
STATUTORY INSTRUMENTS

2008 No. 1276

TRADE DESCRIPTIONS

The Business Protection from
Misleading Marketing Regulations 2008

Made - - - - 8th May 2008
Coming into force - - 26th May 2008

The Secretary of State, being a Minister designated ^{M1} for the purposes of section 2(2) of the European Communities Act 1972 ^{M2} 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 ^{M3}, a draft of this instrument was laid before Parliament and approved by a resolution of each House of Parliament.

Marginal Citations

- M1** S.I. 1985/749.
M2 1972 c.68. Section 2(2) was amended by section 27(1)(a) of the [Legislative and Regulatory Reform Act 2006 \(c.51\)](#).
M3 [Paragraph 2\(2\)](#) of Schedule 2 was amended by section 27(2)(a) of the [Legislative and Regulatory Reform Act 2006 \(c.51\)](#).

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;

[^{F1}“CMA” means the Competition and Markets Authority;]

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

- (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;

[^{F2}“DETINI” means the Department of Enterprise, Trade and Investment in Northern Ireland;]

[^{F3}“enforcement authority” means the [^{F4}CMA], every local weights and measures authority, DETINI and GEMA;]

[^{F5}“GEMA” means the Gas and Electricity Markets Authority;]

“goods” includes ships, aircraft, animals, things attached to land and growing crops;

[^{F6}“local weights and measures authority” means a local weights and measures authority in Great Britain (within the meaning of section 69 of the Weights and Measures Act 1985);]

^{F7}

“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.

F1	Words in reg. 2(1) inserted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) (No. 2) Order 2014 (S.I. 2014/549) , art. 1(1), Sch. 1 para. 34(2)(c) (with art. 3)
F2	Words in reg. 2 inserted (28.3.2013) by The Public Bodies (The Office of Fair Trading Transfer of Consumer Advice Scheme Function and Modification of Enforcement Functions) Order 2013 (S.I. 2013/783) , arts. 1(2), 12(2)(a)
F3	Words in reg. 2 substituted (14.11.2013) by The Business Protection from Misleading Marketing (Amendment) Regulations 2013 (S.I. 2013/2701) , regs. 1, 3(a)
F4	Word in reg. 2(1) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) (No. 2) Order 2014 (S.I. 2014/549) , art. 1(1), Sch. 1 para. 34(2)(a) (with art. 3)
F5	Words in reg. 2 inserted (14.11.2013) by The Business Protection from Misleading Marketing (Amendment) Regulations 2013 (S.I. 2013/2701) , regs. 1, 3(b)
F6	Words in reg. 2 inserted (28.3.2013) by The Public Bodies (The Office of Fair Trading Transfer of Consumer Advice Scheme Function and Modification of Enforcement Functions) Order 2013 (S.I. 2013/783) , arts. 1(2), 12(2)(c)

F7 Words in reg. 2(1) omitted (1.4.2014) by virtue of [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) \(No. 2\) Order 2014 \(S.I. 2014/549\)](#), art. 1(1), [Sch. 1 para. 34\(2\)\(b\)](#) (with art. 3)

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;
- (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 ^{M4} 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.

Marginal Citations

M4 [S.I. 2008/1277](#).

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^{M5}, 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^{M6} 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^{M7} 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.

Marginal Citations

M5 1980 c.43.

M6 1995 c.46.

M7 S.I. 1981/1675 (N.I. 26).

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.

(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

[^{F8}Duty and power to enforce]

13.—[^{F9}(1) It shall be the duty of every local weights and measures authority and DETINI to enforce these Regulations.]

[^{F10}(1A) Each of the following may also enforce these Regulations—

- (a) the [^{F11}CMA];
- (b) GEMA.]

(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) [^{F12}In determining how to comply with paragraph (1), or as the case may be, paragraph (1A)] 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.

[^{F13}(4A) Nothing in this regulation shall authorise GEMA to bring proceedings for an offence.]

(5) Nothing in this regulation shall authorise any enforcement authority to bring proceedings in Scotland for an offence.

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| F8 | Reg. 13 heading substituted (28.3.2013) by The Public Bodies (The Office of Fair Trading Transfer of Consumer Advice Scheme Function and Modification of Enforcement Functions) Order 2013 (S.I. 2013/783), arts. 1(2), 12(3) |
| F9 | Reg. 13(1)(1A) substituted for reg. 13(1) (28.3.2013) by The Public Bodies (The Office of Fair Trading Transfer of Consumer Advice Scheme Function and Modification of Enforcement Functions) Order 2013 (S.I. 2013/783), arts. 1(2), 12(4) |
| F10 | Reg. 13(1A) substituted (14.11.2013) by The Business Protection from Misleading Marketing (Amendment) Regulations 2013 (S.I. 2013/2701), regs. 1, 4(a) |
| F11 | Word in reg. 13(1A) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) (No. 2) Order 2014 (S.I. 2014/549), art. 1(1), Sch. 1 para. 34(3) (with art. 3) |
| F12 | Words in reg. 13(4) substituted (28.3.2013) by The Public Bodies (The Office of Fair Trading Transfer of Consumer Advice Scheme Function and Modification of Enforcement Functions) Order 2013 (S.I. 2013/783), arts. 1(2), 12(5) |
| F13 | Reg. 13(4A) inserted (14.11.2013) by The Business Protection from Misleading Marketing (Amendment) Regulations 2013 (S.I. 2013/2701), regs. 1, 4(b) |

Notice to ^{F14}CMA] 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 ^{F15}CMA] of its intention to bring proceedings at least fourteen days before the date on which proceedings are brought; or
- (b) the ^{F15}CMA] consents to proceedings being brought in a shorter period.

(2) The enforcement authority must also notify the ^{F16}CMA] 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.

F14 Word in reg. 14 heading substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) \(No. 2\) Order 2014 \(S.I. 2014/549\)](#), art. 1(1), [Sch. 1 para. 34\(4\)\(b\)](#) (with art. 3)

F15 Word in reg. 14(1) substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) \(No. 2\) Order 2014 \(S.I. 2014/549\)](#), art. 1(1), [Sch. 1 para. 34\(4\)\(a\)](#) (with art. 3)

F16 Word in reg. 14(2) substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) \(No. 2\) Order 2014 \(S.I. 2014/549\)](#), art. 1(1), [Sch. 1 para. 34\(4\)\(a\)](#) (with art. 3)

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 ^{F17}or GEMA] it may apply for an injunction only if—

- (a) it has notified the ^{F18}CMA] of its intention to apply for an injunction at least fourteen days before the date on which the application is made; or
- (b) the ^{F18}CMA] 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).

F17 Words in reg. 15(3) inserted (14.11.2013) by [The Business Protection from Misleading Marketing \(Amendment\) Regulations 2013 \(S.I. 2013/2701\)](#), regs. 1, 5

F18 Word in reg. 15(3) substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) \(No. 2\) Order 2014 \(S.I. 2014/549\)](#), art. 1(1), [Sch. 1 para. 34\(5\)](#) (with art. 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.—^[F19](1) If more than one enforcement authority in Great Britain is contemplating bringing proceedings under regulation 15 in any particular case, the ^[F20]CMA may direct which enforcement authority is to bring the proceedings or decide that only it may do so.]

(2) Where the ^[F20]CMA 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.

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| <p>F19 Reg. 17(1) substituted (14.11.2013) by The Business Protection from Misleading Marketing (Amendment) Regulations 2013 (S.I. 2013/2701), regs. 1, 6</p> <p>F20 Word in reg. 17 substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) (No. 2) Order 2014 (S.I. 2014/549), art. 1(1), Sch. 1 para. 34(6) (with art. 3)</p> |
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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 ^{F21}CMA]

19. An enforcement authority, other than the ^{F22}CMA], shall notify the ^{F22}CMA]—
- (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.

- F21** Word in reg. 19 heading substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) (No. 2) Order 2014 (S.I. 2014/549), art. 1(1), **Sch. 1 para. 34(7)(b)** (with art. 3)
- F22** Word in reg. 19 substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) (No. 2) Order 2014 (S.I. 2014/549), art. 1(1), **Sch. 1 para. 34(7)(a)** (with art. 3)

Publication, information and advice

20.—(1) The ^{F23}CMA] 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) ^{F24}An enforcement authority] 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.

- F23** Word in reg. 20(1) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) (No. 2) Order 2014 (S.I. 2014/549), art. 1(1), **Sch. 1 para. 34(8)** (with art. 3)
- F24** Words in reg. 20(2) substituted (28.3.2013) by The Public Bodies (The Office of Fair Trading Transfer of Consumer Advice Scheme Function and Modification of Enforcement Functions) Order 2013 (S.I. 2013/783), arts. 1(2), **12(6)**

PART 4

INVESTIGATION POWERS

Powers of Enforcement Authorities to obtain information

^{F25}21.

- F25** Regs. 21-27 revoked (1.10.2015) by The Consumer Rights Act 2015 (Commencement No. 3, Transitional Provisions, Savings and Consequential Amendments) Order 2015 (S.I. 2015/1630), art. 1, **Sch. 2 para. 112** (with art. 8)

Power to make test purchases

^{F25}22.

F25 Regs. 21-27 revoked (1.10.2015) by The Consumer Rights Act 2015 (Commencement No. 3, Transitional Provisions, Savings and Consequential Amendments) Order 2015 (S.I. 2015/1630), art. 1, **Sch. 2 para. 112** (with art. 8)

Power of entry and investigation, etc.

^{F25}23.

F25 Regs. 21-27 revoked (1.10.2015) by The Consumer Rights Act 2015 (Commencement No. 3, Transitional Provisions, Savings and Consequential Amendments) Order 2015 (S.I. 2015/1630), art. 1, **Sch. 2 para. 112** (with art. 8)

Power to enter premises with a warrant

^{F25}24.

F25 Regs. 21-27 revoked (1.10.2015) by The Consumer Rights Act 2015 (Commencement No. 3, Transitional Provisions, Savings and Consequential Amendments) Order 2015 (S.I. 2015/1630), art. 1, **Sch. 2 para. 112** (with art. 8)

Obstruction of authorised officers

^{F25}25.

F25 Regs. 21-27 revoked (1.10.2015) by The Consumer Rights Act 2015 (Commencement No. 3, Transitional Provisions, Savings and Consequential Amendments) Order 2015 (S.I. 2015/1630), art. 1, **Sch. 2 para. 112** (with art. 8)

Notice of test and intended proceedings

^{F25}26.

F25 Regs. 21-27 revoked (1.10.2015) by The Consumer Rights Act 2015 (Commencement No. 3, Transitional Provisions, Savings and Consequential Amendments) Order 2015 (S.I. 2015/1630), art. 1, **Sch. 2 para. 112** (with art. 8)

Compensation

^{F25}27.

F25 Regs. 21-27 revoked (1.10.2015) by The Consumer Rights Act 2015 (Commencement No. 3, Transitional Provisions, Savings and Consequential Amendments) Order 2015 (S.I. 2015/1630), art. 1, **Sch. 2 para. 112** (with art. 8)

Crown

28.—^{F26}(1)

(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.

<p>F26 Reg. 28(1) omitted (1.10.2015) by virtue of The Consumer Rights Act 2015 (Commencement No. 3, Transitional Provisions, Savings and Consequential Amendments) Order 2015 (S.I. 2015/1630), art. 1, Sch. 2 para. 113 (with art. 8)</p>
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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

Gareth Thomas
Parliamentary Under Secretary of State for Trade
and Consumer Affairs

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. 2008/1277).

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). 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.

Changes to legislation:

There are currently no known outstanding effects for the The Business Protection from Misleading Marketing Regulations 2008.