

2001 No. 1422

CONSUMER PROTECTION

The Stop Now Orders (E.C. Directive) Regulations 2001

Made - - - - - *9th April 2001*

Laid before Parliament *10th April 2001*

Coming into force - - *1st June 2001*

The Secretary of State, being a Minister designated(a) for the purposes of section 2(2) of the European Communities Act 1972(b) in relation to measures relating to consumer protection, in the exercise of the powers conferred on him by that section, hereby makes the following Regulations:—

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Stop Now Orders (E.C. Directive) Regulations 2001 and shall come into force on 1st June 2001.

(2) These Regulations extend to Northern Ireland.

Interpretation

2.—(1) In these Regulations—

“the Act” means the Fair Trading Act 1973(c);

“Community infringement” means any act contrary to the Directives as transposed into the internal legal order of a Member State and which harms the collective interests of consumers included in the Directives;

“Community qualified entity” means an entity from another Member State for the time being listed in the Official Journal of the European Communities under Article 4(3) of the Injunctions Directive;

“the Directives” means the directives listed in Schedule 1 to these Regulations;

“EEA Agreement” means the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 as adjusted by the protocol signed at Brussels on 17th March 1993(d);

“the European Commission” means the Commission of the European Communities;

“Injunctions Directive” means Directive 98/27/EC of the European Parliament and of the Council of 19th May 1998 on injunctions for the protection of consumers’ interests (e);

“Member State” means a State which is a contracting party to the EEA Agreement;

“other UK qualified entity” means an organisation designated by the Secretary of State in accordance with regulation 4;

(a) SI 1993/2661.

(b) 1972 c. 68.

(c) 1973 c. 41.

(d) Directive 98/27/EC was added to Annex XIX of the EEA Agreement by Decision No. 121/1999 of the EEA Joint Committee which came into force on 1 July 2000 (O.J. No. L325, 21.12.00, p.38).

(e) OJ No. L166, 11.6.98, p.51.

“public UK qualified entity” means an independent public body specifically responsible for protecting the collective interests of consumers included in the Directives and listed in Schedule 3 to these Regulations;

“qualified entity” means a public UK qualified entity, an other UK qualified entity, or a Community qualified entity;

“Stop Now Order” means an order as mentioned in paragraph 7 of Schedule 2 to these Regulations.

(2) Terms (other than “consumer”) used in Part III of the Act shall have the same meaning as in that Act, and terms used in the Injunctions Directive shall have the same meaning as in that directive.

(3) For the purposes of the definition of “Community infringement” as it applies in relation to the law of any part of the United Kingdom, the internal legal order shall be taken to include the following:

- (a) regulation of misleading and comparative advertising, except regulation specifically in relation to food, tobacco and tobacco products;
- (b) the Consumer Protection (Cancellation of Contracts Concluded away from Business Premises) Regulations 1987(a);
- (c) the Consumer Credit Act 1974(b);
- (d) regulation of the content, amount and distribution of television advertising and of programme sponsorship;
- (e) the Package Travel, Package Holidays and Package Tours Regulations 1992(c);
- (f) The Medicines (Advertising) Regulations 1994(d);
- (g) the Unfair Terms in Consumer Contracts Regulations 1999(e);
- (h) the Timeshare Act 1992(f);
- (i) the Consumer Protection (Distance Selling) Regulations 2000(g);
- (j) regulation of the sale and supply to consumers of goods and the following services, and of guarantees in relation to such services—
 - (i) services provided under a contract for the supply of goods to be manufactured or produced; and
 - (ii) installation of goods, where installation forms part of a contract for the sale or supply of goods, and where the goods are installed by the seller or supplier or under his responsibility.

Application of Part III of Fair Trading Act 1973 to Community infringements

3. The provisions of Schedule 2 to these Regulations shall have effect in place of the corresponding provisions of Part III of the Act in relation to Community infringements.

Designation of other UK qualified entities

4.—(1) On application to him in writing, supported by such evidence as he may require, the Secretary of State may designate any organisation whose purpose is to protect the collective interests of consumers included in the Directives as an other UK qualified entity where he considers that the organisation meets the criteria in paragraph (2) below.

(2) The criteria are—

- (a) that the organisation is so constituted, managed and controlled as to be expected to act independently, impartially and with complete integrity;

(a) SI 1987/2117, amended by the Consumer Protection (Cancellation of Contracts Concluded away from Business Premises) (Amendment) Regulations 1988, SI 1988/958.

(b) 1974 c. 39. The Act has been amended on numerous occasions.

(c) SI 1992/3288, amended by the Package Travel, Package Holidays and Package Tours (Amendment) Regulations 1995, SI 1995/1648 and 1998, SI 1998/1208.

(d) SI 1994/1932, amended by the Medicines (Advertising) Amendment Regulations 1996, SI 1996/1552 and the Medicines (Advertising and Monitoring of Advertising) Amendment Regulations 1999, SI 1999/267.

(e) SI 1999/2083, amended by the Unfair Terms in Consumer Contracts (Amendment) Regulations 2001, SI 2001/1186.

(f) c. 35, amended by the Timeshare Regulations 1997 (SI 1997/1081) and in other respects not relevant to these Regulations.

(g) SI 2000/2334.

- (b) that the organisation has demonstrated the ability to protect the collective interests of consumers included in the Directives by promoting high standards of integrity and fair dealing in the conduct of business in relation to such consumers;
- (c) that the organisation is ready and willing to co-operate, by the sharing of information and otherwise, with the Director, other qualified entities and any other authority, body or person having responsibility for the regulation of the matters covered by these Regulations.

(3) An organisation shall not be regarded as failing to meet the criterion set out in paragraph (2)(a) above by reason only of a connection with a person carrying on business of a kind that could be affected, directly or indirectly, by action taken under these Regulations so long as that person does not control the organisation and any profits of the business are used for the purpose mentioned in paragraph (2)(b) above.

(4) A designation under this regulation may be for all purposes under these Regulations or in relation only to particular types of Community infringement and shall be published in such manner as appears to the Secretary of State best calculated for bringing it to the attention of persons who may be concerned.

(5) At the request of an organisation designated under this regulation the Secretary of State shall communicate to the European Commission that the organisation is qualified to bring proceedings under these Regulations and the name and purpose of the organisation.

(6) The Secretary of State may withdraw or amend a designation under this regulation at the request of an organisation or if it no longer appears to him that the organisation meets the criteria in paragraph (2) above generally or in relation to particular types of Community infringement.

(7) Where a designation is withdrawn or amended under paragraph (6) above the Secretary of State shall publish the withdrawal or amendment in accordance with paragraph (4) and, if he has communicated to the European Commission under paragraph (5) above, he shall make a further communication accordingly.

Proceedings in other Member States and Co-operation with Community qualified entities

- 5.—(1) The Director and any public UK qualified entity shall have all necessary powers—
- (a) to enable them to bring proceedings under the provisions corresponding to these Regulations in any other Member State;
 - (b) to bring proceedings in the United Kingdom on behalf of any Community qualified entity.

(2) Without prejudice to the generality of paragraph (1) above, the Director, any public UK qualified entity and any organisation in relation to which a communication has been made under regulation 4(5) above may enter into arrangements to share information with each other and with any Community qualified entity (whether or not he or it would otherwise be entitled to disclose it) and generally to co-operate with any such entity for the purpose of bringing proceedings under these Regulations or the provisions corresponding to them in any other Member State.

Advice and information

6.—(1) As soon as is reasonably practicable after the making of these Regulations, the Director must prepare and publish advice and information with a view to—

- (a) explaining the provisions of these Regulations to persons who are likely to be affected by them; and
- (b) indicating how the Director expects such provisions to operate.

(2) The Director may at any time publish revised, or new, advice or information.

(3) Advice (or information) published by virtue of paragraph (1)(b) may include advice (or information) about the factors which the Director may take into account in considering whether, and if so how, to exercise the powers conferred on him by these Regulations.

(4) Any advice or information published by the Director under this regulation is to be published in such form and in such manner as he considers appropriate.

(5) If the Director is preparing any advice or information under this regulation he must consult such persons as he considers representative of persons affected by these Regulations.

(6) If the proposed advice or information relates to a matter in respect of which a public UK or other UK qualified entity may act, those consulted must include that qualified entity.

Co-ordination

7.—(1) If more than one of the Director, any public or other UK qualified entity are contemplating bringing proceedings under these Regulations the Director may, in any particular case, direct which of these entities is to bring such proceedings or that only he may do so.

(2) Where the Director directs that only he may bring such proceedings he may take into account whether cessation of the infringement could be achieved by other means in deciding whether or not to bring proceedings.

Kim Howells,
Parliamentary Under-Secretary of State for
Consumers and Corporate Affairs,
Department of Trade and Industry

9th April 2001

THE DIRECTIVES

1. Council Directive 84/450/EEC of 10 September 1984 relating to the approximation of the laws, regulations and administrative provisions of the Member States concerning misleading advertising(a).
2. Council Directive 85/577/EEC of 20 December 1985 to protect the consumer in respect of contracts negotiated away from business premises(b).
3. Council Directive 87/102/EEC of 22 December 1986 for the approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit(c) as last amended by Directive 98/7/EC(d).
4. Council Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities: Articles 10 to 21(e) as amended by Directive 97/36/EC(f).
5. Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours(g).
6. Council Directive 92/28/EEC of 31 March 1992 on the advertising of medicinal products for human use(h).
7. Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts(i).
8. Directive 94/47/EC of the European Parliament and of the Council of 26 October 1994 on the protection of purchasers in respect of certain aspects of contracts relating to the purchase of the right to use immovable properties on a timeshare basis(j).
9. Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts(k).
10. Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees(l).

SCHEDULE 2

PROVISIONS HAVING EFFECT IN PLACE OF CORRESPONDING
PROVISIONS OF PART III OF THE ACT

1. The Director and any qualified entity shall have power to bring proceedings under section 35 of the Act in relation to any Community infringement.
2. Except where the Director considers that circumstances are such that proceedings should be brought without delay, he shall, before bringing such proceedings, try to achieve the cessation of the infringement in consultation with the person against whom he intends to bring the proceedings.
3. Except where the Director considers that circumstances are such that proceedings should be brought without delay, a qualified entity shall before bringing such proceedings try to achieve the cessation of the infringement in consultation with the Director and the person against whom it intends to bring the proceedings.
4. If the cessation of the infringement is not achieved within two weeks after the request for consultation is received, the qualified entity may bring the proceedings without further delay.
5. Section 36(2) of the Act shall apply in relation to acts contrary to the Directives as transposed into the internal legal order of a Member State as it applies in relation to a breach of contract or breach of duty as is mentioned in section 34(3) of the Act.
6. The relevant Court may make an order under section 37 of the Act where it finds that the respondent has engaged in conduct which constitutes a Community infringement or is likely to do so.

(a) OJ No. L 250, 19.9.1984, p.17.

(b) OJ No. L 372, 31.12.1985, p.31.

(c) OJ No. L 42, 12.2.1987, p.48.

(d) OJ No. L 101, 1.4.1998, p.17.

(e) OJ No. L 298, 17.10.1989, p.23.

(f) OJ No. L 202, 30.7.1997, p.60.

(g) OJ No. L 158, 23.6.1990, p.59.

(h) OJ No. L 113, 30.4.1992, p.13.

(i) OJ No. L 95, 21.4.1993, p.29.

(j) OJ No. L 280, 29.10.1994, p.83.

(k) OJ No. L 144, 4.6.1997, p.19.

(l) OJ No. L 171, 7.7.1999, p.12.

7. The order, which shall be known as a Stop Now Order, shall require the cessation of or prohibit the infringement.

8. The order shall be made with all due expediency, and in circumstances where it would grant an interim injunction (or in Scotland an interim interdict) to a public authority seeking to enforce the law where it has power to do so, the court may make an interim order.

9. The court may also order either publication of the decision to make an order (whether interim or final) in full or in part, in such form as deemed adequate or publication of a corrective statement with a view to eliminating the continuing effects of the infringement, or both.

10. In the case of a Community qualified entity the court may examine whether the purpose of the qualified entity justifies its taking action in the particular case and decline to make an order if it is not so satisfied.

11. Sections 38 and 39 of the Act shall apply in relation to any person consenting to or conniving at a Community infringement who at a material time fulfilled the relevant conditions in relation to a body corporate which has engaged in conduct which constitutes a Community infringement or is likely to do so (“an accessory”) as they apply to the conduct there mentioned and to consent to or connivance at it.

12. Paragraphs 2 to 4 above shall apply to proceedings under paragraph 11 above with the substitution for references to the cessation of the infringement to the cessation of consent to or connivance at the infringement.

13. An order made by virtue of paragraph 11 above shall direct the accessory to refrain from consenting to or conniving at the Community infringement, or engaging in conduct which constitutes the infringement in the course of any business which may at any time be carried on by him, and from consenting to or conniving at the engaging in any such conduct by any other body corporate in relation to which, when the conduct is engaged in, he fulfils the relevant conditions.

14. In circumstances where he or it has power to bring proceedings by virtue of this Schedule in relation to any Community infringement, the Director or qualified entity, as the case may be, may accept an undertaking from any person against whom the proceedings could be brought to cease engaging in conduct or not to engage in conduct or to refrain from consenting to or conniving at any person so doing.

15. Any person who has given an undertaking as mentioned in paragraph 14 above, shall be liable to civil proceedings in respect of any failure, or apprehended failure to fulfil the undertaking as if the obligations imposed by the undertaking on that person had been imposed by an order made by virtue of this Schedule.

16. Section 41 of the Act shall apply—

- (a) in relation to proceedings under paragraph 1 above as it applies in relation to proceedings under section 35 of the Act;
- (b) in relation to proceedings under paragraph 11 above as it applies to proceedings under section 38 of the Act.

SCHEDULE 3

Regulation 2

PUBLIC UK QUALIFIED ENTITIES

1. The Information Commissioner.
2. The Civil Aviation Authority.
3. The Gas and Electricity Markets Authority.
4. The Director General of Electricity Supply for Northern Ireland.
5. The Director General of Gas for Northern Ireland.
6. The Director General of Telecommunications.
7. The Director General of Water Services.
8. The Rail Regulator.
9. Every weights and measures authority in Great Britain.
10. The Department of Enterprise, Trade and Investment in Northern Ireland.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement Directive 98/27/EC of the European Parliament and of the Council of 19 May 1998 on injunctions for the protection of consumers' interests, referred to in the Regulations as the "Injunctions Directive" (OJ No L166, 11.6.98, p.51).

The Regulations apply to any act contrary to a provision in certain EC consumer protection directives as transposed into the legal order of a Member State and which harms the collective interests of consumers. For the purpose of these Regulations these acts are defined as "Community infringements". The ten relevant directives, which cover a wide range of consumer protection measures, are listed in Schedule 1. The Regulations also contain a non-exhaustive list of the United Kingdom legislation which, for the purposes of the definition of "Community infringement", are to be regarded as transposing the ten EC directives into the United Kingdom legal order (regulation 2(3)).

The Regulations provide that the provisions of Schedule 2 have effect in place of the corresponding provisions in Part III of the Fair Trading Act 1973 (the "Act") in relation to Community infringements (regulation 3). The existing provisions of Part III provide a means of dealing with traders who persist in a course of conduct which breaches the constraints imposed by civil or criminal law, in a way which is detrimental to the interests of consumers. Under section 35 of the Act the Director General of Fair Trading can apply for an order that the trader refrain from carrying on that course of conduct.

Schedule 2 provides that the Director General of Fair Trading and any qualified entity have the power to bring proceedings under section 35 of the Act in relation to any Community infringement. In addition to widening the range of bodies who may bring proceedings under section 35 of the Act, it displaces the existing requirement that before bringing proceedings under this section the Director General must first use his best endeavours to obtain a satisfactory written assurance from the trader that he will refrain from continuing that course of conduct or a similar one.

Except where the Director General considers that circumstances justify proceedings being brought immediately, qualified entities must first consult both the Director General and the trader and give the latter the opportunity to stop the infringement without the need for court action. If the infringement is not stopped within two weeks after the request for consultation is received, the qualified entity may bring proceedings without further delay.

Where the relevant Court is satisfied that the trader has engaged in conduct which constitutes a Community infringement or is likely to do so, the court may make an order (including an interim order) under section 37 of the Act. The order, to be known as a Stop Now Order, must require the trader to stop the infringement or not to engage in the conduct which would constitute an infringement. In addition, the court may, where appropriate, order the publication of the decision to make the order (in full or in part) and/or the publication of a corrective statement with a view to eliminating effects of the infringement.

The Regulations identify three categories of qualified entities: "public UK qualified entities" listed in Schedule 3 to the Regulations (statutory regulators and trading standards departments); "other UK qualified entities"; and "Community qualified entities."

"Community qualified entities" are defined as entities from other Member States which are listed in the Official Journal of the European Communities under Article 4.3 of the Injunctions Directive.

"Other UK qualified entities" are private consumer organisations meeting objective criteria set out in regulation 4(2) who have been designated for this purpose by the Secretary of State. Private consumer organisations may be designated for all purposes under these Regulations or in relation only to particular types of Community infringement. The names of other UK qualified entities are to be published in a manner that appears to the Secretary of State best calculated for bringing it to the attention of persons who may be concerned. At the request of an other UK qualified entity, the Secretary of State is required to notify the European Commission that it should be added to the list of bodies qualified to bring proceedings which is published in the Official Journal (regulation 4).

The Regulations empower the Director General and public UK qualified entities to bring proceedings in other Member States and to bring proceedings in the UK on behalf of Community qualified entities. The Director General, public UK qualified entities and other UK qualified entities on the Official Journal list may co-operate with each other and with Community qualified entities for the purpose of bringing proceedings under these Regulations or in other Member States (regulation 5).

The Director General is required to publish advice and information concerning the operation of the Regulations (regulation 6). If more than one of the Director General, any public or other UK qualified entity are contemplating bringing proceedings under these Regulations against a particular trader, the Director General may direct which entity may bring proceedings, or that only he may do so. Where the Director General directs that only he may bring proceedings he may take into account whether the infringement could be stopped by other existing means (regulation 7).

A Regulatory Impact Assessment of the costs and benefits which will result from these Regulations has been prepared by the Department of Trade and Industry and is available from Consumer Affairs Directorate, Department of Trade and Industry, Room 407, 1 Victoria Street, London SW1H 0ET (Telephone 020 7215 0341). Copies have been placed in the libraries of both Houses of Parliament.

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