

Statutory Instrument 1987 No. 2117

The Consumer Protection (Cancellation of Contracts Concluded away from Business Premises) Regulations 1987

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STATUTORY INSTRUMENTS

1987 No. 2117

CONSUMER PROTECTION

The Consumer Protection (Cancellation of Contracts Concluded away from Business Premises) Regulations 1987

Made 7th December 1987

Laid before Parliament 16th December 1987

Coming into force 1st July 1988

The Secretary of State, being a Minister designated for the purposes of section 2(2) of the European Communities Act 1972 in relation to matters of consumer protection in respect of contracts negotiated away from business premises of the trader, in exercise of the powers conferred on him by that section and of all other powers enabling him in that behalf, hereby makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Consumer Protection (Cancellation of Contracts Concluded away from Business Premises) Regulations 1987 and shall come into force on 1st July 1988.

Interpretation

2.—(1) In these Regulations-

"business" includes a trade or profession;

"consumer" means a person, other than a body corporate, who, in making a contract to which these Regulations apply, is acting for purposes which can be regarded as outside his business;

"goods" has the meaning given by section 61(1) of the Sale of Goods Act 1979;

"land mortgage" includes any security charged on land and in relation to Scotland includes any heritable security;

"notice of cancellation" has the meaning given by regulation 4(5) below;

"security" in relation to a contract means a mortgage, charge, pledge, bond, debenture, indemnity, guarantee, bill, note or other right provided by the consumer, or at his request (express or implied), to secure the carrying out of his obligations under the contract;

"signed" has the same meaning as in the Consumer Credit Act 1974; and

"trader" means a person who, in making a contract to which these Regulations apply, is acting for the purposes of his business, and anyone acting in the name or on behalf of such a person.

(2) In Scotland any provision in these Regulations requiring a document to be signed shall be complied with by a body corporate if the document is properly executed in accordance with the law of Scotland.

Contracts to which the Regulations apply

3.—(1) These Regulations apply to a contract, other than an excepted contract, for the supply by a trader of goods or services to a consumer which is made—

- (a) during an unsolicited visit by a trader—
 - (i) to the consumer's home or to the home of another person; or
 - (ii) to the consumer's place of work;
- (b) during a visit by a trader as mentioned in paragraph (a)(i) or (ii) above at the express request of the consumer where the goods or services to which the contract relates are 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 those other goods or services formed part of the trader's business activities;
- (c) after an offer was made by the consumer in respect of the supply by a trader of the goods or services in the circumstances mentioned in paragraph (a) or (b) above or (d) below; or
- (d) during an excursion organised by the trader away from premises on which he is carrying on any business (whether on a permanent or temporary basis).

(2) For the purposes of this regulation an excepted contract means

- (a) any contract—
 - (i) for the sale or other disposition of land, or for a lease or land mortgage;
 - (ii) to finance the purchase of land;
 - (iii) for a bridging loan in connection with the purchase of land; or
 - (iv) for the construction or extension of a building or other erection on land:

Provided that these Regulations shall apply to a contract for the supply of goods and their incorporation in any land or a contract for the repair or improvement of a building or other erection on land, where the contract is not financed by a loan secured by a land mortgage;

- (b) any contract for the supply of food, drink or other goods intended for current consumption by use in the household and supplied by regular roundsmen;
- (c) any contract for the supply of goods or services which satisfies all the following conditions, namely—

- (i) terms of the contract are contained in a trader's catalogue which is readily available to the consumer to read in the absence of the trader or his representative before the conclusion of the contract;
 - (ii) the parties to the contract intend that there shall be maintained continuity of contact between the trader or his representative and the consumer in relation to the transaction in question or any subsequent transaction; and
 - (iii) both the catalogue and the contract contain or are accompanied by a prominent notice indicating that the consumer has a right to return to the trader or his representative goods supplied to him within the period of not less than 7 days from the day on which the goods are received by the consumer and otherwise to cancel the contract within that period without the consumer incurring any liability, other than any liability which may arise from the failure of the consumer to take reasonable care of the goods while they are in his possession;
- (d) contracts of insurance to which the Insurance Companies Act 1982 applies;
 - (e) investment agreements within the meaning of the Financial Services Act 1986, and agreements for the making of deposits within the meaning of the Banking Act 1987 in respect of which Regulations have been made for regulating the making of unsolicited calls under section 34 of that Act;
 - (f) any contract not falling within sub-paragraph (g) below under which the total payments to be made by the consumer do not exceed £35; and
 - (g) any contract under which credit within the meaning of the Consumer Credit Act 1974 is provided not exceeding £35 other than a hire-purchase or conditional sale agreement.

(3) In this regulation "unsolicited visit" means a visit by a trader, whether or not he is the trader who supplies the goods or services, which does not take place at the express request of the consumer and includes a visit which takes place after a trader telephones the consumer (otherwise than at his express request) indicating expressly or by implication that he is willing to visit the consumer.

Cancellation of Contract

4.—(1) No contract to which these Regulations apply shall be enforceable against the consumer unless the trader has delivered to the consumer notice in writing in accordance with paragraphs (3) and (4) below indicating the right of the consumer to cancel the contract within the period of 7 days mentioned in paragraph (5) below containing both the information set out in Part I of the Schedule to these Regulations and a Cancellation Form in the form set out in Part II of the Schedule and completed in accordance with the footnotes.

(2) Paragraph (1) above does not apply to a cancellable agreement within the meaning of the Consumer Credit Act 1974 or to an agreement which may be cancelled by the consumer in accordance with terms of the agreement conferring upon him similar rights as if the agreement were such a cancellable agreement.

(3) The information to be contained in the notice under paragraph (1) above shall be easily legible and if incorporated in the contract or other document shall be afforded no less prominence than that given to any other information in the document apart from the heading to the document and the names of the parties to the contract and any information inserted in handwriting.

(4) The notice shall be dated and delivered to the consumer-

- (a) in the cases mentioned in regulation 3(1)(a), (b) and (d) above, at the time of the making of the contract; and
- (b) in the case mentioned in regulation 3(1)(c) above, at the time of the making of the offer by the consumer.

(5) If within the period of 7 days following the making of the contract the consumer serves a notice in writing (a "notice of cancellation") on the trader or any other person specified in a notice referred to in paragraph (1) above as a person to whom notice of cancellation may be

given which, however expressed and whether or not conforming to the cancellation form set out in Part II of the Schedule to these Regulations, indicates the intention of the consumer to cancel the contract, the notice of cancellation shall operate to cancel the contract.

(6) Except as otherwise provided under these Regulations, a contract cancelled under paragraph (5) above shall be treated as if it had never been entered into by the consumer.

(7) Notwithstanding anything in section 7 of the Interpretation Act 1978, a notice of cancellation sent by post by a consumer shall be deemed to have been served at the time of posting, whether or not it is actually received.

Recovery of money paid by consumer

5.—(1) Subject to regulation 7(2) below, on the cancellation of a contract under regulation 4 above, any sum paid by or on behalf of the consumer under or in contemplation of the contract shall become repayable.

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

(3) Where any security has been provided in relation to the cancelled contract, the security, so far as it is so provided, shall be treated as never having had effect and any property lodged with the trader solely for the purposes of the security as so provided shall be returned by him forthwith.

Repayment of credit

6.—(1) Notwithstanding the cancellation of a contract under regulation 4 above under which credit is provided, the contract shall continue in force so far as it relates to repayment of credit and payment of interest.

(2) If, following the cancellation of the contract, the consumer repays the whole or a portion of the credit-

(a) before the expiry of one month following service of the notice of cancellation, 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) above, 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 shall be treated as duly made if it is made to any person on whom, under regulation 4(5) above, a notice of cancellation could have been served.

(5) Where any security has been provided in relation to the contract, the duty imposed on the consumer by this regulation shall not be enforceable before the trader has discharged any duty imposed on him by regulation 5(3) above.

(6) In this regulation, the expression "credit" has the same meaning as in the Consumer Credit Act 1974.

Return of goods by consumer after cancellation

7.—(1) Subject to paragraph (2) below, a consumer who has before cancelling a contract under regulation 4 above acquired possession of any goods by virtue of the contract shall be under a duty, subject to any lien, on the cancellation to restore the goods to the trader in accordance with this regulation, 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-

- (i) perishable goods;
- (ii) goods which by their nature are consumed by use and which, before the cancellation, were so consumed;
- (iii) goods supplied to meet an emergency; or
- (iv) goods which, before the cancellation, had become incorporated in any land or thing not comprised in the cancelled contract,

but he shall be under a duty to pay in accordance with the cancelled contract for the supply of the goods and for the provision of any services in connection with the supply of the goods before the cancellation.

(3) The consumer shall not be under any duty to deliver the goods except at his own premises and in pursuance of 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-

- (i) delivers the goods (whether at his own premises or elsewhere) to any person on whom, under regulation 4(5) above, a notice of cancellation could have been served; or
- (ii) 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)(i) above, his obligation to take care of the goods shall cease; and if he send the goods as mentioned in paragraph (4)(ii) above, 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) above 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) above, 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 by this regulation shall not be enforceable before the trader has discharged any duty imposed on him by regulation 5(3) above.

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

Goods given in part-exchange

8.—(1) This regulation applies on the cancellation of a contract under regulation 4 above 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.

Amendment of the Consumer Credit Act 1974

9. After section 74(2) there shall be added the following subsection: -

" (2A) In the case of an agreement to which the Consumer Protection (Cancellation of Contracts Concluded away from Business Premises) Regulations 1987 apply the reference in subsection (2) to a small agreement shall be construed as if in section 17(1) (a) and (b) "£35" were substituted for "£50"."

No contracting-out

10.—(1) A term contained in a contract to which these Regulations apply 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 to which these Regulations apply is inconsistent with that provision if it purports to impose, directly or indirectly, an additional duty or liability on him in those circumstances.

Service of documents

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

- (a) by delivering it to him, or by sending it by post to him, or by leaving it with him, at his proper address addressed to him by name;
- (b) if the person is a body corporate, by serving it in accordance with paragraph (a) above on the secretary or clerk of that body; or
- (c) if the person is a partnership, by serving it in accordance with paragraph (a) above on a partner or on a person having the control or management of the partnership business.

(2) For the purposes of these Regulations, a document sent by post to, or left at, the address last known to the server of the document as the address of a person shall be treated as sent by post to, or left at, his proper address.

Francis Maude

Parliamentary Under-Secretary of State, Department of Trade and Industry

7th December 1987

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continued

SCHEDULE

Regulation 4(i)

PART I

information to be contained in notice of cancellation rights

1. The name of the trader.
2. The trader's reference number, code or other details to enable the contract or offer to be identified.
3. A statement that the consumer has a right to cancel the contract if he wishes and that this right can be exercised by sending or taking a written notice of cancellation to the person mentioned in paragraph 4 within the period of 7 days following the making of the contract.
4. The name and address of a person to whom notice of cancellation may be given.
5. A statement that the consumer can use the cancellation form provided if he wishes.

PART II

cancellation form to be included in notice of cancellation rights

(Complete, detach and return this form ONLY IF YOU WISH TO CANCEL THE CONTRACT.)

To: 1

I/We* hereby give notice that I/we* wish to cancel my/our* contract

2

Signed

Date

*Delete as appropriate

Notes:

1. Trader to insert name and address of person to whom notice may be given.
2. Trader to insert reference number, code or other details to enable the contract or offer to be identified. He may also insert the name and address of the consumer.

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continued

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement Council Directive 85/577/EEC (OJ No.L372, 20.12.85, p.31) to protect the consumer in respect of contracts made at the doorstep or otherwise concluded away from business premises. They apply to contracts under which a trader supplies goods or services to a consumer and which are concluded during an unsolicited visit by a trader

- (i) to the consumer's home or to the home of another person; or
- (ii) to the consumer's place of work.

The Regulations also apply to contracts concluded during a visit made at the express request of the consumer which are for the supply of goods and services other than those concerning which the consumer requested the trader's visit. In these circumstances the Regulations apply only if the consumer did not know, or could not reasonably have known, when he requested the visit, that the supply of those other goods or services formed part of the trader's business activities.

The Regulations apply to contracts in respect of which an offer was made by the consumer under conditions similar to those described above.

The Regulations also apply to contracts concluded during an excursion organised by a trader away from premises on which he is carrying on any business.

Where the Regulations apply, they provide a cooling off period of 7 days enabling a consumer within that period to cancel the contract by giving a notice of cancellation. The Regulations provide that if the consumer does not receive a written notice informing him of this right of cancellation and of this period for reflection the contract will not be enforceable against him. Where the Consumer Credit Act 1974 applies, the question of unenforceability of contracts is governed by that Act.

Certain types of contracts are exempted from the application of the Regulations. These are:-

- (a) contracts relating to land, but not contracts for the supply of goods and their incorporation into land or contracts for repairing or improving buildings on land;
- (b) contracts for the supply of food, drink and other goods intended for current consumption in the household and supplied by regular roundsmen;
- (c) certain contracts concluded on the basis of a trader's catalogue;
- (d) insurance contracts;
- (e) investment agreements;
- (f) contracts not falling within sub-paragraph (g) which do not require the consumer to make total payments exceeding £35; and
- (g) any contract under which credit is provided not exceeding £35.

The Regulations also deal with the consequences of cancellation of contracts such as the repayment of payments for goods or services and of credit provided and the return of goods received.

The Regulations apply to cash transactions and to credit transactions not already cancellable under the Consumer Credit Act 1974. Where that Act applies cancellation of contracts and the consequences of cancellation are governed by the provisions of the Act, and Regulations made under it, as amended by these Regulations.

ISBN 0 11 078117 1