



**Department
for Business
Innovation & Skills**

**The Consumer Protection from
Unfair Trading (Amendment)
Regulations 2013**

Draft Regulations

AUGUST 2013

 STATUTORY INSTRUMENTS

2013 No. XXXX**CONSUMER PROTECTION**
**The Consumer Protection from Unfair Trading (Amendment) Regulations
2013**

<i>Made</i>	- - - -	***
<i>Laid before Parliament</i>		***
<i>Coming into force</i>	- -	***

The Secretary of State, being a Minister designated for the purposes of section 2(2) of the European Communities Act 1972⁽¹⁾, in relation to matters relating to consumer protection and to the control of advertising, makes the following Regulations in exercise of the powers conferred by section 2(2) of that Act.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Consumer Protection from Unfair Trading (Amendment) Regulations 2013.

(2) These Regulations come into force on [...].

(3) The amendments made by these Regulations have effect only in relation to—

- (a) commercial practices that begin before that date and continue on or after that date, and
- (b) commercial practices that begin on or after that date.

(4) But paragraph (3)(a) applies in relation to the amendments made by regulation 4 only where a contract of a kind referred to in those amendments is entered into, or a payment of a kind referred to in those amendments is made, after that date.

(5) In paragraph (3) “commercial practice” has the same meaning as in the 2008 Regulations.

(6) In these Regulations “the 2008 Regulations” means the Consumer Protection from Unfair Trading Regulations 2008⁽²⁾.

Amendments to regulation 2 of the 2008 Regulations

2.—(1) Regulation 2 of the 2008 Regulations (interpretation) is amended as follows.

(2) In paragraph (1), in the definition of “business”—

- (a) after “includes” insert “—(a)”, and
- (b) after “profession” insert—

“, and

- (b) the activities of any government department or local or public authority”.

(3) In that paragraph, for the definition of “consumer” substitute—

⁽¹⁾ 1972 c. 68.

⁽²⁾ S.I. 2008/1277.

““consumer” means an individual acting for purposes that are wholly or mainly outside that individual’s business;”.

(4) In that paragraph, after that definition insert—

““digital content” means data which are produced and supplied in digital form;”.

(5) In that paragraph, for the definition of “goods” substitute—

““goods” means any tangible moveable items, but that includes water, gas and electricity if and only if they are put up for sale in a limited volume or set quantity;”.

(6) In that paragraph, for the definition of “product” substitute—

““product” means—

- (a) goods,
- (b) a service,
- (c) digital content,
- (d) immoveable property,
- (e) rights or obligations, or
- (f) a product of the kind mentioned in paragraphs (1A) and (1B),

but the application of this definition to Part 4A is subject to regulation 27C.”.

(7) In that paragraph, for the definition of “trader” substitute—

““trader” means a person acting (personally or through an agent) for purposes relating to that person’s business;”.

(8) In that paragraph, in the definition of “transactional decision”, after paragraph (b) insert “(but the application of this definition to regulations 5 and 7 as they apply for the purposes of Part 4A is subject to regulation 27B(2))”.

(9) After that paragraph insert—

“(1A) A trader (“T”) who demands payment from a consumer (“C”) in full or partial settlement of C’s liabilities or purported liabilities to T is to be treated for the purposes of these Regulations as offering to supply a product to C.

(1B) In such a case the product that T offers to supply comprises the full or partial settlement of those liabilities or purported liabilities.”.

Amendments to regulation 7 of the 2008 Regulations

3.—(1) Regulation 7 of the 2008 Regulations (aggressive commercial practices) is amended as follows.

(2) In paragraph (1)(a), for “undue influence” substitute “abuse of position”.

(3) In paragraph (2), for “undue influence” substitute “abuse of position”.

(4) In paragraph (3)(b), for ““undue influence”” substitute ““abuse of position””.

New Part 4A of the 2008 Regulations

4. After Part 4 of the 2008 Regulations insert—

“PART 4A

CONSUMER’S RIGHTS TO REDRESS

When a consumer has a right to redress

27A.—(1) A consumer has a right to redress under this Part if—

- (a) the conditions in this regulation are met, and
- (b) the conditions in the following provisions of this Part for the availability of that right are met.

- (2) The first of the conditions mentioned in paragraph (1)(a) is that—
- (a) the consumer contracts with a trader for the sale or supply of a product (by the trader to the consumer or vice versa), or
 - (b) the consumer makes a payment to a trader in respect of the supply of a product of the kind described in regulation 2(1A) and (1B).
- (3) The second of the conditions mentioned in paragraph (1)(a) is that the trader engages in a prohibited practice in relation to the product.
- (4) The third of the conditions mentioned in paragraph (1)(a) is that the prohibited practice is a significant factor in the consumer’s decision to enter into the contract or make the payment.
- (5) The reference in paragraph (3) to the trader includes a reference to a producer of the product (other than the trader) in a case where—
- (a) the product consists of goods or digital content, and
 - (b) when the contract is entered into or the payment is made, the trader is aware of the commercial practice that constitutes the prohibited practice or could reasonably be expected to be aware of it.
- (6) In paragraph (5) “producer”, in relation to goods or digital content, means—
- (a) the manufacturer,
 - (b) the importer into the European Economic Area, or
 - (c) any person who purports to be a producer by placing the person’s name, trade mark or other distinctive sign on the goods or using it in connection with the digital content.
- (7) The reference in paragraph (3) to the trader, and the reference in paragraph (5) to a producer, includes—
- (a) an agent of the trader or producer (as the case may be), or
 - (b) an agent of an agent within sub-paragraph (a) or this sub-paragraph.
- (8) Paragraph (7) does not prevent other references in these Regulations to a trader from including an agent of that trader.

Meaning of “prohibited practice”

27B.—(1) In this Part, but subject to paragraph (2), “prohibited practice” means a commercial practice that—

- (a) is a misleading action under regulation 5, or
- (b) is aggressive under regulation 7.

(2) Regulation 2(1) has effect in relation to regulations 5 and 7 as they apply for the purposes of this Part as if for the definition of “transactional decision” there were substituted—

““transactional decision” means any decision taken by a consumer to enter into a contract with a trader for the sale or supply of a product (by the trader to the consumer or vice versa) or to make a payment to a trader in respect of the supply of a product of the kind described in regulation 2(1A) and (1B).”.

Meaning of “product” in this Part

27C.—(1) In this Part “product” does not include—

- (a) immovable property other than a residential lease, or
- (b) a financial service.

(2) In this regulation “residential lease”—

- (a) means any lease (including a sub-lease), but
- (b) in relation to England and Wales and Northern Ireland, does not include a lease which, by reason of the level of the rent or the length of the term (or both), has a capital value which may lawfully be realised on the open market.

(3) In this regulation “financial service” means a regulated activity within the meaning of section 22 of the Financial Services and Markets Act 2000⁽³⁾.

(4) But if at any time the provision of credit by one person to another under a contract is a regulated activity within the meaning of that section, that activity is not a financial service at that time for the purposes of this regulation.

The rights to redress

27D.—(1) The rights to redress are—

- (a) in the case of a contract for the sale or supply of a product by a trader to a consumer—
 - (i) the right to unwind under regulation 27F, and
 - (ii) the right to a discount under regulation 27I,
- (b) in the case of a contract for the sale or supply of goods by a consumer to a trader, the right to unwind under regulation 27G,
- (c) in the case of a payment for a product of the kind described in regulation 2(1A) and (1B), the right to unwind under regulation 27H, and
- (d) in any case, the right to damages under regulation 27J.

(2) A consumer who has both the right to unwind and the right to a discount in respect of the same contract and the same prohibited practice may exercise one of those rights but not both.

Conditions for the availability of the right to unwind: supply by trader to consumer

27E.—(1) A consumer has the right to unwind in respect of a contract for the sale or supply of a product by a trader to the consumer if the consumer indicates to the trader that the consumer rejects the product, and does so—

- (a) within the relevant period, and
- (b) at a time when the product is capable of being rejected.

(2) An indication under paragraph (1) may be something that the consumer says or does, but it must be clear.

(3) In paragraph (1)(a) “the relevant period” means the period of 90 days beginning with the later of—

- (a) the day on which the consumer enters into the contract, and
- (b) the relevant day.

(4) In paragraph (3)(b) “the relevant day” means the day on which—

- (a) the goods are first delivered,
 - (b) the performance of the service begins,
 - (c) the digital content is first provided,
 - (d) the lease begins, or
 - (e) the right is first exercisable,
- (as the case may be).

(5) For the purposes of this Part, where the consumer’s access to digital content on a device requires its transmission to the device under arrangements initiated by the trader, the day on which the digital content is first provided is—

- (a) the day on which it reaches the device, or
- (b) if earlier, the day on which it reaches another trader chosen by the consumer to provide, under a contract with the consumer, a service by which digital content reaches the device.

(6) For the purposes of paragraph (1)(b), a product remains capable of being rejected only if—

(3) 2000 c. 8; section 22 was amended by the Financial Services Act 2012 (c. 21), s. 7(1).

- (a) the goods have not been fully consumed,
 - (b) the service has not been fully performed,
 - (c) the digital content has not been fully consumed,
 - (d) the lease has not expired, or
 - (e) the right has not been fully exercised,
(as the case may be).
- (7) For the purposes of paragraph (6)—
- (a) goods have been fully consumed only if nothing is left of the goods, and
 - (b) digital content has been fully consumed only if the digital content was available to the consumer for a fixed period and that period has expired.
- (8) In the case of a mixed contract, paragraph (3)(b) has effect as if it referred to the latest of the days mentioned in paragraph (4) that is relevant to the contract.
- (9) For the purposes of this Part, a contract is “mixed” if the product to which it relates consists of any two or more of—
- (a) goods,
 - (b) a service,
 - (c) digital content,
 - (d) immoveable property, or
 - (e) rights.

Exercise of the right to unwind: supply by trader to consumer

27F.—(1) Where a consumer has the right to unwind in respect of a contract for the sale or supply of a product by a trader to the consumer—

- (a) the contract comes to an end so that the consumer and the trader are released from their obligations under it,
 - (b) the consumer has a right to a refund from the trader (subject as follows), and
 - (c) if the contract was wholly or partly for the sale or supply of goods—
 - (i) the consumer must make the goods available for collection by the trader, or
 - (ii) where there is an agreement to return rejected goods, the consumer must return the goods as agreed.
- (2) If the consumer paid money under the contract, the right to a refund is a right to receive back the same amount of money.
- (3) If the consumer transferred anything else under the contract, the right to a refund is the right to receive back the same amount of what the consumer transferred, unless paragraph (4) applies.
- (4) If the consumer transferred under the contract something for which the same amount of the same thing cannot be substituted, the right to a refund is the right to receive back in its original state whatever the consumer transferred.
- (5) The consumer does not have the right to a refund if—
- (a) none of paragraphs (2) to (4) applies, or
 - (b) paragraph (4) applies, but the thing transferred cannot be given back in its original state.
- (6) Paragraphs (2) to (4) do not apply if—
- (a) the contract was for the sale or supply of a product on a regular or continuous basis, and
 - (b) the period beginning with the relevant day and ending with the day on which the consumer rejected the product exceeds one month.
- (7) In paragraph (6)(b) “the relevant day” means the day on which—
- (a) the goods are first delivered,

- (b) the performance of the service begins,
 - (c) the digital content is first provided,
 - (d) the lease begins, or
 - (e) the right is first exercisable,
- (as the case may be).

(8) In a case within paragraph (6), the consumer's right to a refund is a right to receive back the same amount of money as the consumer paid under the contract minus—

- (a) the market price, when the consumer rejected the product, of the product supplied up to that time, or
- (b) where the prohibited practice in question involved false information about the price payable under the contract, the lesser of—
 - (i) the amount under sub-paragraph (a), and
 - (ii) the price that the consumer was led to believe would be payable for the product supplied up to that time.

(9) But if the amount found under sub-paragraph (a) or (b) of paragraph (8) (as appropriate in the consumer's case) is equal to or exceeds the amount that the consumer paid under the contract, the consumer does not have a right to a refund.

(10) In the case of a mixed contract paragraph (6)(b) has effect as if it referred to the period beginning with the latest of the days mentioned in paragraph (7) that is relevant to the contract.

The right to unwind: supply by consumer to trader

27G.—(1) A consumer has the right to unwind in respect of a contract for the sale or supply of a product by the consumer to a trader if that product consists of goods.

(2) Where paragraph (1) applies—

- (a) the consumer has the right to treat the contract as at an end so that the trader and the consumer are released from their obligations under it, and
- (b) the consumer has the right within paragraph (5) or (7).

(3) To treat the contract as at an end, the consumer must indicate to the trader that the contract is ended.

(4) An indication under paragraph (3) may be something that the consumer says or does, but it must be clear.

(5) If the trader is able to return the goods to the consumer in the condition they were in when sold or supplied by the consumer—

- (a) the consumer has a right to the return of the goods, and
- (b) the consumer must repay to the trader the amount (if any) that the trader has paid for the goods.

(6) Paragraph (7) applies if the trader is unable to return the goods to the consumer in the condition they were in when sold or supplied by the consumer.

(7) The consumer has a right to a payment from the trader of the amount (if any) by which the market price of the goods when the trader paid for them exceeds what the trader paid for them.

The right to unwind: payments by a consumer that are not owed

27H.—(1) A consumer has the right to unwind in respect of a payment to a trader for a product of the kind described in regulation 2(1A) and (1B) if the consumer was not required to make all or part of the payment.

(2) Where paragraph (1) applies, the consumer has the right to receive back from the trader—

- (a) the same amount of money as the consumer paid to the trader, or
- (b) in a case where the consumer was required to make part of the payment, an amount equal to the part of the payment the consumer was not required to make.

The right to a discount: supply by consumer to trader

27I.—(1) A consumer has the right to a discount in respect of a contract for the sale or supply of a product by a trader to the consumer if the consumer has made, or is or will be required to make, one or more payments for the product to the trader.

(2) Where paragraph (1) applies, the consumer has the right within paragraph (3) or (4).

(3) If the consumer has made any payment to the trader for the product, the consumer has the right to receive back from the trader the relevant percentage of that payment.

(4) If the consumer is required to make one or more such payments or will be required in the future to make one or more such payments, the consumer has the right to reduce the payment, or as many of them as is appropriate having regard to the seriousness of the prohibited practice, by the relevant percentage.

(5) The relevant percentage is as follows—

- (a) if the prohibited practice is minor, it is 25%,
- (b) if the prohibited practice is significant, it is 50%,
- (c) if the prohibited practice is serious, it is 75%, and
- (d) if the prohibited practice is very serious, it is 100%.

(6) But paragraph (5) does not apply if—

- (a) the market value of the product exceeds £5,000,
- (b) that value is lower than the amount payable for the product under the contract, and
- (c) there is clear evidence of the difference between that value and that amount.

(7) In such a case, the relevant percentage is such percentage as is appropriate having regard to—

- (a) the difference between the market value and the amount payable under the contract, and
- (b) the seriousness of the prohibited practice.

(8) Where the consumer has the right to a discount, either party to the contract may also elect to terminate the contract.

(9) If the contract is terminated under paragraph (8), neither party is subject to any liability to which that party would otherwise be subject under the contract as a result of the termination.

(10) The seriousness of the prohibited practice is to be assessed by reference to—

- (a) the behaviour of the person who engaged in the practice,
- (b) the impact of the practice on the consumer, and
- (c) the time that has elapsed since the prohibited practice took place.

The right to damages

27J.—(1) Subject as follows, a consumer has the right to damages if—

- (a) the consumer has incurred financial loss which the consumer would not have incurred if the prohibited practice in question had not taken place, or
- (b) the consumer has suffered alarm, distress, physical discomfort or inconvenience which the consumer would not have suffered if the prohibited practice in question had not taken place.

(2) The right to damages is the right to be paid damages for the matter referred to in paragraph (1)(a) or (b) (or for both matters where both sub-paragraphs apply) by the trader with whom the contract in question was entered into or to whom the payment in question was made.

(3) In a case within regulation 27A(2)(a), the right to be paid damages for alarm or distress is available in respect of a prohibited practice relating to the contract only if a significant purpose of the contract is or was to provide pleasure, relaxation or peace of mind to the consumer.

(4) Where the consumer also exercises the right to unwind or the right to a discount, the consumer's right to damages for financial loss is limited to the right to be paid damages for the loss (if any) that is not recoverable by the exercise of that other right.

(5) The right to damages in respect of alarm, distress, physical discomfort or inconvenience is a right to be paid only restrained and modest damages.

(6) A consumer does not have the right to damages in a case where the prohibited practice in question was that of the trader if the trader proves that—

- (a) the occurrence of the prohibited practice in question was due to—
 - (i) a mistake,
 - (ii) reliance on information supplied to the trader by another person,
 - (iii) the act or default of a person other than the trader,
 - (iv) an accident, or
 - (v) another cause beyond the trader’s control, and
- (b) the trader took all reasonable precautions and exercised all due diligence to avoid the occurrence of the prohibited practice.

Enforcement of rights to redress

27K.—(1) A consumer with a right to redress under this Part may bring a claim in civil proceedings to enforce that right.

(2) In Scotland, proceedings to enforce the right to unwind may be brought in the sheriff court or the Court of Session.

(3) Paragraph (4) applies if in proceedings under this regulation the consumer establishes that the consumer has—

- (a) the right to unwind,
- (b) the right to a discount,
- (c) the right to damages, or
- (d) a right within sub-paragraph (a) or (b) and the right within sub-paragraph (c).

(4) The court must make an order that gives effect to—

- (a) that right or those rights, and
- (b) any associated obligations of the consumer under this Part.

(5) In making a determination where the prohibited practice in question involves action taken to collect a debt or a purported debt, the court may have regard to any guidance that—

- (a) deals with the conduct that constitutes a prohibited practice in such cases, and
- (b) has been issued by an enforcement authority and approved by the Secretary of State for the purposes of this paragraph.

(6) The Limitation Act 1980⁽⁴⁾ applies to a claim under this regulation in England and Wales as if it were an action founded on simple contract.

(7) The Prescription and Limitation (Scotland) Act 1973⁽⁵⁾ applies in Scotland to a right of redress under this Part as if it were an obligation to which section 6 of that Act applies; but this is subject to paragraph 2(g) of Schedule 1 to that Act (by which that section does not apply to any obligation to make reparation in respect of personal injuries).

(8) The Limitation (Northern Ireland) Order 1989⁽⁶⁾ applies to a claim under this regulation in Northern Ireland as if it were an action founded on simple contract.

⁽⁴⁾ 1980 c.58.

⁽⁵⁾ 1973, c. 54.

⁽⁶⁾ S.I. 1989/1339 (N.I. 11).

Relationship with existing law

27L.—(1) Nothing in this Part affects the ability of a consumer to make a claim under a rule of law in respect of conduct constituting a prohibited practice.

(2) But a consumer may not—

- (a) make a claim under a rule of law in respect of such conduct if the consumer has successfully exercised a right under this Part or been granted relief under this Part in respect of the conduct, or
- (b) exercise a right under this Part or be granted relief under this Part in respect of such conduct if the consumer has been granted relief under a rule of law in respect of the conduct.”.

New regulation 27M of the 2008 Regulations

5. Before regulation 28 of the 2008 Regulations (and in Part 5 of those Regulations) insert—

“Inertia selling

27M.—(1) This regulation applies where a trader engages in the unfair commercial practice described in paragraph 29 of Schedule 1 (inertia selling).

(2) The consumer is exempted from any obligation to provide consideration for the products supplied by the trader.

(3) The absence of a response from the consumer following the supply does not constitute consent to the provision of consideration for, or the return or safekeeping of, the products.

(4) In the case of an unsolicited supply of goods, the consumer may, as between the consumer and the trader, use, deal with or dispose of the goods as if they were an unconditional gift to the consumer.”.

Amendment to regulation 19 of the 2008 Regulations

6. In regulation 19(1) of the 2008 Regulations (duty of enforcement authority to enforce regulations), at the end insert “(other than Part 4A).”.

Amendments to other enactments

7. In section 2 of the Misrepresentation Act 1967⁽⁷⁾ (damages for misrepresentation), after subsection (3) insert—

“(4) This section does not apply to a contract between a trader and a consumer within the meaning of the Consumer Protection from Unfair Trading Regulations 2008 (SI 2008/1277) if—

- (a) the subject matter of the contract is a product as defined in regulation 2(1) of those Regulations as modified by regulation 27B of those Regulations, and
- (b) the misrepresentation relates to that product.”.

8.—(1) Section 75 of the Consumer Credit Act 1974⁽⁸⁾ (liability of creditor for breaches by supplier) is amended as follows.

(2) In subsection (1), for “misrepresentation or breach of contract” substitute “misrepresentation, relevant prohibited practice or breach of contract”.

(3) After subsection (5) insert—

“(6) In subsection (1) “relevant prohibited practice” means a prohibited practice within the meaning of Part 4A of the Consumer Protection from Unfair Trading Regulations 2008 (SI 2008/1277) (consumers’ rights to redress for misleading and aggressive practices) that is a misleading action under regulation 5 of those Regulations as applied by regulation 27B of those Regulations.”.

⁽⁷⁾ 1967 c. 7.

⁽⁸⁾ 1974 c.39; section 75 was amended by the Consumer Credit (EU Directive) Regulations 2010, regulation 24.

9. In section 10 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985⁽⁹⁾ (negligent misrepresentation), after subsection (2) insert—

“(3) This section does not apply to a contract between a trader and a consumer within the meaning of the Consumer Protection from Unfair Trading Regulations 2008 (SI 2008/1277) if—

- (a) the subject matter of the contract is a product as defined in regulation 2(1) of those Regulations as modified by regulation 27B of those Regulations, and
- (b) the misrepresentation relates to that product.”.

Name
Parliamentary Under Secretary of State
Department for Business, Innovation and Skills

Date

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Consumer Protection from Unfair Trading Regulations 2008 (S.I. 2008/1277) (“the 2008 Regulations”). They provide consumers with rights to redress in respect of misleading and aggressive commercial practices.

The Regulations also insert new regulation 27M into the 2008 Regulations which implements article 27 of Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council (“the Directive”)(¹⁰). A Transposition Note detailing how the Directive is implemented in the UK is available from the BIS website at www.gov.uk/bis, [and is published with the Explanatory Memorandum alongside the instrument on www.legislation.gov.uk].

Regulation 4 inserts new Part 4A which contains provisions on when the rights to redress are available, what they entail and how they can be enforced. New regulation 27A sets out when the rights to redress are available. Firstly, the consumer must have entered into a contract with, or made a payment to, a trader for the sale or supply of a product. Regulation 2 makes various amendments to the definitions of “consumer”, “trader”, “goods” and “product” in the 2008 Regulations. New regulation 27C also modifies the definition of “product” for the purposes of Part 4A. Secondly, the trader must have engaged in a prohibited practice in relation to the product. New regulation 27B sets out the meaning of “prohibited practice”. Finally, the prohibited practice must have been a significant factor in the consumer’s decision to enter into the contract or to make the payment.

New regulation 27D sets out the rights to redress which consumers may have available if the general conditions in regulation 27A are met. They include the right to unwind, the right to a discount and the right to damages.

New Regulations 27E to 27H cover the new right to unwind. New regulation 27E sets out when the right to unwind is available in the case of a contract for the supply of a product to a consumer. In such cases, the consumer must exercise the right to unwind within a period of 90 days and while the product remains capable of being rejected. New regulation 27F provides that the effect of unwinding such a contract is that it comes to an end and the consumer has a right to a refund (and, where applicable, any goods are restored to the trader). New regulation 27G sets out what happens when a consumer unwinds a contract for supply of goods to a trader. New regulation 27H provides that consumers have a right to unwind a payment which they were not required to make and that this entitles them to receive that money back from the trader.

New regulation 27I sets out when the right to a discount is available and what it entails. The right to a discount is available in respect of past or future payments under a contract for the supply of a product to a consumer. It

⁽⁹⁾ 1985 c.73.

⁽¹⁰⁾ OJ L 304, 22.11.2011, p. 64.

entitles consumers to a 25%, 50%, 75% or 100% discount on such payments. The level of the discount depends on the seriousness of the prohibited practice which is assessed by reference to behaviour of the trader, the impact of the practice on the consumer and the time which has elapsed. The level of the discount is assessed in a different way for products with a market value exceeding £5,000.

New regulation 27J sets out when the right to damages is available and what it entails. The right to damages is available for additional financial losses and for alarm, distress, physical discomfort and inconvenience where these were caused by the prohibited practice. If the prohibited practice caused the consumer to enter into a contract then the right to damages for alarm or distress is only available if a significant purpose of that contract was to provide pleasure, relaxation or peace of mind to the consumer. The level of damages for alarm, distress etc. is limited to being restrained and modest. Traders have a due diligence defence in respect of the right to damages.

New regulation 27K makes provision for consumers to be able to bring civil proceedings to enforce their rights to redress under new Part 4A.

New regulation 27L makes clear that the new rights to redress do not affect existing causes of action which consumers may have in respect of the same conduct save that they cannot recover twice for the same loss.

Regulation 5 of the Regulations inserts new regulation 27M into the 2008 Regulations which implements article 27 of the Directive. New regulation 27M applies where a trader has engaged in an unfair commercial practice within paragraph 29 of Schedule 1 to the 2008 Regulations (inertia selling). It makes clear that consumers are exempted from any obligation to provide consideration and that silence by the consumer does not constitute consent to the provision of consideration for, or the return or safekeeping of, the products.

Regulations 6 to 9 make consequential amendments to the 2008 Regulations and to other enactments. Regulations 7 and 9 repeal section 2 of the Misrepresentation Act 1967 and section 10 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 to the extent that those provisions apply to business-to-consumer contracts. Regulation 8 amends section 75 of the Consumer Credit Act 1974 so that the liability of a creditor for breaches by a supplier under that Act covers misleading actions under new Part 4A of the 2008 Regulations.

An impact assessment of the effect that the instrument will have on the costs of business, the voluntary sector and the public sector is available from the BIS website at www.gov.uk/bis, [and is published with the Explanatory Memorandum alongside the instrument on www.legislation.gov.uk.] [A copy has also been placed in the Libraries of both Houses of Parliament.]

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