

Consumer Law Bulletin

Ian Turner, BA (Hons), DTS, MTSI
Editor of *O'Keefe: The Law of Weights and Measures*

Filing instructions: This Bulletin contains material available on 1 July 2013. It should be filed behind the Bulletins Guide Card and in front of Bulletin No 316. **Remove Bulletin 304.** If desired Bulletin 304 may be retained outside the Binder for future reference. The Binder should now contain Bulletins Nos 305 to 317.

Important Notice to Subscribers

This is the final Butterworths Consumer Law Bulletin to be published in hardcopy; from now on, this Bulletin, together with all other LexisNexis looseleaf bulletins, will be freely available to download from LexisWeb, the only online resource in the UK that brings the best of free and paid-for legal content together in one place. Hosting our Bulletins online has the additional benefit of improving the speed with which we can get these updates to you.

To download this Bulletin, please follow the instructions below.

Access the LexisWeb site at www.lexisweb.co.uk

Under the heading "Browse" select "Content Guides"; this will open up an alpha list of our Content Guides.

Navigate to [B] and click on the link to Butterworths Consumer Law Bulletin. Here you will find the PDF of the current Bulletin, archived PDFs of the previous year's Bulletins and general information about the service.

By making this content freely available online, we hope to better facilitate the sharing of it across workplaces.

ENFORCEMENT

Proposed Legislation

Draft Consumer Rights Bill

The draft Consumer Rights Bill was been published on 12 June 2013 along with the government's response to its government Consultation on Consumer Rights. The proposed Bill aims to streamline and reduce complicated rules by combining eight different pieces of legislation into one consumer Bill. It also introduces new rights for consumers and businesses.

ENFORCEMENT

The proposed Bill is composed of 86 sections, in three parts.

Part 1 is composed of five chapters and contains the majority of the new proposals.

Chapter 1 introduces the Bill. Chapter 2 relates to goods and the detailed measures include:

- setting a clear time period of 30 days following purchase in which consumers can reject faulty goods and receive a full refund, providing clarity to both the consumer and trader;
- after 30 days, or where the consumer does not choose to reject faulty goods initially, clarify that consumers need only accept a single repair or replacement attempt before being able to get some money back if the repair or replacement fails to fix the problem, or a further problem arises;
- establish that traders may not, in the first six months after purchase, reduce the level of refund provided to take account of the use of faulty goods the consumer has had up to that point. An exception is where robust third party evidence of the second hand value of the goods exists, in which case the refund may be reduced in the first six months to take account of use, but must be at least that value;
- consolidate and align the currently inconsistent remedies available for goods supplied under different contract types, such as sale, work and materials, conditional sale or hire purchase;
- setting out more clearly the standards that the goods must meet. This will remove reference to 'conditions' and 'warranties' and 'implied terms' and replace these with less legalistic language.

Chapter 3 relates to digital content. The detailed measures include:

- the introduction of a new category of digital content in consumer law;
- the introduction of new statutory rights for digital content;
- the introduction of new statutory remedies for faulty digital content.

Chapter 4 relates to the law relating to services and. The detailed measures include:

- the introduction of a new statutory right that the service must comply with the information given by the trader in certain circumstances, even if this is not recorded in the written contract. It is also intended to make the language of the law easier to understand by making clear that the existing consumer protections are statutory rights: that a service must be provided with reasonable care and skill and where the time for the service or the price has not been agreed, and that the service must be performed within a reasonable time and at a reasonable price;
- the introduction of new statutory remedies. Where a service is sub-standard, the business will be required to put the service right. If that is

impossible, or cannot be performed within a reasonable time or without significant inconvenience to the consumer, the business must give a reduction in the price the consumer has to pay;

- clarification that the statutory rights will always apply and the consumer can always request these remedies, and any attempt by businesses to render them inapplicable will have no legal effect.

Chapter 5 contains general and supplementary provision.

Part 2 contains requirements relating to unfair contract term. The detailed measures include:

- streamlining of legislation governing unfair terms in consumer contracts – currently found in two separate pieces of legislation – into one place, removing anomalies and overlapping provisions. This will allow businesses, consumers and those advising them to understand more easily the circumstances in which terms can be assessed for fairness;
- the clarification of the circumstances when the price or subject matter of the contract cannot be considered for fairness. In particular, make clear that in order not to be considered, that term must be transparent and prominent in the contract with the consumer;
- clarify the role of and extend the indicative list of terms which may be regarded as unfair (the so called “grey list”).

Part 3 contains miscellaneous and general provisions.

The detailed measures include:

- the streamlining and simplification of the investigatory powers of consumer law enforcers and setting them out in one place. The law will be clarified so that Trading Standards Services are able to work across local authority boundaries as simply and efficiently as possible;
- to enhance the flexibility of enforcers of consumer law, the government intends to introduce greater flexibility for enforcers to get the best outcome for consumers in the civil courts;
- redress for consumers who have been disadvantaged from breaches of consumer law;
- measures from traders who have breached consumer law to improve their compliance and reduce the likelihood of future breaches;
- measures to give consumers more information so they can exercise greater choice and help improve the functioning of the market for consumers and other businesses;
- to enhance opportunities for businesses and consumers to obtain compensation for losses, and to tackle anti-competitive behaviour.

It is felt that the draft Bill represents a useful consolidation of the legislative requirements. In areas such as cross-border working for Trading Standards Departments it is felt that the proposed changes will bring advantages.

FOOD

NEW LEGISLATION

Specified Products from China (Restrictions on First Placing on the Market) (England) (Amendment) Regulations 2013, SI 2013/221

These regulations, which come into force on the 10 July 2013, amend the Specified Products from China (Restrictions on First Placing on the Market) (England) (Amendment) Regulations 2008, SI 2008/1079, as previously amended by SI 2012/47). The 2013 amendments implement the requirements of Commission implementing decision 2013/287/EU, amending implementing decision 2011/884/EU on emergency measures regarding unauthorised genetically modified rice in rice products originating from China.

NEW EU LEGISLATION

Commission Regulation (EU) No 545/2013 of 14 June 2013 amending Annex I to Regulation (EC) No 1334/2008 of the European Parliament and of the Council as regards the flavouring substance 3-acetyl-2,5-dimethylthiophene

The EU Regulation No 1334/2008 on flavourings and certain food ingredients with flavouring properties has been amended to prohibit the use of 3-acetyl-2,5-dimethylthiophene.

Information

Guide to creating a front of pack (FoP) nutrition label for pre-packed products sold through retail outlets

A new consistent nutritional label for the front of food packaging has been launched. The new labelling system aims to make it easier for people to make healthier choices about what food they eat.

Research has shown that different nutrition labels can confuse people and the new label aims to be more comprehensible and make it easier for people to make healthy eating choices.

The guidance supports the development of FoP nutrition labels that are compliant with Council Reg (EU) No 1169/2011 on the provision of food information to consumers (EU FIC). The requirements relating to FoP information remains voluntary, but if provided it must meet the requirements set out in the EU FIC.

Voluntary front of pack nutrition labelling cannot be given in isolation it must be provided *in addition to* the full mandatory (back of pack) nutrition declaration, which comprises energy, fat, saturates, carbohydrate, sugars, protein and salt.

The FoP scheme outlined in this guidance includes colour coding of nutrients (but not energy). Colour coding is an additional form of expression as

provided for in the EU FIC (art 35). The colours red, amber and green do not represent claims. Nutrition declaration and should not be treated as a group of individual claims.

Many major manufacturers and retailers support the system, but it must be remembered that this is not a statutory provision.

Results of an independent review of the Food Standards Agency (FSA) response to the adulteration of processed beef products with horse and pork meat and DNA published

A report into the FSA response to the recent horsemeat scandal includes the following:

- the need for improved intelligence across the food industry;
- the need for the FSA to strengthen its major incident plan;
- improved clarity of the role of government departments in large, complex incidents;
- review of the FSA's powers and the use of framework agreements; and
- codes of conduct.

An FSA report summarising the incident and subsequent actions and investigations have also been published and is available on the FSA website.

Factsheets for Trading Standards Officers published

Trading standards officers throughout the country can now read FSA factsheets containing basic advice on how enforcement officers and the FSA can work together to achieve shared food-safety goals. The factsheets provide key messages on food standards, food standards enforcement, food allergen labelling, animal feed, food fraud and imported food. They can be found on the FSA website but will not be updated and can be superseded by other documents.

LICENSING

New Legislation

The Sale of Alcohol to Children and Young Persons (Scotland) Amendment Regulations 2013, SI 2013/1199

Regulation 2 of the Sale of Alcohol to Children and Young Persons (Scotland) Regulations 2007 prescribes a photographic identity card of a type approved by the British Retail Consortium for the purposes of its Proof of Age Standards Scheme as a document that can be used to establish proof of age.

Regulation 2 of these Regulations prescribes a further three forms of acceptable identification for these purposes. These are:

- a Defence Identity Card issued by the Ministry of Defence;

LICENSING

- a national identity card issued by an EU state (other than the UK), Norway, Iceland, Liechtenstein or Switzerland; and
- a Biometric Immigration Document.

These regulations come into force on the 13 October 2013.

SAFETY

New Legislation

The Construction Products Regulations 2013, SI 2013/1387

These Regulations make provision necessary for the operation in the UK of Council Reg (EU) No 305/2011 (the 2011 Regulation) of the European Parliament and of the Council laying down harmonised conditions for the marketing of construction products repealing Council Directive 89/106/EEC.

The Regulations revoke Construction Products Regulations 1991, SI 1991/6120 which implemented Council Dir 89/106/EEC.

Part 1 of the Regulations provides for citation, commencement and interpretation, and establishes the competent authority in the United Kingdom for the purposes of the 2011 Regulation, and, insofar as it applies to construction products, to Council Reg (EC) No 765/2008.

Part 2, Requirements relating to construction products.

Regulations 4 (prohibition on supply etc) and 5 (breaches of duty by economic operators) establish offence provisions in respect of breaches of the principal safety-related provisions of the 2011 Regulations.

Regulation 6 (other breaches of the 2011 Regulation) provides an offence where construction products are supplied without accompanying product identification, contact information for manufacturers, importers or distributors, or instructions and safety information.

Regulation 7 (suspension notices) and Sch 2 make provision, based on provision in SI 1991/6120, for the service of notices by an enforcement authority suspending the supply of construction products on grounds of the commission of an offence under regs 4, 5 or 6, or on a number of grounds relating to the 2011 Regulation. Schedules 1 and 2 include provision for appeal against suspension notices.

Regulations 8 (forfeiture: England and Wales and Northern Ireland) and 9 (forfeiture: Scotland) make provision for forfeiture of construction products, based on provision in SI 1991/6120, on grounds similar to those for the service of suspension notices.

Regulation 10 (duty of enforcement authority to give notice of suspension notices and forfeiture applications etc) provides that enforcement authorities must notify the Secretary of State of any action that they take under regs 7 to 9.

Regulations 11 (prohibition notices) and 12 (notices to warn) make provision, based on provision in SI 1991/6120, for the service of notices by the Secretary of State prohibiting the supply of construction products, and requiring the issue of warnings in relation to construction products, on grounds of the commission of an offence under regs 4 or 5, or on the grounds set out in Sch 1. Offences are provided for in respect of breach of notices.

Regulation 13 (power to obtain information) provides for the service of notices requiring information to assist the Secretary of State in deciding whether to serve prohibition notices and notices to warn, with an offence for non-compliance or provision of false information. Schedules 3 and 4 contain requirements for the content of prohibition notices and notices to warn.

Part 3 (enforcement of Pt 2 and the 2011 Regulation) of the Regulations makes enforcement provision based on similar provision in SI 1991/6120.

Regulation 14 (enforcement) establishes the duty for local weights and measures authorities in England and Wales and in Scotland, and district councils in Northern Ireland, to carry out market surveillance under the 2008 Regulation, as it applies to construction products, and the 2011 Regulation and to enforce the weights and measures authorities in England and Wales to investigate and prosecute in relation to offences anywhere in England and Wales, and district councils to do the same anywhere in Northern Ireland.

Regulations 16 (powers of search etc) and 17 (provisions supplemental to reg 16) govern powers of entry, search and seizure in connection with failures to comply with the requirements of the 2011 Regulation and offences under SI 2013/1387, Pt 2 of the Regulations.

Regulation 18 (obstruction of authorised officer) establishes offences for obstructing, or giving false information to, an officer of an enforcement authority.

Part 4 (miscellaneous and supplemental) makes provision also largely based on provision in SI 1991/6120. This includes an offence provision in reg 22 (restrictions on disclosure of information) for disclosure of information obtained in the course of procedures under the Regulations or under art 27(2) (sharing of information between market surveillance and external border control authorities) of the 2008 Regulation, and transitional provisions.

These regulations come into force on the 1 July 2013.

The Cosmetic Products Enforcement Regulations 2013, SI 2013/1478

These Regulations provide for the enforcement of Council Reg (EC) No 1223/2009 on cosmetic products (recast) (the EU Cosmetics Regulation).

The EU Cosmetics Regulation repeals and replaces Council Dir 76/768/EEC of 27 July 1976 which was implemented in the UK by the Cosmetic Products (Safety) Regulations 2008, SI 2008/1284 (as amended). These Regulations revoke SI 2008/1284 (reg 3, Sch 1).

SAFETY

Regulation 4 identifies the Secretary of State and the enforcement authority (as defined in reg 2) as the competent authorities for the purposes of the EU Cosmetics Regulation.

Regulation 5 contains additional requirements for labelling goods that are required to be created under art 19 of the EU Cosmetics Regulation.

Part 2 sets out offences, penalties and enforcement.

Regulations 6 and 7 impose duties on the enforcement authorities to enforce the regulations, and give them the necessary powers.

Regulation 8 provides for how notices of requirements and requests should be given.

Regulation 9 requires enforcement authorities to get authorisation from the Secretary of State before taking provisional measures under art 27 (Safeguard clause) of the EU Cosmetics Regulation.

Regulation 10 requires enforcement authorities to notify the Secretary of State of information, which is required to be notified to the European Commission or to other member States. Regulation 11 sets out what information must be provided to the Secretary of State when requesting authorisation of provisional measures or providing notification under regs 9 and 10.

Regulations 14 to 17 relate to appeals and compensation.

Regulations 18 and 19 enable the court to order someone to remedy a matter or reimburse the enforcement authority for expenses of enforcement.

Regulations 20 and 21 enable orders for the forfeiture of goods to be made.

Regulations 22 to 24 set out time limits for prosecution, defences and liability of persons other than the principal offender.

Part 3 deals with consequential amendments (which are set out in Sch 5) and review provisions.

Regulation 26 requires the Secretary of State to review the operation and effect of these Regulations and publish a report within five years after they come into force and within every five years after that. Following a review it will fall to the Secretary of State to consider whether the Regulations should remain as they are, or be revoked or be amended.

Schedule 1 lists the Regulations revoked by this regulation.

Schedule 2 contains provisions relating to testing cosmetic products, powers to enter premises, powers to inspect, seize and detain cosmetic products etc, and warrants.

Schedule 5 contains consequential amendments to other legislation.

These regulations come into force on the 11 July 2013.

NEW EU LEGISLATION

Directive 2013/29/EU of the European Parliament and of the Council on the harmonisation of the laws of member states relating to the making available of pyrotechnic arts (recast)

The updated rules cover products such as fireworks, pyrotechnics used in film or theatre productions, and automotive pyrotechnic arts like gas generators used in airbags or in seatbelt pre-tensioners. The new rules aim to ensure easier market access and a higher level of protection to life and property. It would achieve this by harmonising rules on their safety and making them stricter.

The new rules provide:

- Clearer responsibilities for manufacturers, importers and distributors when they sell consumer products;
- Possibility for wider use of electronic means for economic operators when demonstrating compliance
- More guarantees for consumer safety through a traceability system allowing to track down defective or unsafe products and through clearer rules and improved supervision of conformity assessment bodies;
- National market surveillance authorities will be better equipped to stop dangerous imports from third countries.

Fireworks will be categorised as follows:

Category F1: Age limit 12 years – fireworks that present a very low hazard and negligible noise level and which are intended for use in confined areas, including fireworks which are intended for use inside domestic buildings;

Category F2: Age limit 16 years – fireworks that present a low hazard and low noise level and which are intended for outdoor use in confined areas;

Category F3: Age limit 18 years – fireworks that present a medium hazard, which are intended for outdoor use in large open areas and whose noise level is not harmful to human health;

Category F4: Age limit 18 years – fireworks that present a high hazard, which are intended for use only by persons with specialist knowledge and whose noise level is not harmful to human health.

Background

The updated rules on making pyrotechnics arts available on the market is part of a Package of nine product safety directives (including also the Directive on non-automatic weighing instruments, measuring instruments, simple pressure vessels, lifts, explosives for civil uses, electromagnetic compatibility, low voltage electrical equipment and equipment used in explosive atmospheres) proposed by the Commission.

SAFETY

INFORMATION

Guidance on the Pyrotechnic arts (Safety) Regulations 2010, SI 2010/11554

The guidance on these regulations has been reissued to ensure compliance with the government's Code of Practice on Guidance on Regulation. The nature of the guidance remains the same as the previous document.

CONSUMER CREDIT AND PRICES

NEW LEGISLATION

The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) (No 3) Order 2013, SI 2013/11765

This Order makes transitional provision and amendments to subordinate legislation in connection with the Financial Services Act 2012 (FA 2012).

Article 2 makes transitional provision in connection with FA 2012. Articles 3 to 10 and art 12 make consequential amendments to subordinate legislation in connection with FA 2012.

Article 11 amends subordinate legislation, which makes transitional provision in connection with FA 2012.

Information

The Office of Fair Trading (OFT) has suspended the consumer credit licence of Staffordshire-based Donegal Finance Limited (DFL) – trading as Donegal Finance, Donegal Investigations and Donegal Recovery. This is the first time the OFT has used its new power to suspend a credit licence. It concluded that suspending DFL's licence is urgently necessary to protect consumers.

DFL was licensed to offer consumer credit, credit brokerage and debt collecting services. The suspension means it is now a criminal offence for DFL or any of its directors, employees or agents to engage in any of these activities using DFL's licence.

DFL has been invited to make representations to the OFT. The OFT's Adjudicator will take into account the representations and decide whether to confirm the suspension (with or without variation) or withdraw it.

FAIR TRADING

NEW LEGISLATION

The Public Bodies (The Office of Fair Trading Transfer of Consumer Advice Scheme Function and Modification of Enforcement Functions) Order 2013, SI 2013/1783

This instrument transfers the power of the OFT to support a consumer advice scheme to the National Association of Citizens Advice Bureaux (Citizens Advice) and the Scottish Association of Citizens Advice Bureaux

(Citizens Advice Scotland). The instrument also makes modifications to the OFT's consumer enforcement functions.

Article 2 transfers the OFT's power under the Enterprise Act 2002, s 8(1) (EA 2002) of supporting a specified type of public consumer advice scheme to Citizens Advice and Citizens Advice Scotland. It abolishes the OFT's equivalent power in relation to Northern Ireland, except in so far as it relates to postal services.

Article 3 amends EA 2002 to make clear that the OFT may no longer support the specified type of public consumer advice scheme.

Article 4 makes consequential amendments to EA 2002, Pt 9 (information sharing).

Articles 5 and 6 make consequential amendments to the Utilities Act 2000, s 8 and the Postal Services Act 2011, s 51.

Article 7 adds Citizens Advice to the Freedom of Information Act 2000, Sch 1, Pt 1 for the purpose of the function transferred to them.

Article 8 adds Citizens Advice Scotland to the Freedom of Information (Scotland) Act 2002, Sch 1, Pt 7 for the same purpose.

Article 9 amends EA 2002, s 214.

There are a number of enforcers under EA 2002, Pt 8, primarily the OFT, local weights and measures authorities in Great Britain and the Department of Enterprise, Trade and Investment in Northern Ireland. There are also a number of sectoral regulators. These enforcers may seek an enforcement order in relation to the enforcement of consumer infringements. As a result of this Order, Pt 8 enforcers, other than the OFT, will no longer be required to consult with the OFT before they make an application for an enforcement order. Instead, enforcers will be required to notify the OFT that they are making an application.

Articles 10 to 13 amend the Unfair Terms in Consumer Contracts Regulations 1999, SI 1999/2083; the Consumer Protection (Distance Selling) Regulations 2000, SI 2000/2334; the Business Protection from Misleading Marketing Regulations 2008, SI 2008/1276; and the Consumer Protection from Unfair Trading Regulations 2008, SI 2008/1277 to provide that the OFT will have a power rather than a duty to enforce those regulations.

Property Misdescriptions Act 1991 (Repeal) Order 2013, SI 2013/1575

This Order repeals the Property Misdescriptions Act 1991 and will remove the duplication that exists with the Consumer Protection from Unfair Trading Regulations 2008, SI 2008/ 1277 which provide largely similar protections. It further amends other legislation by removing redundant references.

WEIGHTS AND MEASURES

WEIGHTS AND MEASURES

Consultations

The second committee draft for the consultation on the OIML Document R50 on continuous totalising weighing instruments (belt-weighers) has been published and can be found on the NMO website.

Correspondence about this Bulletin should be sent to: Butterworths Looseleaf Textbooks Department, FREEPOST 6983, 35 Chancery Lane, London WC2A 1BR (tel: 020 7400 2500).

Subscription and filing enquiries should be directed to LexisNexis Customer Services Department, PO Box 1073, Belfast BT10 9AS (tel: +44(0)84 5370 1234).

Visit LexisNexis UK at www.lexisnexis.co.uk

© Reed Elsevier (UK) Ltd 2013

Published by LexisNexis

Printed in Great Britain by Hobbs the Printers Ltd, Totton, Hampshire



ISBN 978-1-4057-7826-8

