

## **Statutory Instrument 1998 No. 3050**

### **The Consumer Protection (Cancellation of Contracts Concluded away from Business Premises) (Amendment) Regulations 1998**

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#### **STATUTORY INSTRUMENTS**

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**1998 No. 3050**

#### **CONSUMER PROTECTION**

The Consumer Protection (Cancellation of Contracts Concluded away from Business Premises) (Amendment) Regulations 1998

*Made 8th December 1998*

*Laid before Parliament 10th December 1998*

*Coming into force 31st December 1998*

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

1. These Regulations may be cited as the Consumer Protection (Cancellation of Contracts Concluded away from Business Premises) (Amendment) Regulations 1998 and shall come into force on 31st December 1998.

2. The Consumer Protection (Cancellation of Contracts Concluded away from Business Premises) Regulations 1987 are amended as follows-

(a) in regulation 2(1), by adding the following after the definition of "consumer"-

" "enforcement authority" means, in Great Britain, a weights and measures authority and, in Northern Ireland, the Department of Economic Development;";

(b) by substituting the following for regulation 3(3)-

" (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) a visit by a trader which takes place after he, or a person acting in his name or on his behalf, telephones the consumer (otherwise than at the consumer's express request) and indicates during the course of the telephone call (either expressly or by implication) that he, or the trader in whose name or on whose behalf he is acting, is willing to visit the consumer; and

(b) a visit by a trader which takes place after he, or a person acting in his name or on his behalf, visits the consumer (otherwise than at the consumer's express request) and indicates during the course of that visit (either expressly or by implication) that he, or the trader in whose name or on whose behalf he is acting, is willing to make a subsequent visit to the consumer."; and

(c) by adding the following after regulation 4-

**" Offence relating to the failure to provide notice of cancellation rights**

**4A.** - (1) A trader is guilty of an offence if he enters into a contract to which these Regulations apply (other than an agreement referred to in regulation 4(2) above) with a consumer but fails (or, in the case mentioned in regulation 3(1)(c) above, has failed) to deliver to the consumer the notice in writing referred to in regulation 4(1) above in accordance with paragraph (2) below.

(2) A notice is delivered in accordance with this paragraph if it-

(a) contains what is required by regulation 4(1) above;

(b) complies with the requirements of regulation 4(3) above; and

(c) is dated and delivered to the consumer at the time specified in regulation 4(4) above.

(3) A person who is guilty of an offence under paragraph (1) above shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale.

**Defence of due diligence**

**4B.** - (1) In proceedings against any person for an offence under regulation 4A above it shall be a defence for that person to show that he took all reasonable steps and exercised all due diligence to avoid committing the offence.

(2) Where in proceedings against a person for such an offence the defence provided for by paragraph (1) above involves an allegation that the commission of the offence was due-

(a) to the act or default of another, or

(b) to reliance on information given by another,

that person shall not, without the leave of the court, be entitled to rely on the defence unless he has served a notice under paragraph (3) below on the person bringing the proceedings not less than seven clear days before the hearing of the proceedings or, in Scotland, the diet of the trial.

(3) A notice under this paragraph shall give such information identifying or assisting in the identification of the person who committed the act or default or gave the information as is in the possession of the person serving the notice at the time when he serves it.

**Liability of persons other than the principal offender**

**4C.** - (1) Where the commission by a person of an offence under regulation 4A above is due to the act or default of some other person, that other person is guilty of the offence and may be proceeded against and punished by virtue of this

regulation whether or not proceedings are taken against the first-mentioned person.

(2) Where a body corporate is guilty of an offence under regulation 4A above in respect of any act or default which is shown to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity he, as well as the body corporate, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(3) Where the affairs of a body corporate are managed by its members, paragraph (2) above shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

(4) Where an offence under regulation 4A above committed in Scotland by a Scottish partnership is proved to have been committed with the consent or connivance of, or to be attributable to neglect on the part of, a partner, he (as well as the partnership) is guilty of the offence and liable to be proceeded against and punished accordingly.

#### **Duty to enforce regulation 4A**

**4D.** - (1) Subject to paragraph (2) below-

(a) it shall be the duty of every weights and measures authority in Great Britain to enforce regulation 4A above within its area; and

(b) it shall be the duty of the Department of Economic Development to enforce regulation 4A above in Northern Ireland.

(2) Nothing in paragraph (1) above shall authorise any weights and measures authority to bring proceedings in Scotland for an offence.

#### **Enforcement powers, obstruction of authorised officers and restrictions on disclosure of information**

**4E.** - (1) If a duly authorised officer of an enforcement authority has reasonable grounds for suspecting that an offence has been committed under regulation 4A above, he may-

(a) require a person carrying on or employed in a business to produce any book, document or record in non-documentary form relating to the business, and take copies of it or any entry in it, or

(b) require such a person to produce in a visible and legible documentary form any information so relating which is contained in a computer, and take copies of it,

for the purposes of ascertaining whether such an offence has been committed.

(2) If such an officer has reasonable grounds for believing that any books, documents or records 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) The powers of an officer under this regulation may be exercised by him only at a reasonable hour and on production (if required) of his credentials.

(4) Nothing in this regulation requires a person to produce, or authorises the taking from a person of, a book, document or record which he could not be compelled to produce in civil proceedings before the High Court or (in Scotland) the Court of Session.

**4F.** - (1) A person who-

(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 the requirement made of him by regulation 4E(1) above, or

(c) without reasonable excuse fails to give an officer of an enforcement authority acting in pursuance of his functions under these Regulations any other assistance or information which the officer has reasonably required of him for the purpose of the performance of the officer's functions under these Regulations,

is guilty of an offence.

(2) If a person, in giving information to an officer of an enforcement authority who is acting in pursuance of his functions under these Regulations-

(a) makes a statement which he knows is false in a material particular, or

(b) recklessly makes a statement which is false in a material particular,

he is guilty of an offence.

(3) A person guilty of an offence under paragraph (1) or (2) above shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

**4G.** - (1) If a person discloses to another any information obtained in the exercise of his functions under regulations 4D and 4E above, he is guilty of an offence unless the information has already been disclosed in any civil or criminal proceedings or the disclosure is made-

(a) in or for the purpose of the performance by him or any other person of any such function, or

(b) for a purpose specified in section 38(2)(a) or (b) of the Consumer Protection Act 1987[4] (enforcement of various enactments and compliance with Community obligations) or in the circumstances or for a purpose described in section 38(2)(c) of that Act (criminal investigations and civil or criminal proceedings).

(2) A person guilty of an offence under paragraph (1) above shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

**4H.** Nothing in regulations 4E or 4F above requires a person to answer any question or give any information if to do so might incriminate him."

Kim Howells

Parliamentary Under-Secretary of State for Competition and Consumer  
Affairs, Department of Trade and Industry

8th December 1998

## EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Consumer Protection (Cancellation of Contracts Concluded away from Business Premises) Regulations 1987 (the "principal Regulations").

These Regulations amend the definition of "unsolicited visit" which applies for the purposes of regulation 3 of the principal regulations so that a visit by a trader is considered to be unsolicited if it follows an earlier unsolicited visit during which he, or someone acting in his name or on his behalf, indicated that he, or the trader in whose name or on whose behalf he was acting, was prepared to make a subsequent visit to the consumer. The definition is also amended to make it clear that it covers a visit following an unsolicited telephone call where the person who visits the consumer is not the same as the person who made the telephone call, but the person who made the telephone call was acting in his name or on his behalf.

The Regulations also amend the principal Regulations to create an offence which is committed by a trader who enters into a contract to which the principal Regulations apply without giving the consumer written notice of his right to cancel that contract, together with a cancellation form for that purpose, in accordance with those Regulations. The principal Regulations are amended to provide for a due diligence defence and for liability of persons other than the principal offender in a number of specified circumstances.

In relation to the new offence, the principal Regulations are amended to impose a duty to enforce on weights and measures authorities in Great Britain and on the Department of Economic Development in Northern Ireland. Authorised officers of these authorities are given qualified rights to require the production of information and to seize and detain evidence. The principal Regulations are amended to create offences relating to the obstruction of authorised officers and the making of false statements.

Finally, the principal Regulations are amended to provide for an offence of disclosing information obtained in the exercise of functions under the enforcement provisions. The offence is subject to various exceptions, which allow for the disclosure of information in particular circumstances.

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 the Consumer Affairs Directorate, Department of Trade and Industry, Room 622, 1 Victoria Street, London SW1H 0ET (Telephone 0171 215 0350). Copies have been placed in the libraries of both Houses of Parliament.