

EUROPEAN COMMUNITIES (CANCELLATION OF CONTRACTS NEGOTIATED AWAY FROM BUSINESS PREMISES) REGULATIONS, 1989.

I, DESMOND O'MALLEY, Minister for Industry and Commerce, in exercise of the powers conferred on me by section 3 of the European Communities Act, 1972 (No. 27 of 1972), and for the purpose of giving effect to Council Directive No. 85/577/EEC of 20 December, 1985 ⁽¹⁾ hereby make the following Regulations:

1. (1) These Regulations may be cited as the European Communities (Cancellation of Contracts Negotiated away from Business Premises) Regulations, 1989.

(2) These Regulations shall come into operation on the 1st day of November, 1989.

2. (1) In these Regulations—

"cancellation form" has the meaning assigned to it by Regulation 4 of these Regulations;

"cancellation notice" has the meaning assigned to it by Regulation 4 of these Regulations;

"consumer" means a natural person who, in transactions covered by these Regulations, is acting for purposes which can be regarded as outside his trade or profession;

"the Council Directive" means Council Directive No. 85/577/EEC of 20 December, 1985⁽²⁾;

"securities" has the meaning assigned to it by section 2 of the Central Bank Act, 1971 (No. 24 of 1971);

"trader" means a natural or legal person who, for the transaction in question, acts in his commercial or professional capacity, and anyone acting in the name or on behalf of a trader.

(2) A word or expression that is used in these Regulations and is also used in the Council Directive has, unless the contrary intention appears, the same meaning in these Regulations that it has in the Council Directive.

3. (1) These Regulations apply—

¹ O.J. No. L372/31, 31.12.85.

² O.J. No. L372/31, 31.12.85.

(a) to contracts under which a trader supplies goods or services to a consumer and which are concluded—

(i) during an excursion organised by the trader away from his business premises, or

(ii) during a visit by a trader—

(I) to the consumer's home or to that of an other consumer, or

(II) to the consumer's place of work,

where the visit does not take place at the express request of the consumer,

(b) to contracts for the supply of goods or services, other than those referred to in paragraph (a) of this Regulation, concerning which the consumer requested the visit of the trader; provided that when he requested the visit 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 commercial or professional activities,

(c) to contracts in respect of which an offer was made by the consumer under conditions similar to those described in subparagraphs (a) or (b) of this paragraph although the consumer was not bound by that offer before its acceptance by the trader, and

(d) to offers made contractually by the consumer under conditions similar to those described in subparagraphs (a) or (b) of this paragraph where the consumer is bound by his offer.

(2) These Regulations shall not apply to—

(a) any contract the consideration whereof is less than £40,

(b) any contract for the construction, sale and rental of immovable property or contracts concerning other rights relating to immovable property; provided, however, these Regulations shall apply to contracts for the supply of goods and for their incorporation in immovable property or contracts for repairing immovable property,

(c) contracts for the supply of foodstuffs or beverages or other goods intended for current consumption in the household and supplied by regular roundsmen,

(d) contracts for the supply of goods and services where the following conditions are satisfied, namely—

(i) the contract is concluded on the basis of a trader's catalogue which the consumer has a reasonable opportunity to read in the absence of the trader or his representative,

(ii) there is an intention on the part of the parties to the contract to maintain continuity of contract between the trader, or his representative, and the consumer in relation to the transaction which is the subject of the contract or any subsequent transaction, and

(iii) both the catalogue and the contract clearly state that the consumer has a right to return the goods to which the contract

relates to the trader or his representative or otherwise to cancel the contract, within a period of not less than seven days without the consumer's incurring any liability other than that arising from a failure to take reasonable care of the goods,

- (e) contracts for insurance or assurance, and
- (f) contracts for the sale of securities.

4. (1) A contract to which these Regulations apply shall not be enforceable against a consumer unless the trader delivered to the consumer at the times referred to in paragraph (2) of this Regulation—

(a) a notice in writing (to be known and in these Regulations referred to as "a cancellation notice") that—

(i) provides the information set out in Part I of the Schedule to these Regulations,

(ii) is easily legible and, if incorporated into the contract or other document, is 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,

(b) a notice in writing (to be known and in these Regulations referred to as "a cancellation form") in the form set out in Part II of the said Schedule.

(2) A cancellation notice and cancellation form shall be given to a consumer by a trader—

(a) in the case of contracts specified in Regulation 3 (1) (a) of these Regulations, at the time of the conclusion of the contract,

(b) in the case of contracts specified in Regulation 3 (1) (b) of these Regulations, not later than the time of the conclusion of the contract, and

(c) in the case of contracts specified in Regulation 3 (1) (c) or (d) of these Regulations, when the offer is made by the consumer.

(3) A person who, not having reasonable cause to believe there is a right to payment, makes a demand for payment, or asserts a present or prospective right to payment in respect of a contract which is unenforceable by virtue of this Regulation, shall be guilty of an offence.

(4) A person who, not having reasonable cause to believe there is a right to payment and, with a view to obtaining payment in respect of a contract which is unenforceable by virtue of this Regulation—

(a) threatens to bring any legal proceedings, or

(b) places or causes to be placed the name of any person on a list of defaulters or debtors or threatens to do so, or

(c) invokes or causes to be invoked any other collection procedure or threatens to do so,

shall be guilty of an offence.

(5) The Restrictive Practices (Amendment) Act, 1987 (No. 31 of 1987), is hereby amended by the insertion in the First Schedule thereto after "Trading

Stamps Act, 1980" of "European Communities (Cancellation of Contracts Negotiated away from Business Premises) Regulations, 1989."

(6) A person guilty of an offence under this Regulation shall be liable on summary conviction to a fine not exceeding £1,000.

5. (1) Where a consumer enters into a contract to which these Regulations apply and from which he wishes to withdraw, he may do so within the period specified in the cancellation notice by delivering by hand or by sending by prepaid post a cancellation form to that effect.

(2) The cancellation of the contract under paragraph (1) of this Regulation shall have effect from the date of the delivery of the cancellation form by hand or the date that it is posted.

(3) A contract shall be rendered void by the delivery or the posting of a cancellation form to the trader concerned.

6. (1) On the cancellation of a contract as provided for in Regulation 5 of these Regulations any sum paid by the consumer shall become due and owing by the trader.

(2) A consumer shall have a lien on any goods held by him as a result of a contract which he has lawfully cancelled under these Regulations or the Council Directive until all monies due and owing by the trader in respect of that contract are repaid in full to the consumer.

(3) Where a contract has been rendered void by virtue of Regulation 5 of these Regulations and the trader wishes to have the goods returned to him, he shall collect the goods at such reasonable time and place specified by the consumer in the cancellation form and the consumer shall not be obliged to deliver the goods to the trader other than at that time and place.

(4) Without prejudice to any of the rights of a consumer including the right to be paid any sum due and owing specified in paragraph (1) of this Regulation in relation to goods sold under a contract to which these regulations apply, title in those goods shall pass to the consumer three months after the date on which the consumer has delivered or posted a cancellation notice to the trader in a case where the trader has not returned all the monies due to the consumer in respect of the said contract.

7. (1) This Regulation shall apply on the cancellation of a contract to which these Regulations apply where the trader agreed to take goods in part-exchange and those goods have been delivered to him.

(2) Unless, before the end of the period of 10 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:—

"part-exchange goods" means any goods which the trader has agreed to take from the consumer in lieu of part of the sum which would otherwise be payable for the goods the subject of the contract,

"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 sent,

"the date of cancellation" means the date on which the consumer delivers or sends a cancellation form as provided for in Regulation 5 of these Regulations.

GIVEN under my Official Seal, this 6th day of September, 1989.

DESMOND O'MALLEY,

Minister for Industry and Commerce.

SCHEDULE

PART I

INFORMATION TO BE PROVIDED BY A CANCELLATION NOTICE

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 delivering or sending a written cancellation form to the person mentioned in paragraph 4 within a period not being less than 7 days following the making of the contract.
4. The name and address of a person to whom the cancellation form may be delivered or sent.
5. A statement that the consumer can use the cancellation form provided if he wishes.
6. The date on which the notice is given to the consumer.

PART II

MODEL CANCELLATION FORM

(Complete 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

Time at which goods may be collected

Place at which goods may be collected

*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.

EXPLANATORY NOTE.

These Regulations give effect to Council Directive 85/577/EEC relating to contracts negotiated away from business premises.

The Regulations provide that in any contract to which the Regulations apply, the consumer will have a right to receive from the trader

—a written notice which states, inter alia, that the consumer has a right to cancel the contract, and

—cancellation form on which to exercise this right.

If these are not given by the trader, the contract is unenforceable.

There are also provisions in relation to

—the repayment of money paid to the trader by the consumer,

—part-exchange goods,

—the demanding of money or the making of threats by the trader in respect of an unenforceable contract, and

— the collection of goods covered by the cancelled contract.

Source: Irish Statute Book Database

© Government of Ireland. Oireachtas Copyright Material is reproduced with the permission of the Houses of the Oireachtas