

News Release

Life Gets Tougher for Rogue Traders from Today

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New legislation protecting consumers by outlawing unfair trading comes in to force today. The Consumer Protection Regulations (2008) introduce a tough new duty on businesses that make it illegal for them to trade unfairly. It is being hailed as the most significant change to consumer protection law in decades.

The new regulations will ban 31 types of unfair commercial practices outright (listed below). They will also establish a general principle not to trade unfairly, use aggressive selling techniques or mislead consumers – helping to close loopholes that have previously been exploited by unscrupulous businesses. The regulations bring the terms of the EU Unfair Commercial Practices Directive into UK law

Scottish Consumer Council's Legal Officer, Sarah O'Neill says the legislation plugs some significant gaps in the law protecting consumers:

"Too often traders have been selling goods and services to customers knowing full well that what they're doing is dishonest. It can be 'special offers' which are not actually in stock, selling goods that are already obsolete or competitions that nobody has a chance of winning.

"One current example of such unfair practices might be if a retailer in the Borders were offering analogue TVs to buyers just months ahead of the digital switch over.

"What has made it so distasteful has been the fact that victims of misleading and unfair practices are often those most vulnerable in society. This legislation signals a huge step towards putting the perpetrators of scams and mis-selling out of business".

A survey by the UK Department for Business (BERR) found that in Scotland:

- 96% of consumers surveyed supported measures that would clean up misleading and unfair practices
- 94% had won a competition that they never entered

- 8 out of 10 had to deal with pushy salesman who wouldn't take no for an answer

Sarah O'Neill says SCC's only disappointment is that the UK Government chose not to extend the right of legal action under the regulations to consumers themselves.

"While the Office of Fair Trading and trading standards officers will be able to take action against traders who breach the regulations, UK consumers, unlike those in Ireland, won't be able to claim compensation themselves when businesses act unfairly. We remain hopeful that this will be remedied soon."

NOTES TO EDITORS

The Scottish Consumer Council was set up by the government in 1975 to promote the interests of consumers, particularly those who experience disadvantage in society. While producers and suppliers of goods and services are usually well organised when protecting their own interests, individual consumers very often are not. The people we represent are consumers of all kinds: they may be council tenants, patients, parents, solicitors' clients, public transport users, or simply shoppers in a supermarket. We speak up for them by communicating with the professions, industry, business, local authorities and central government, using careful research and persuasive lobbying.

Media Contact: To arrange an interview or for more information contact our media advisers, John Macgill or Andrew Ritchie on 0131 556 0050 (including out of hours) or john@morhamburn.com.

THE 31 TYPES OF UNFAIR COMMERCIAL PRACTICES

1. Faking credentials

Claiming to be a signatory to a code of conduct when the trader is not.

2. You're not who you say you are

Displaying a trust mark, quality mark or equivalent without having obtained the necessary authorisation.

3. Your endorsement is not real

Claiming that a code of conduct has an endorsement from a public or other body which it does not have.

4. Not being true to the terms of the endorsement

Claiming that a trader (including his/her commercial practices) or a product has been approved, endorsed or authorised by a public or private body when he/she/it has not, or making such a claim without complying with the terms of the approval, endorsement or authorisation.

5. Special offer – not in stock

Making an invitation to purchase products at a specified price, without disclosing the existence of any reasonable grounds the trader may have for believing that he/she will not be able to offer for supply or to procure another trader to supply, those products or equivalent products at that price for a period that is, and in quantities that are, reasonable having regard to the product, the scale of advertising of the product and the price offered. This is known as bait advertising.

6. Limited time only

Falsely stating that a product will only be available for a very limited time, or that it will only be available on particular terms for a very limited time, in order to elicit an immediate decision and deprive consumers of sufficient opportunity or time to make an informed choice.

7. Illegally selling goods

Stating or otherwise creating the impression that a product can legally be sold when it cannot.

8. It's not right

Presenting rights given to consumers in law as a distinctive feature of the trader's offer.

9. Over promise, under deliver

Falsely claiming that a product is able to cure illnesses, dysfunction or malformations.

10. Promoting a product you don't want to sell

Making an invitation to purchase products at a specified price and then:

(a) Refusing to show the advertised item to consumers;

Or (b) Refusing to take orders for it or deliver it within a reasonable time;

Or (c) Demonstrating a defective sample of it, with the intention of promoting a different product (known as bait and switch).

11. Scare tactics

Making a materially inaccurate claim concerning the nature and extent of the risk to the personal security of the consumer or his or her family if the consumer does not purchase the product.

12. Creating extra paperwork

Requiring a consumer who wishes to claim on an insurance policy to produce documents which could not reasonably be considered relevant as to whether the claim was valid, or failing systematically to respond to pertinent correspondence, in order to dissuade a consumer from exercising his/her contractual rights.

13. Being honest about advertorials

Using editorial content in the media to promote a product where a trader has paid for the promotion (advertorial) without making that clear in the content or by images or sounds clearly identifiable by the consumer.

14. Faking goods

Promoting a product similar to a product made by a particular manufacturer in such a manner as deliberately to mislead the consumer into believing that the product is made by that same manufacturer when it is not.

15. Closing down sale

Claiming that the trader is about to cease trading or move premises when he/she is not.

16. Pulling the wool over their eyes

Passing on materially inaccurate information on market conditions or on the possibility of finding the product with the intention of inducing the consumer to acquire the product at conditions less favourable than normal

market conditions.

17. Forcing the deal

Including in marketing material an invoice or similar document seeking payment which gives the consumer the impression that he/she has already ordered the marketed product when he/she has not.

18. A wolf in sheep's clothing

Falsely claiming or creating the impression that the trader is not acting for purposes relating to his/her trade, business, craft or profession, or falsely representing oneself as a consumer.

19. Advertising to children

Including in an advertisement a direct exhortation to children to buy advertised products or persuade their parents or other adults to buy advertised products for them.

20. Pyramid schemes

Establishing, operating or promoting a pyramid promotional scheme where a consumer gives consideration for the opportunity to receive compensation that is derived primarily from the introduction of other consumers into the scheme, rather than from the sale or consumption of products.

21. You can't promise a win

Claiming that products are able to facilitate winning in games of chance.

22. Winner takes nothing

Claiming in a commercial practice to offer a competition or prize promotion without awarding the prizes described or a reasonable equivalent.

23. Is it truly free?

Describing a product as 'gratis', 'free', 'without charge' or similar if the consumer has to pay anything other than the unavoidable cost of responding to the commercial practice and collecting or paying for delivery of the item.

24. No win situations

Creating the false impression that the consumer has already won, will win, or will on doing a particular act win, a prize or other equivalent benefit, when in fact either:

– There is no prize or other equivalent benefit,

Or – Taking any action in relation to claiming the prize or other equivalent benefit is subject to the consumer paying money or incurring a cost.

25. Forcing the sale

Creating the impression that the consumer cannot leave the premises until a contract is formed.

26. Overstaying your welcome

Conducting personal visits to the consumer's home and ignoring the consumer's request to leave or not to return, except in circumstances and to the extent justified, under national law, to enforce a contractual obligation.

27. Pestering the consumer

Making persistent and unwanted solicitations by telephone, fax, e-mail or other remote media except in circumstances and to the extent justified under national law to enforce a contractual obligation.

28. Using guilt to make sales

Explicitly informing a consumer that if he or she does not buy the product or service, the trader's job or livelihood will be in jeopardy.

29. Asking for payment when they didn't ask for the product

Demanding immediate or deferred payment for, or the return or safekeeping of products supplied by the trader, but not solicited by the consumer except where the product is a substitute supplied in accordance with regulation 19(7) of the Consumer Protection (distance selling) Regulations 2000 (this is known as inertia selling).

30. Talking the same language

Undertaking to provide after-sales service to consumers with whom the trader has communicated prior to a transaction in a language which is not an official language of the European Member State where the trader is located, and then making such service available only in another language without clearly disclosing this to the consumer before the consumer is committed to the transaction.

31. Misleading after-sales information

Creating the false impression that after-sales service in relation to a product is available in a European Member State other than the one in which the product is sold.

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