

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 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). They are also annexed to the Explanatory Memorandum which is available alongside the instrument on the OPSI website (www.opsi.gov.uk). Copies have also been placed in the Libraries of both Houses of Parliament.