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DRAFT STATUTORY INSTRUMENTS

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**2008 No.**

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

*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.