referred to in paragraph (2) if he cancels the contract in accordance with regulation 8.

(4) For the purposes of this regulation and regulation 13, a “specified contact” means a contract for any of the following—

(a) the supply of newspapers, periodicals or magazines;

(b) advertising in any medium;

(c) the supply of goods the price of which is dependent on fluctuations in the financial markets which cannot be controlled by the trader;

(d) the supply of goods to meet an emergency;

(e) the supply of goods made to a customer’s specifications or clearly personalised and any services in connection with the provision of such goods;

(f) the supply of perishable goods;

(g) the supply of goods which by their nature are consumed by use and which, before the cancellation, were so consumed;

(h) the supply of goods which, before the cancellation, had become incorporated in any land or thing not comprised in the cancelled contract;

(i) the supply of goods or services relating to a funeral; or

(j) the supply of services of any other kind.

Recovery of money paid by consumer

10.—(1) On the cancellation of a contract under regulation 8 any sum paid by or on behalf of the consumer in respect of the contract shall become repayable except where these Regulations provide otherwise.

(2) If the consumer or any person on his behalf is in possession of any goods under the terms of the cancelled contract then he shall have a lien on them for any sum repayable to him under paragraph (1).

(3) Where any security has been provided in relation to the cancelled contract, the security shall be treated as never having had effect for that purpose and the trader must immediately return any property lodged with him solely as security for the purposes of the cancelled contract.

Automatic cancellation of related credit agreement

11.—(1) A cancellation notice which cancels a contract for goods or services shall have the effect of cancelling any related credit agreement.

(2) Subject to paragraphs (3) and (4), where a related credit agreement has been cancelled under paragraph (1)—

- (a) the trader must, if he is not the same person as the creditor under that agreement, immediately on receipt of the cancellation notice inform the creditor that the notice has been given;
- (b) any sum paid by or on behalf of the consumer in relation to the credit agreement must be reimbursed, except for any sum which would have to be paid under sub-paragraph (c);
- (c) the agreement shall continue in force so far as it relates to repayment of the credit and payment of interest in accordance with regulation 12, but shall otherwise cease to be enforceable; and
- (d) any security provided under the related credit agreement shall be treated as never having had effect for that purpose and the creditor must immediately return any property lodged with him solely as security for the purposes of the related credit agreement.

(3) Where a related credit agreement is a cancellable agreement—

- (a) its cancellation under paragraph (1) shall take effect as if a notice of cancellation within the meaning of the 1974 Act had been served;
- (b) that Act shall apply in respect of the consequences of such cancellation;
- (c) paragraph (2)(b) to (d) and regulation 12 shall not apply in respect of its cancellation; and
- (d) regulations 13 and 14 shall not apply in respect of the cancellation of the related contract for goods or services.

(4) Where a related credit agreement of a kind referred to in regulation 6(1)(c) is cancelled under paragraph (1)—

- (a) paragraph (2)(b) to (d) and regulation 12 shall not apply in respect of its cancellation; and
- (b) regulations 13 and 14 shall not apply in respect of the cancellation of the related contract for goods or services.

(5) Where a related credit agreement of a kind referred to in regulation 6(1)(d)(iii) is cancelled under paragraph (1)—

- (a) the provisions of this regulation and regulation 12 shall apply in respect of its cancellation; and
- (b) the provisions of regulations 13 and 14 shall apply in respect of the cancellation of the related contract for goods or services.

(6) For the purposes of this regulation and regulation 12 “creditor” is the person who grants credit under a related credit agreement.

Repayment of credit and interest

12.—(1) Where—

- (a) a contract under which credit is provided to the consumer is cancelled under regulation 8; or
- (b) a related credit agreement (other than a cancellable agreement or an agreement of a kind referred to in regulation 6(1)(c)) is cancelled as a result of the cancellation of a contract for goods or services,

the contract or agreement shall continue in force so far as it relates to repayment of the credit and payment of interest.

(2) If, following the cancellation of a contract or related credit agreement to which paragraph (1) applies, the consumer repays the whole or a portion of the credit—

- (a) before the expiry of one month following service of the cancellation notice; or
- (b) in the case of a credit repayable by instalments, before the date on which the first instalment is due,

no interest shall be payable on the amount repaid.

(3) If the whole of a credit repayable by instalments is not repaid on or before the date specified in paragraph (2)(b), the consumer shall not be liable to repay any of the credit except on receipt of a request in writing signed by the trader stating the amounts of the remaining instalments (recalculated by the trader as nearly as may be in accordance with the contract and without extending the repayment period), but excluding any sum other than principal and interest.

(4) Repayment of a credit, or payment of interest, under a cancelled contract or related credit agreement shall be treated as duly made if it is made to any person on whom, under regulation 8(4), a cancellation notice could have been served.

(5) Where any security has been provided in relation to the contract or consumer credit agreement, the duty imposed on the consumer by this regulation shall not be enforceable before the trader or creditor has discharged any duty imposed on him by regulation 10(3) or 11(2)(d) respectively.

Return of goods by consumer after cancellation

13.—(1) A consumer who has acquired possession of any goods by virtue of the contract shall on the cancellation of that contract be under a duty, subject to any lien, to restore the goods to the trader and meanwhile to retain possession of the goods and take reasonable care of them.

(2) The consumer shall not be under a duty to restore goods supplied under a specified contract in circumstances where—

- (a) he is required to pay, in accordance with the reasonable requirements of the cancelled contract, for the supply of such goods before cancellation; or
- (b) the trader has begun performance of the contract before the end of the cancellation period without a prior request in writing by the consumer.

(3) The consumer shall not be under any duty to deliver the goods except at his own premises and following a request in writing signed by the trader and served on the consumer either before, or at the time when, the goods are collected from those premises.

(4) If the consumer—

- (a) delivers the goods (whether at his own premises or elsewhere) to any person on whom, under regulation 8(4), a cancellation notice could have been served; or

(b) sends the goods at his own expense to such a person,
he shall be discharged from any duty to retain possession of the goods or restore them to the trader.

(5) Where the consumer delivers the goods as mentioned in paragraph (4)(a), his obligation to take care of the goods shall cease; and if he send the goods as mentioned in paragraph (4)(b), he shall be under a duty to take reasonable care to see that they are received by the trader and not damaged in transit, but in other respects his duty to take care of the goods shall cease.

(6) Where, at any time during the period of 21 days following the cancellation, the consumer receives such a request as is mentioned in paragraph (3) and unreasonably refuses or unreasonably fails to comply with it, his duty to retain possession and take reasonable care of the goods shall continue until he delivers or sends the goods as mentioned in paragraph (4); but if within that period he does not receive such a request his duty to take reasonable care of the goods shall cease at the end of that period.

(7) Where any security has been provided in relation to the cancelled contract, the duty imposed on the consumer to restore goods shall not be enforceable before the trader has discharged any duty imposed on him by regulation 10(3).

(8) Breach of a duty imposed on a consumer by this regulation is actionable as a breach of statutory duty.

Goods given in part-exchange

14.—(1) This regulation applies on the cancellation of a contract where the trader agreed to take goods in part-exchange (the “part-exchange goods”) and those goods have been delivered to him.

(2) Unless, before the end of the period of ten days beginning with the date of cancellation, the part-exchange goods are returned to the consumer in a condition substantially as good as when they were delivered to the trader, the consumer shall be entitled to recover from the trader a sum equal to the part-exchange allowance.

(3) During the period of ten days beginning with the date of cancellation, the consumer, if he is in possession of goods to which the cancelled contract relates, shall have a lien on them for—

- (a) delivery of the part-exchange goods in a condition substantially as good as when they were delivered to the trader; or
- (b) a sum equal to the part-exchange allowance,

and if the lien continues to the end of that period it shall thereafter subsist only as a lien for a sum equal to the part-exchange allowance.

(4) In this regulation the part-exchange allowance means the sum agreed as such in the cancelled contract, or if no such sum was agreed, such sum as it would have been reasonable to allow in respect of the part-exchange goods if no notice of cancellation had been served.

No contracting-out of contracts to which these Regulations apply

15.—(1) A term contained in a contract is void if, and to the extent that, it is inconsistent with a provision for the protection of the consumer contained in these Regulations.

(2) Where a provision of these Regulations specifies the duty or liability of the consumer in certain circumstances, a term contained in a contract is inconsistent with that provision if it purports to impose, directly or indirectly, an additional or different duty or liability on the consumer in those circumstances.

Service of documents

16.—(1) A document to be served under these Regulations on a person may be so served—

- (a) by delivering it to him, or by leaving it at his proper address or by sending it to him at that address;
 - (b) if the person is a body corporate, by serving it in accordance with sub-paragraph (a) on the secretary or clerk of that body;
 - (c) if the person is a partnership, by serving it in accordance with sub-paragraph (a) on a partner or on a person having the control or management of the partnership business; and
 - (d) if the person is an unincorporated body, by serving it in accordance with sub-paragraph (a) on a person having control or management of that body.
- (2) For the purposes of paragraph (1), the proper address of any person on whom a document is to be served under these Regulations is his last known address except that—
- (a) in the case of service on a body corporate or its secretary or clerk, it is the address of the registered or principal office of the body corporate in the United Kingdom; and
 - (b) in the case of service on a partnership or partner or person having the control or management of a partnership business, it is the partnership's principal place of business in the United Kingdom.
- (3) A person's electronic mail address may also be his proper address for the purposes of paragraph (1).

Enforcement

Offence relating to the failure to give notice of the right to cancel

17.—(1) A trader is guilty of an offence if he enters into a contract to which these Regulations apply but fails to give the consumer a notice of the right to cancel in accordance with regulation 7.

(2) A person who is guilty of an offence under paragraph (1) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Defence of due diligence

18.—(1) In any proceedings against a person for an offence under regulation 17 it is a defence for that person to prove—

- (a) that the commission of the offence was due to—
 - (i) the act or default of another, or
 - (ii) reliance on information given by another, 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) 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 not less than seven clear days before the hearing of the proceedings or, in Scotland, the diet of trial.

Liability of persons other than the principal offender

19. Where the commission by a person of an offence under regulation 17 is due to the act or default of another person, that other person is guilty of the offence and may be proceeded against and punished whether or not proceedings are taken against the first person.

Offences committed by bodies of persons

20.—(1) Where an offence under regulation 17 committed by a body corporate is proved—

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

the officer, as well as the body corporate shall be 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 regulation 17 committed in Scotland 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,

that partner, as well as the partnership shall be 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.

Duty to enforce

21.—(1) Subject to paragraphs (2) and (3)—

- (a) it shall be the duty of every weights and measures authority in Great Britain to enforce regulation 17 within its area; and
- (b) it shall be the duty of the Department of Enterprise Trade and Investment in Northern Ireland to enforce regulation 17 within Northern Ireland.

(2) No proceedings for an offence under these Regulations may be instituted in England and Wales except by or on behalf of an enforcement authority.

(3) Nothing in paragraph (1) shall authorise any weights and measures authority to bring proceedings in Scotland for an offence.

Powers of investigation

22.—(1) If a duly authorised officer of an enforcement authority has reasonable grounds for suspecting that an offence has been committed under regulation 17, he may require a person carrying on or employed in a business to produce any document relating to the business, and take copies of it or any entry in it for the purposes of ascertaining whether such an offence has been committed.

(2) If the officer has reasonable grounds for believing that any documents may be required as evidence in proceedings for such an offence, he may seize and detain them and shall, if he does so, inform the person from whom they are seized.

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

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

(5) An officer seeking to exercise a power under this regulation must do so only at a reasonable hour and on production (if required) of his identification and authority.

(6) Nothing in this regulation requires a person to produce, or authorises the taking from a person of, a 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 the Court of Session on the grounds of confidentiality of communications.

(7) In paragraph (6) “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 purpose of those proceedings.

Obstruction of authorised officers

23.—(1) A person is guilty of an offence if he—

- (a) intentionally obstructs an officer of an enforcement authority acting in pursuance of his functions under these Regulations;
- (b) without reasonable cause fails to comply with any requirement properly made of him by such an officer under regulation 22; 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.

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

(3) A person guilty of an offence under paragraph (1) or (2) shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

24. Nothing in regulation 22 or 23 shall be construed as requiring a person to answer any question or give any information if to do so might incriminate him.

Date

Department for Business, Enterprise and
Regulatory Reform