

2020 No. 484

CONSUMER PROTECTION

ENFORCEMENT

**The Consumer Protection (Enforcement) (Amendment etc.)
Regulations 2020**

<i>Made</i>	- - - -	<i>30th April 2020</i>
<i>Laid before Parliament</i>		<i>5th May 2020</i>
<i>Coming into force</i>	- -	<i>2nd June 2020</i>

The Secretary of State has been designated^(a) for the purposes of making regulations under section 2(2) of the European Communities Act 1972^(b) in relation to measures relating to consumer protection.

The Secretary of State, in exercise of the powers conferred by sections 210(9) and 212(3) of the Enterprise Act 2002^(c) and section 2(2) of the European Communities Act 1972, makes the following Regulations:

PART 1

Introduction

Citation and commencement

1.—(1) These Regulations may be cited as the Consumer Protection (Enforcement) (Amendment etc.) Regulations 2020.

(2) These Regulations come into force on 2nd June 2020.

^(a) S.I. 1993/2661.

^(b) 1972 c. 68. The European Communities Act 1972 was repealed by section 1 of the European Union (Withdrawal) Act 2018 (c. 16) with effect from exit day, but saved with modifications until IP completion day by section 1A of that Act (as inserted by section 1 of the European Union (Withdrawal Agreement) Act 2020 (c. 1)). Section 2(2) was amended by section 27(1) of the Legislative and Regulatory Reform Act 2006 (c. 51) and by section 3(3) and Part 1 of the Schedule to the European Union (Amendment) Act 2008 (c. 7).

^(c) 2002 c. 40. Part 8 amended by the Civil Partnership Act 2004 (c. 33), section 261(1), Schedule 27, paragraph 169, S.I. 2006/3363, S.I. 2007/528, S.I. 2008/1277, S.I. 2009/1941, S.I. 2011/1043, S.I. 2011/1208, the Financial Services Act 2012 (c. 21), section 114(1), Schedule 18, paragraphs 95(1) and (2), the Crime and Courts Act 2013 (c. 22), section 17(5), Schedule 9, Part 3, paragraphs 81(b) and (c), S.I. 2013/783, S.I. 2014/631, S.I. 2014/892, the Consumer Rights Act 2015 (c. 15), section 77(2), Schedule 6, paragraphs 67 to 80, section 79(1), Schedule 7, the Digital Economy Act 2017 (c. 30), section 4(10), Schedule 3, Part 2, paragraphs 42 and 44, S.I. 2018/378 and S.I. 2018/634. Schedule 13 amended by S.I. 2004/2095, S.I. 2005/2759, S.I. 2006/3363, S.I. 2008/1277, S.I. 2009/2999, S.I. 2010/1010, S.I. 2010/2960, S.I. 2011/1208, S.I. 2014/2908, S.I. 2015/542, S.I. 2015/1392, S.I. 2015/1911, S.I. 2017/752, S.I. 2018/634 and S.I. 2018/1153. There are amendments to other provisions of the Act, but those amendments are not relevant to these Regulations.

PART 2

Amendment of primary legislation

Amendment of the Enterprise Act 2002

2.—(1) The Enterprise Act 2002 is amended as follows.

(2) In section 213 (enforcers), in subsection (5A)—

- (a) in the words before paragraph (a), for “Article 4(1) or 4(2)” substitute “Article 5(1)”;
(b) at the end of paragraph (j), for the full stop substitute a semi-colon;
(c) after paragraph (j) insert—
 - “(k) the Department for Infrastructure;
 - (l) the Maritime and Coastguard Agency;
 - (m) the Office of Rail and Road;
 - (n) the Office for the Traffic Commissioner.”

(3) For the italic heading before section 214 substitute “Enforcement orders and interim enforcement orders”.

(4) After section 218 insert the italic heading “*Online interface orders and interim online interface orders*”.

(5) After the italic heading inserted by paragraph (4) insert—

“218ZA Applications

(1) The CMA may apply for an online interface order or an interim online interface order if the CMA thinks that there has been or is likely to be a Community infringement.

(2) An online interface order or an interim online interface order may be sought against the person the CMA thinks has engaged, is engaging or is likely to engage in conduct which constitutes the Community infringement or against another person.

(3) The following courts have jurisdiction to make an online interface order or an interim online interface order—

- (a) the High Court or the county court if the person against whom the order is sought carries on business or has a place of business in England and Wales;
- (b) the High Court or a county court if the person against whom the order is sought carries on business or has a place of business in Northern Ireland;
- (c) the Court of Session or the sheriff if the person against whom the order is sought carries on business or has a place of business in Scotland.

218ZB Online interface orders

(1) The court may make an online interface order on an application under section 218ZA if it finds that—

- (a) there has been or is likely to be a Community infringement,
- (b) there are no other available means of bringing about the cessation or prohibition of the infringement which, by themselves, would be wholly effective, and
- (c) it is necessary to make the order to avoid the risk of serious harm to the collective interests of consumers.

(2) An online interface order must direct the person against whom it is made to do, or to co-operate with another person so that other person may do, one or more of the following—

- (a) remove content from or modify content on an online interface;
- (b) disable or restrict access to an online interface;

- (c) display a warning to consumers accessing an online interface;
 - (d) delete a fully qualified domain name and take any steps necessary to facilitate the registration of that domain name by the CMA.
- (3) Where an online interface order is made, the CMA may publish in such form and manner as it thinks appropriate for the purpose of eliminating any continuing effects of the Community infringement to which the order relates—
- (a) the online interface order, and
 - (b) where known, the identity of the person who has engaged, is engaging or is likely to engage in conduct which constitutes the infringement.
- (4) An online interface order made by a court in one part of the United Kingdom has effect in any other part of the United Kingdom as if made by a court in that part.

218ZC Interim online interface orders

- (1) The court may make an interim online interface order on an application under section 218ZA if it appears to the court—
- (a) that it is alleged that there has been or is likely to be a Community infringement,
 - (b) that if the application had been an application for an online interface order it would be likely to be granted,
 - (c) that it is expedient to bring about the cessation or prohibition of the Community infringement immediately, and
 - (d) if no notice of the application has been given to the person against whom the order is sought that it is appropriate to make an interim online interface order without notice.
- (2) An interim online interface order must direct the person against whom it is made to do, or to co-operate with another person so that person may do, one or more of the following—
- (a) remove content from or modify content on an online interface;
 - (b) disable or restrict access to an online interface;
 - (c) display a warning to consumers accessing an online interface;
 - (d) delete a fully qualified domain name and take any steps necessary to facilitate the registration of that domain name by the CMA.
- (3) An application for an interim online interface order against a person may be made at any time before an application for an online interface order against the person in respect of the same infringement is determined.
- (4) An application for an interim online interface order must refer to all matters—
- (a) which are known to the CMA, and
 - (b) which are material to the question whether or not the application is granted.
- (5) If an application for an interim online interface order is made without notice the application must state why no notice has been given.
- (6) The court may vary or discharge an interim online interface order on the application of—
- (a) the CMA;
 - (b) the person against whom it is made.
- (7) An interim online interface order against a person is discharged on the determination of an application for an online interface order made against the person in respect of the same infringement.
- (8) An interim online interface order made by a court in one part of the United Kingdom has effect in any other part of the United Kingdom as if made by a court in that part.

218ZD Online interface orders: supplementary

(1) In sections 218ZA to 218ZC, “online interface” means any software, including a website, part of a website or an application, that is operated by or on behalf of a trader, and which serves to give consumers access to the trader’s goods and services.

(2) In subsection (1), “trader” means a person acting for purposes relating to that person’s trade, business, craft or profession, whether acting personally or through another person acting in the trader’s name or on the trader’s behalf.

(3) Nothing in sections 218ZA to 218ZC limits the operation of any provisions of this Part relating to—

- (a) enforcement orders,
- (b) interim enforcement orders, or
- (c) undertakings,

in respect of Community infringements.”

(6) Before section 218A insert the italic heading “*Enforcement procedure: supplementary*”.

(7) In section 218A (unfair commercial practices: substantiation of claims)—

- (a) in subsection (1), for “an enforcement order or for an interim enforcement order” substitute “an enforcement order, an interim enforcement order, an online interface order or an interim online interface order”;
- (b) in subsection (2), for “the person named in the application” substitute “the relevant person”.
- (c) after subsection (2) insert—

“(2A) In subsection (2), “the relevant person”, in relation to an application, means—

- (a) where the application is for an enforcement order or an interim enforcement order, the person named in the application under section 215(1);
- (b) where the application is for an online interface order or an interim online interface order, the person alleged by the CMA to have engaged, be engaging or be likely to engage in conduct which constitutes the Community infringement, provided that person is either the person against whom the order is sought or otherwise a party to the proceedings.”

(8) In section 219 (undertakings), in subsection (1), for “under section 215” substitute “for an enforcement order or an interim enforcement order under section 215 or for an online interface order or an interim online interface order under section 218ZA”.

(9) In section 219A (definition of enhanced consumer measures), in subsection (2)—

- (a) for paragraph (a) substitute—

“(a) measures offering compensation or other redress to consumers—

- (i) who have suffered loss as a result of the conduct which has given rise to the enforcement order or undertaking, or
- (ii) where that conduct constitutes a Community infringement, who have been affected in any other way by that conduct.”;

- (b) for paragraph (b) substitute—

“(b) where the conduct which has given rise to the enforcement order or undertaking relates to a contract, measures offering consumers falling within paragraph (a)(i) or (ii) the option to terminate (but not vary) that contract.”;

- (c) in paragraph (c), for “such consumers” substitute “consumers falling within paragraph (a)(i) or (ii)”.

(10) In section 219B (inclusion of enhanced consumer measures etc.)—

- (a) in subsection (4), for “An” substitute “Where the conduct which has given rise to an enforcement order or undertaking constitutes a domestic infringement and not a Community infringement, the”;

Amendment of the Consumer Rights Act 2015

3.—(1) Schedule 5 (investigatory powers etc.) to the Consumer Rights Act 2015^(a) is amended as follows.

(2) In paragraph 4 (EU enforcers)—

- (a) at the end of sub-paragraph (i), omit “or”;
- (b) at the end of sub-paragraph (j), omit the full stop and insert “,”;
- (c) after sub-paragraph (j) insert—
 - “(k) the Department for Infrastructure,
 - (l) the Maritime and Coastguard Agency,
 - (m) the Office of Rail and Road, or
 - (n) the Office for the Traffic Commissioner.”

(3) In paragraph 8 (interpretation of other terms), at the appropriate place, insert—

““interim online interface order” means an order under section 218ZC of that Act;
“online interface order” means an order under section 218ZB of that Act;”.

(4) In paragraph 13 (exercise of powers in this Part), in sub-paragraph (2), in paragraph (d), for “an enforcement order or an interim enforcement order” substitute “an enforcement order, an interim enforcement order, an online interface order or an interim online interface order”.

(5) In paragraph 20 (exercise of powers in this Part: EU enforcers)—

- (a) in sub-paragraph (2), for “paragraphs 21 to 25” substitute “paragraphs 22 to 25”;
- (b) in sub-paragraph (3), in paragraph (b), for “an enforcement order or an interim enforcement order” substitute “an enforcement order, an interim enforcement order, an online interface order or an interim online interface order”;
- (c) after sub-paragraph (3) insert—

“(3A) An EU enforcer may exercise the power in paragraph 21 (power to purchase products) for either of the following purposes—

 - (a) the purpose mentioned in sub-paragraph (2), if the condition in sub-paragraph (3) is met, or
 - (b) to obtain a product for use as evidence in proceedings under Part 8 of the Enterprise Act 2002.”

PART 3

Specification of UK law for the purpose of section 212 of the Enterprise Act 2002

4. The law set out in the Schedule is specified for the purposes of section 212 of the Enterprise Act 2002.

(a) 2015 c. 15. Schedule 5 amended by S.I. 2015/1640, S.I. 2015/1726, the Enterprise Act 2016 (c. 12), section 25(2), the Housing and Planning Act 2016 (c. 22), section 132(4), S.I. 2016/1091, S.I. 2016/1092, S.I. 2016/1093, S.I. 2016/1101, S.I. 2016/1105, S.I. 2016/1152, S.I. 2016/1153, S.I. 2016/1259, S.I. 2017/737 and S.I. 2018/634. There are amendments to other provisions of the Act, but those amendments are not relevant to these Regulations.

PART 4

Consequential and transitional provision

Financial Conduct Authority

5.—(1) The functions of the Financial Conduct Authority which are exercisable by virtue of the CPC Regulation are to be treated as functions conferred on that Authority under provisions of the Financial Services and Markets Act 2000(**a**).

(2) In paragraph (1), “the CPC Regulation” means Regulation (EU) 2017/2394 of the European Parliament and of the Council of 12 December 2017 on cooperation between national authorities responsible for the enforcement of consumer protection laws and repealing Regulation (EC) No 2006/2004(**b**).

Consequential amendments

6.—(1) The Operation of Air Services in the Community (Pricing etc.) Regulations 2013(**c**) are amended as follows.

(2) In regulation 3(1), omit the following definitions—

- (a) “electronic address”;
- (b) “electronic communication”;
- (c) “electronic communications network”;
- (d) “enforcement order”;
- (e) “enforcement subject”;
- (f) “interim enforcement order”.

(3) Omit regulation 3(2).

(4) Omit regulations 6 to 27.

(5) Omit regulations 29 to 31.

(6) Omit Part 4.

7.—(1) The Civil Aviation (Access to Air Travel for Disabled Persons and Persons with Reduced Mobility) Regulations 2014(**d**) are amended as follows.

(2) In regulation 3(1), omit the following definitions—

- (a) “electronic address”;
- (b) “electronic communication”;
- (c) “electronic communications network”;
- (d) “enforcement order”;
- (e) “enforcement subject”;
- (f) “interim enforcement order”.

(3) Omit regulations 5 to 23.

Transitional provision

8. These Regulations have effect only in respect of conduct to the extent that it occurs, or is likely to occur, after these Regulations come into force.

(a) 2000 c. 8.

(b) OJ No L 345, 27.12.2017, p. 1-26; amended by Regulation (EU) 2018/302 (OJ No L 60I, 2.3.2018, p. 1-15).

(c) S.I. 2013/486, amended by S.I. 2014/549; there is another amending instrument but it is not relevant.

(d) S.I. 2014/2833, amended by S.I. 2016/729.

30th April 2020

Paul Scully
Parliamentary Under Secretary of State
Department for Business, Energy and Industrial Strategy

SCHEDULE

Listed Directives and Regulations

Regulation 4

<i>Directives and Regulations</i>	<i>Specified UK law</i>
Regulation (EC) No 1107/2006 of the European Parliament and of the Council of 5 July 2006 concerning the rights of disabled persons and persons with reduced mobility when travelling by air	The Civil Aviation (Access to Air Travel for Disabled Persons and Persons with Reduced Mobility) Regulations 2014
Articles 1, 2(c) and 4 to 8 of Directive 2006/114/EC of the European Parliament and of the Council of 12 December 2006 concerning misleading and comparative advertising	Regulations 2, 4, 13, 15 and 18 of the Business Protection from Misleading Marketing Regulations 2008(a)
Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market(b)	The Provision of Services Regulations 2009(c)
Regulation (EC) No 1371/2007 of the European Parliament and of the Council of 23 October 2007 on rail passengers' rights and obligations	The Rail Passengers' Rights and Obligations Regulations 2010(d); The Rail Passengers Rights and Obligations (Designation and Enforcement) Regulations (Northern Ireland) 2017(e)
Articles 22 to 24 of Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community	The Operation of Air Services in the Community (Pricing etc.) Regulations 2013
Articles 9 to 11 and 19 to 26 of Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services	Sections 319, 321, 322, 325, 368F, 368G and 368H of the Communications Act 2003(f)
Regulation (EU) No 1177/2010 of the European Parliament and of the Council of 24 November 2010 concerning the rights of passengers when	The Merchant Shipping (Passengers' Rights) Regulations 2013(g)

(a) S.I. 2008/1276, amended by S.I. 2013/783, S.I. 2013/2701, S.I. 2014/549 and S.I. 2015/1630.

(b) OJ No L 376, 27.12.2006, p. 36-68.

(c) S.I. 2009/2999; amended by S.I. 2011/1043, S.I. 2012/1809, S.I. 2013/3115, S.I. 2014/1937, S.I. 2015/102, S.I. 2015/2059 and the Data Protection Act 2018 (c. 12), section 211 and Schedule 19, paragraph 342.

(d) S.I. 2010/1504; relevant amending instruments are S.I. 2010/2317 and S.I. 2015/1682.

(e) S.R. 2017 No. 84, to which there are amendments not relevant to these Regulations.

(f) 2003 c. 21. Sections 368F, 368G and 368H inserted by S.I. 2009/2979. The relevant sections amended by S.I. 2010/419, S.I. 2010/831 and S.I. 2016/507.

(g) S.I. 2013/425, to which there are amendments not relevant to these Regulations.

Directives and Regulations in Schedule 13 to the 2002 Act and specify under section 212(3) of that Act the law in the United Kingdom which gives those Directives and Regulations effect.

The Regulations introduce a new concept of online interface orders into Part 8 of the 2002 Act. Courts are given the power to make orders relating to online interfaces (requiring, for example, the removal of content from or restriction of access to an interface) where the Competition and Markets Authority makes an application under that Part in respect of a Community infringement and the court considers both that there is a risk of serious harm to the collective interests of consumers and that no other available means would, by themselves, be wholly effective in stopping or preventing the infringement. An online interface order may be made against the person responsible for the infringement or a third party. Courts are also given the power to make interim online interface orders in certain circumstances. Nothing in the new provisions limits the operation of the existing provisions of Part 8 relating to enforcement orders, interim enforcement orders or undertakings.

The Regulations also amend Part 8 of the 2002 Act to provide that where enhanced consumer measures in the redress category are included in an enforcement order or undertaking in respect of a Community infringement, those measures may be for the benefit of consumers affected by that infringement and are not restricted to loss cases.

The Regulations amend Schedule 5 (investigatory powers etc.) to the Consumer Rights Act 2015 (“the 2015 Act”) to ensure that, in respect of Community infringements, the power to purchase a product may be exercised to obtain that product for use as evidence in proceedings under Part 8 of the 2002 Act.

The Regulations increase the number of national competent authorities able to exercise the required investigation and enforcement powers, by adding to the list of CPC enforcers in Part 8 of the 2002 Act and the list of EU enforcers in Schedule 5 to the 2015 Act.

The Regulations provide that relevant provisions of the Financial Services and Markets Act 2000 apply to the Financial Conduct Authority’s functions under the CPC Regulation; for example, provisions relating to practical arrangements for the discharge of those functions.

The Regulations amend The Operation of Air Services in the Community (Pricing etc.) Regulations 2013 and The Civil Aviation (Access to Air Travel for Disabled Persons and Persons with Reduced Mobility) Regulations 2014 by omitting provisions that are redundant following the listing in Schedule 13 to the 2002 Act of the EU Regulations implemented by those instruments.

The Regulations have effect only in respect of conduct to the extent that it occurs, or is likely to occur, after these Regulations come into force.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen.

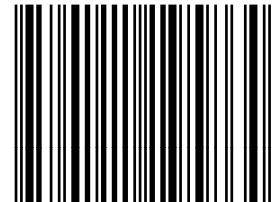
An Explanatory Memorandum and a transposition note are also available with these Regulations on www.legislation.gov.uk. Copies have been placed in the Libraries of both Houses of Parliament.

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