

Report to: 1. Community Protection Panel
2. Regulation Committee

Date: 1. 21 July 2008
2. 13 August 2008

Subject: New consumer protection legislation

Report of: Director of Environmental Services

Contact officer: Julie Middlehurst 86758

Purpose / summary: To inform members of significant changes to consumer protection legislation

Alternative options considered and reason for selecting the one recommended: N/A

Recommendation / decision: N/A

Risks / Implications:

Financial:	None
Staffing:	Within existing resources
Policy:	
Equal Opportunities - Has a Diversity Impact Assessment been conducted?	Yes
Wards affected:	All

Property Implications – Does the proposal involve a reduction, addition or change to the Council’s asset base or its occupation?

No

If yes, have the property implications been agreed with the Corporate Property Officer?

Does this proposal have significant implications for the Council and the local population?

A full diversity impact assessment has been undertaken and is attached as an appendix to this report.

Does this proposal involve a new policy or procedure or significant changes to

an existing policy or procedure?

No

Has the Service Director - Borough Solicitor confirmed that the recommendations within this report are lawful and comply with the Council's Constitution?

N/A

Has the Service Director - Corporate Services confirmed that any expenditure referred to within this report is consistent with the Council's budget?

N/A

Are any of the recommendations within this report contrary to the Policy Framework of the Council?

No *

* delete which applicable

For Cabinet reports only :

Categorisation of the report:	x
Discussion leading to a decision	
Monitoring	
Sharing for corporate understanding	

	x
Discussion	
Decision	
Information	

Tracking/Process:

	Consultation	Ward Members	Partners
Panel	Overview & Scrutiny	Cabinet	Council
Community Protection Panel- 21/7/2008 Regulation Committee- 13/8/2008			

There are no Background Papers to this report within the meaning of Section 100D of the Local Government Act 1972:

Proper Officer Martin Kimber

Date 3 July 2008

1 Background:

- 1.1 On the 26 May 2008 the Unfair Commercial Practices Directive became law with the implementation of the Consumer Protection from Unfair Trading Regulations 2008 ('CPRs').
- 1.2 These Regulation overhaul the old consumer protection framework, repealing a number of existing laws which cover the same subject matter, including most of the Trade Descriptions Act 1968.
- 1.3 This legislation represents the biggest change in consumer protection for 40 years and is designed to create a modern, simplified consumer protection framework which applies to all businesses that deal directly with consumers.
- 1.4 The Consumer Protection Section deals with over 2000 complaints each year from consumers who feel that they have been treated unfairly by traders. Unfair commercial practices harm all in society and includes issues such as misleading pricing, the selling of clocked second-hand cars, prize scams, or through high-pressure selling techniques.
- 1.5 Tackling deceptive and dishonest practices is a key objective for the Consumer Protection Section. The Office of Fair Trading ('OFT') has carried out research which shows that detriment suffered by low-income consumers causes a greater welfare loss than the same monetary loss for an average consumer ^(OFT 20001). Prize draw scams alone are estimated to cause UK consumers £150 million pounds of detriment a year.
- 1.6 The legislation will enable officers in Wigan to enhance the work which will be carried out by the new regional "Scambuster" team. The team are to be based in Liverpool and will be funded for 3 years by Government. The team will tackle cross boundary doorstep crime and major scams in partnership with local trading Standards services.

2 Proposals:

- 2.1 The new Consumer Protection from Unfair Trading Regulations 2008 (CPRs)s not only consolidate existing powers but extend them to close loopholes previously exploited by rogue traders by establishing for the first time a catch-all duty for all businesses not to trade unfairly.
- 2.2 This is good, not only for consumers, but for local businesses also. Recent research shows that 53% of small firms believe their profits have been hit by rivals using unfair sales practices, and of those, 10% reckon the rogues cost them more than a fifth of their revenue.
- 2.3 CPRs prohibits such unfair commercial practices and sets out rules that determine when commercial practices are unfair.
- 2.4 These fall into three categories:

(1) a general prohibition of unfair commercial practices. It is envisaged that this will act as a safety-net to catch practices which do not come under the categories below,

(2) A prohibition of commercial practices which are misleading and aggressive,

and

(3) A list of 31 commercial practices that are banned in all circumstances, which are always considered to be unfair.

These include for example prize-draw scams, bogus closing-down sales, and issues such as preying on elderly people's fears about their personal security to sell them burglar alarms.

- 2.5 A breach of these rules is a criminal offence. Most of the offences follow the general approach of strict liability, which requires proof only that a commercial practice is prohibited.
- 2.6 The prohibition on the use of unfair commercial practices is also enforceable through the procedure for the enforcement of Community infringements in Part 8 of the Enterprise Act 2002. This enables application to the courts for enforcement orders to prevent or stop the use of unfair commercial practices.
- 2.7 The CPR's do not apply to business-to-business commercial practices.

3 Conclusions:

- 3.1 The Section will use this new law for the benefit of both consumers and honest businesses.
- 3.2 Consumers will have better protection from unfair practices and from unscrupulous traders who treat consumers unfairly and dishonestly.
- 3.3 Businesses will be supported
- by provision of information and advice, making it clear which commercial practices are, and are not, allowed.
 - by the section ensuring that honest businesses will no longer have to face unfair competition from traders who adopt unfair or misleading practices.
- 3.4 The OFT have produced guidance explaining the regulations to businesses. A copy is attached for information.

Diversity Impact Assessment form

Section: Community Protection Section

Policy/Service Area: Trading Standards Service

Person Completing Form: Julie Middlehurst

Date: 1 July 2008

Do any of the below groups suffer specific disadvantage (please indicate)

	Yes	No		Yes	No
Race			Disability		
Ethnicity			Gender		
Age	✓		Religion		
Class	✓		Sexual Orientation		

Is there evidence of disadvantage or associated problems?

The OFT's research shows that detriment suffered by low-income consumers causes a greater welfare loss than the same monetary loss for an average consumer. (OFT 20001)

Wigan has 29 SOA's that are included in the 10% most deprived areas in the country.

It is important that we target our resources at those consumers who are most vulnerable and who are least able to help themselves.

How was the information collected and/or who have you consulted with?

OFT Commissioned Research,
D of H Report 2007.

Action Plan – *What specific actions are planned to tackle any disadvantage identified?*

Provision of information to consumers and businesses
Fair trade schemes to support both businesses and consumers
Involvement in Community events.

Is the policy in line with current equality legislation and relevant codes of practice?

Yes

--

Timescale	
Responsibility	
Comments	

Are the actions specified included in any other documents/plans?

Departmental Service Plan	
Section/Team Plan	Community Protection Service Plan
Other (Specify)	

Date for further review





BERR | Department for Business
Enterprise & Regulatory Reform

OFFICE OF FAIR TRADING



Printed in the UK on recycled paper containing a minimum of 75% post consumer waste. Department for Business, Enterprise & Regulatory Reform.
www.berr.gov.uk First published March 2008. Crown Copyright. URN 08/635.
Published in association with the Office of Fair Trading (OFT979)

The Consumer Protection from Unfair Trading Regulations: a basic guide for business

What are the regulations?

The Department for Business, Enterprise and Regulatory Reform are introducing new regulations to clamp down on unfair sales and marketing practices. They are designed to protect consumers and honest businesses. Everyone who deals with consumers will be affected including retailers, builders and second-hand motor traders.

Many detailed rules around trade descriptions and misleading price indications are being replaced with a general ban on unfair trading. This broadly means traders will have to act in a way that enables the average consumer to make free and informed purchasing decisions.

In addition, they will put a stop to aggressive selling techniques and misinforming and misleading people about products or services. You'll find these, the practices they cover and some examples at the end of this booklet.

What are the benefits for business?

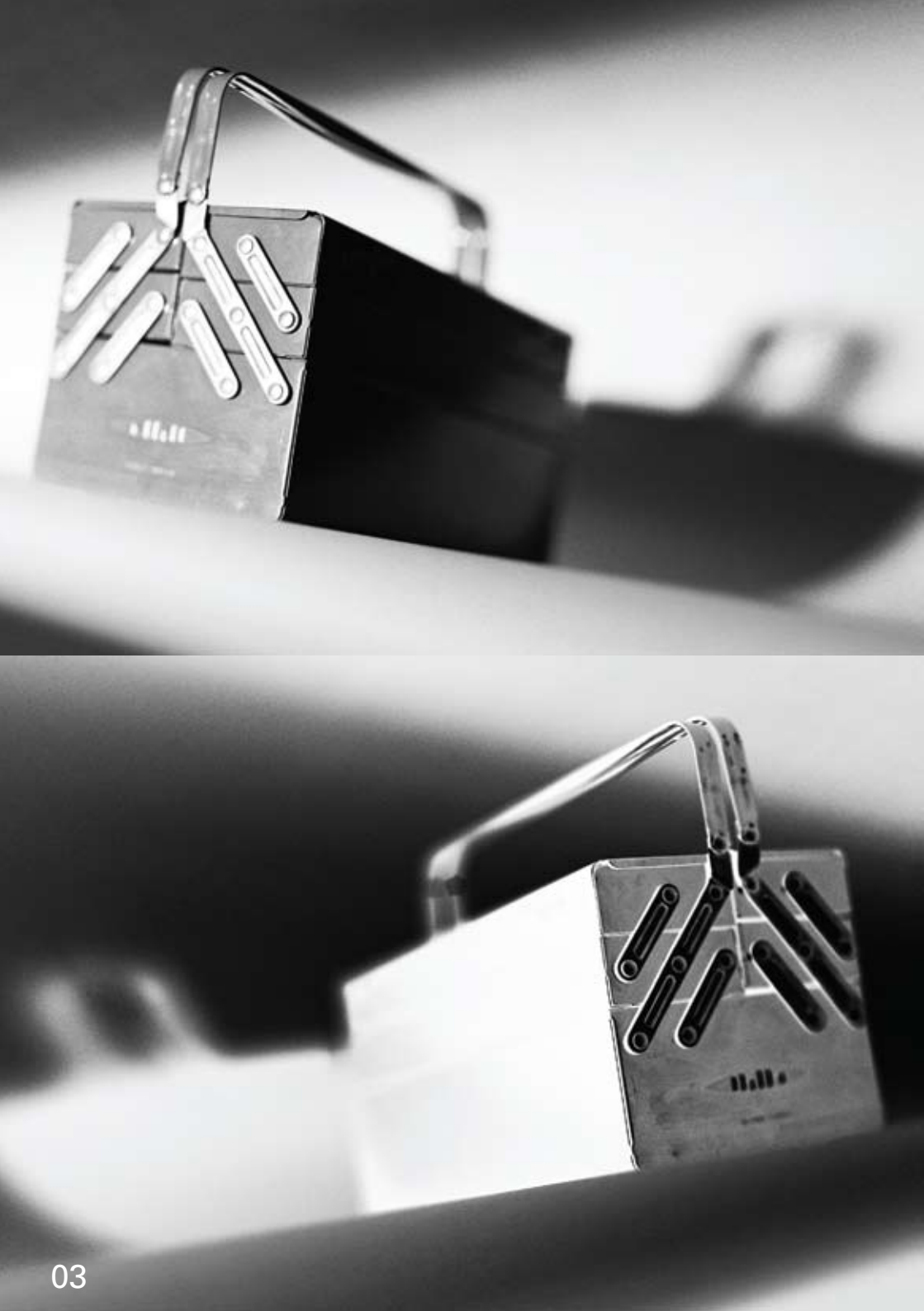
Businesses will no longer have to face unfair competition from traders who use underhand practices. The changes will also simplify consumer protection in the UK and across the EU, making it clear which commercial practices are – and are not – allowed.

What do I need to do?

Businesses that deal fairly and honestly with their customers may not need to change the way they work at all. But to make sure you're treating your customers properly, you and your staff must read and understand these new regulations.

What happens if I don't follow them?

If you don't comply with these regulations, your company may well be investigated by your local authority's trading standards service and other bodies. These lengthy investigations could take up a lot of your business time and you could also be prosecuted and fined. You could also lose your customers.



Where can I go for advice?

For practical business advice and to find out more about these regulations, please visit one of the following websites:

www.businesslink.gov.uk/unfairtrading for England

www.bgateway.com/unfairtrading for Scotland

www.hiebusiness.co.uk/unfairtrading

(Scottish Highlands & Islands)

www.busesseye.org.uk for Wales

www.nibusinessinfo.co.uk/unfairtrading for Northern Ireland

You can also contact your local authority's trading standards service for further advice on the regulations.



What do the new regulations cover?

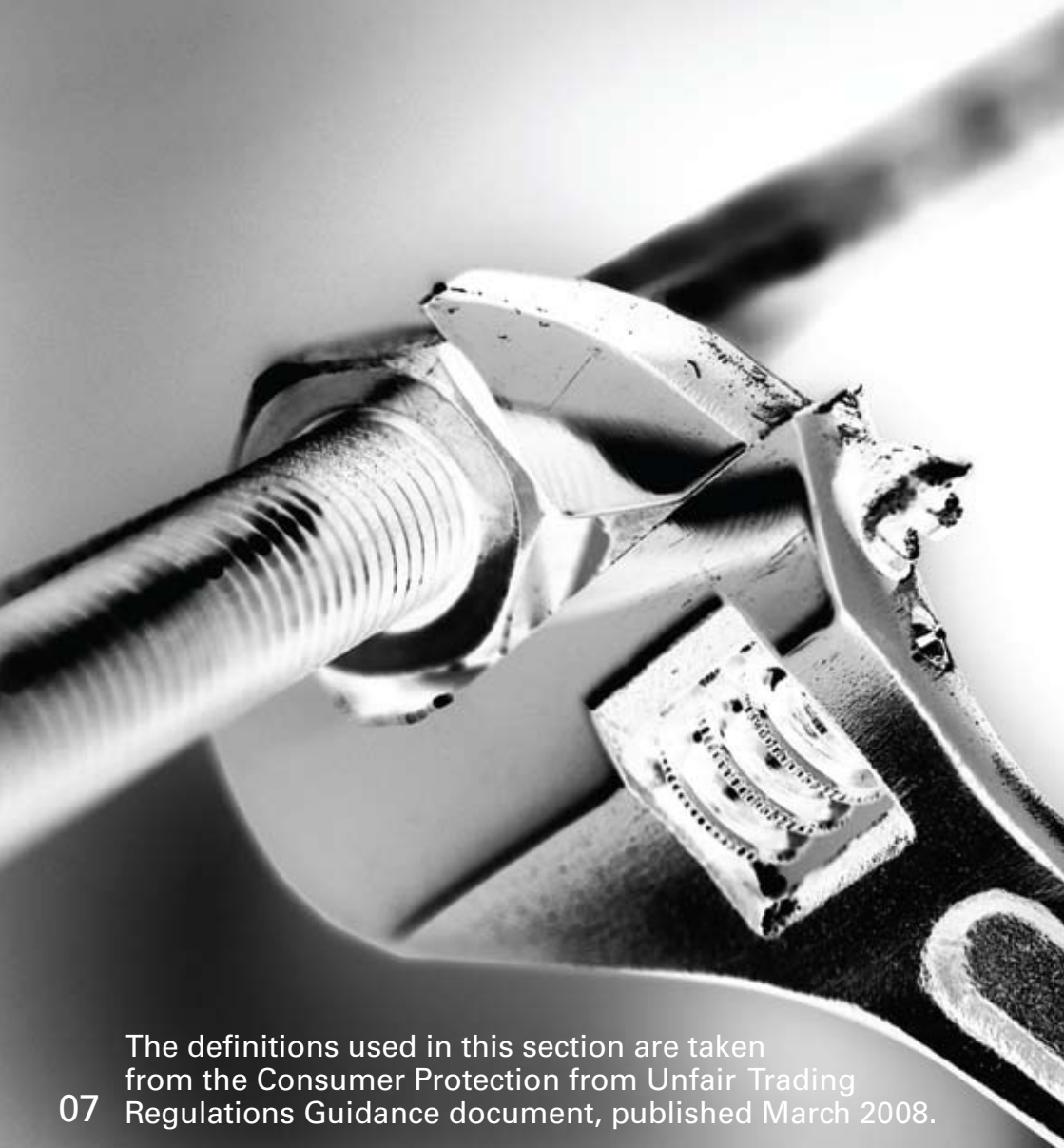
The new regulations ban traders in all sectors from using unfair commercial practices towards consumers. They set out broad rules outlining when commercial practices are unfair. These fall into four main categories:

- A general ban on conduct below a level which may be expected towards consumers (honest market practice/good faith). This is intended to act as a “safety net” protection for all consumers.
- Misleading practices, like false or deceptive messages, or leaving out important information.
- Aggressive sales techniques that use harassment, coercion or undue influence.

For a practice to be unfair under these rules, they must harm, or be likely to harm, the economic interests of the average consumer. For example, when a shopper makes a purchasing decision he or she would not have made had he or she been given accurate information or not put under unfair pressure to do so.

- In addition, the regulations ban 31 specific practices outright. These practices are set out on the following pages.

The following practices
are banned outright:



Falsely claiming accreditation

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.

A builder claims that he is registered under the '†TrustMark' scheme when he is not. This would breach the regulations.

†TrustMark is a scheme which helps consumers find reliable, and trustworthy tradesmen to undertake home repairs and improvements.

Pricing and product/service information

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, disfunction 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.

Promotional activities

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.

A **trader** designs the packaging of shampoo 'A' so that it very closely resembles that of shampoo 'B', an established brand of a competitor. If the similarity was introduced to deliberately mislead **consumers** into believing that shampoo 'A' is made by the competitor (who owns shampoo 'B') – this would breach the regulations.

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.

Competitions and Prize Draws

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.



Sales and After-Sales Service

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.

A door to door salesman visits a **consumer** to sell her some cleaning **products**. She tells him she is not interested and asks him to leave. He is determined to try and get her to change her mind and continues his sales pitch on her doorstep. This would breach the regulations.

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.

A **trader** based in the UK agrees to provide after sales service to a **consumer** he or she has been communicating with in German. The **trader** then provides after sales services only in English, without warning the **consumer** pre-contract that that would be the case. This would breach the regulations.

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.



The role of BERR

The Department for Business, Enterprise and Regulatory Reform (BERR) was created on the 28th June 2007, bringing together many functions of the former Department of Trade and Industry (DTI) with the Better Regulation Executive. BERR works with business, employees and consumers to help ensure business success in an increasingly competitive world.

Providing consumers with better protection from rogue practices and disreputable traders and firms are central to these aims. Whether shopping on the high street or online, consumers have a right to be sold to fairly and honestly. The Consumer Protection Regulations will make life a lot tougher for the rogues, while creating a level, competitive playing field where honest business can thrive and prosper in the global marketplace.

For further information on BERR, visit **www.berr.gov.uk**

The role of OFT

The Office of Fair Trading is the independent agency that acts as the UK's consumer and competition authority. It works to change the behaviour of consumers, business and government to make markets work better, this is achieved through influence and leadership as well as active enforcement.



Where can I go for advice?

For practical business advice and to find out more about these regulations, please visit one of the following websites:

www.businesslink.gov.uk/unfairtrading for England

www.bgateway.com/unfairtrading for Scotland

www.hiebusiness.co.uk/unfairtrading

(Scottish Highlands & Islands)

www.busesseye.org.uk for Wales

www.nibusinessinfo.co.uk/unfairtrading for Northern Ireland

You can also contact your local authority's trading standards service for further advice on the regulations.