

NORTH LINCOLNSHIRE COUNCIL

**NEIGHBOURHOOD ENVIRONMENT & COMMUNITIES
CABINET MEMBER**

THE CONSUMER PROTECTION FROM UNFAIR TRADING REGULATIONS 2008

1. OBJECT AND KEY POINTS IN THIS REPORT

- 1.1 To inform the Cabinet Member of the introduction of The Consumer Protection from Unfair Trading Regulations 2008 (the CPRs) which came into force on 26 May 2008.
- 1.2 The key points in this report are:
- the extent and scope of the new regulations
 - the legislation to be repealed
 - the additional protection for consumers

2. BACKGROUND INFORMATION

- 2.1 The CPRs implement the European Union Directives concerning unfair business-to-consumer commercial practices and aspects of the sale of consumer goods and associated guarantees. The same rules should then be in force across all member states.
- 2.2 The UK government's approach was to introduce a new set of all-encompassing regulations rather than amend existing legislation. Consequently, some well known pieces of legislation will either disappear completely or be left purely for administrative purposes.
- 2.3 The main casualty will be the Trade Descriptions Act 1968 (TDA), now celebrating its 40th Anniversary. The TDA was a ground-breaking piece of consumer legislation prohibiting false and misleading descriptions and statements about goods and services. However, over the years the changing market place and new highly detrimental trading practices have reduced the effectiveness of the TDA.
- 2.4 The CPRs prohibit unfair commercial practices. A commercial practice will be deemed to be unfair if:
- i) It contravenes the requirements of professional diligence. This covers the responsibility a trader has towards a consumer in areas of skill and care taking into account honest standards of practice and good faith in that sector of the market. In addition,

there must also be a potential financial loss or disadvantage to the consumer.

- ii) It contains false or misleading information.
- iii) There are misleading omissions, which either omits or hides the true facts or if information is unclear, unintelligible, ambiguous or untimely.
- iv) It is aggressive and there has been a degree of harassment, coercion or undue influence. Factors to be taken into account include the time, place, nature and persistence of any actions, and importantly the vulnerability of the consumer.
- v) It is one of the 31 commercial practices that are in all circumstances considered to be unfair. These prohibitions include such things as:
 - a) creating the false impression that a consumer has won a prize when there is no prize or having to pay money to claim a prize.
 - b) falsely claiming that goods or services are able to cure illnesses, dysfunction or malformation.
 - c) directly encouraging children to buy advertised products or persuading adults to buy advertised products for them.
 - d) conducting personal visits to consumers' homes and ignoring the consumer's request to leave or not to return.
 - e) luring customers into buying by advertising very low prices without having a reasonable stock available (bait and switch selling).

2.5 Penalties, statutory defences and powers of officers are broadly similar to those contained in previous legislation. The maximum penalty at the crown court will be an unlimited fine or up to two years imprisonment or both.

2.6 As the title suggests, the CPRs only apply to consumers and therefore, unlike the TDA, give no protection to businesses. Fortunately, parallel legislation, namely the Business Protection from Misleading Marketing Regulations, will protect traders from misleading indications made by other traders.

3. OPTIONS FOR CONSIDERATION

3.1 As the legislation places a statutory duty on the local weights and measures authorities to enforce the regulations, there are no options to consider or analyse.

4. RESOURCE IMPLICATIONS (FINANCIAL, STAFFING, PROPERTY, IT)

4.1 Financial

No additional money is being made available to enforce these regulations as government is of the opinion that these are merely replacement regulations.

The Office of Fair Trading has provided free one-day training for officers.

4.2 Staffing

This is a major change moving from prescriptive legislation to a more subjective regime. Staff will have to unlearn forty years of TDA law and build new knowledge to enforce this new far-reaching legislation. Specialist training will be needed for some time to come as interpretation and case law develops.

5. OTHER IMPLICATIONS (STATUTORY, ENVIRONMENTAL, DIVERSITY, SECTION 17 - CRIME AND DISORDER, RISK AND OTHER)

5.1 Statutory

The work imposed by this legislation is statutory and as the enforcement of Fair Trading legislation is a national enforcement priority a great deal of resources will be allocated to advising businesses and enforcing this legislation.

5.2 Crime and Disorder

These regulations appear to close several loopholes that have enabled rogue traders and scamsters to prey on unsuspecting and vulnerable consumers.

6. OUTCOMES OF CONSULTATION

6.1 The content and implementation of this legislation has been widely consulted on by the government.

7. RECOMMENDATIONS

7.1 That the Cabinet Member notes the content of the report.

7.2 That the Service Director Neighbourhood and Environment ensures that appropriate delegations are in place.

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Background Papers used in the preparation of this report

The Consumer Protection Regulations
OFT guidance material
Consumer Law Today