

Consumer Protection (Fair Trading) (Opt-Out Practices) Regulations 2009

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No. S 67

CONSUMER PROTECTION (FAIR TRADING) ACT (CHAPTER 52A)

CONSUMER PROTECTION (FAIR TRADING) (OPT-OUT PRACTICES) REGULATIONS 2009

In exercise of the powers conferred by section 20 of the Consumer Protection (Fair Trading) Act, the Minister for Trade and Industry hereby makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Consumer Protection (Fair Trading) (Opt-Out Practices) Regulations 2009 and shall come into operation on 15th April 2009.

Definitions

2.—(1) In these Regulations, unless the context otherwise requires —

“continuing basis”, in relation to the supply of goods or services, includes the renewal of an existing written contract for the supply of goods or services at the option of the consumer on terms specified in the existing contract;

“free trial basis”, in relation to the supply of goods or services, means an arrangement whereby goods or services are supplied free of charge for a specified period;

“free trial period”, in relation to goods or services supplied on a free trial basis, means the specified period during which the goods or services are supplied free of charge;

“unsolicited goods or services” means goods or services that are supplied in relation to a consumer transaction to a consumer who did not request them, but does not include goods or services supplied to a consumer who knew or ought to have known that they were intended for delivery to another person unless it was reasonable to believe that the goods or services, if delivered to that other person, would have been unsolicited goods or services.

(2) A request for goods or services (for the purposes of the definition of “unsolicited goods or services” in paragraph (1)) or an intention to accept and pay for goods or services (for the purposes of regulations 3(1), 5(9)(b) and 6(1)) or consent to a material change (for the purposes of regulation 4(2)) shall not be inferred only from the passage of time or from the consumer’s —

- (a) payment for the goods or services;
- (b) use of, dealing with or disposal of the goods or services;
- (c) request to purchase another similar good or service; or
- (d) inaction.

Unsolicited goods or services

3.—(1) Unless and until the consumer expressly acknowledges to the supplier in writing his intention to accept and pay for the unsolicited goods or services, the consumer may use, deal with or dispose of the goods or services as if they were an unconditional gift to him from the supplier.

(2) Unless the consumer has given the acknowledgment referred to in paragraph (1),

the supplier shall not have a cause of action for any loss, use, misuse, possession, damage or misappropriation in respect of the goods or services or the value obtained by the use of the goods or services.

(3) In any proceedings taken in any court between the consumer and a supplier where it is alleged that the goods or services supplied by the supplier are unsolicited goods and a dispute arises as to whether —

- (a) the consumer requested the goods or services, for the purposes of the definition of “unsolicited goods or services” in regulation 2(1);
- (b) the consumer expressly acknowledged in writing his intention to accept or pay for the goods or services, for the purposes of paragraph (1) or regulation 6(1); or
- (c) the consumer consented in writing to a material change, for the purposes of regulation 4(2),

section 18A of the Act shall apply so that the supplier shall bear the burden of proving that the requirements referred to in sub-paragraph (a), (b) or (c), as the case may be, has been complied with.

Supply on continuing basis

4.—(1) Regulation 3 shall not apply to goods or services supplied to a consumer on a continuing basis under a contract between the consumer and supplier, unless the goods or services are deemed to be unsolicited goods or services under this regulation.

(2) If a consumer is being supplied with goods or services on a continuing basis and there is a material change in the goods or services, or in the supply of the goods or services, the goods or services shall be deemed to be unsolicited goods or services from the time of the material change unless the consumer consented in writing to the material change.

(3) A consumer shall not be taken to have consented to a material change for the purposes of paragraph (2) merely because the supplier gave notice to the consumer to the following effect: that the supplier will supply the materially changed goods or services to the consumer unless the consumer instructs the supplier not to supply those goods or services.

(4) For the purposes of paragraph (2), a “material change” does not include —

- (a) a change to the price of goods or services or a renewal of an existing supply of goods or services, if the goods or services are not otherwise changed; or
- (b) a change that a reasonable person in the position of the consumer would