



How Do I... ...comply with the new Consumer Protection legislation?

26 May 2008 heralded one of the biggest changes to consumer legislation for 40 years. The Consumer Protection from Unfair Trading Regulations 2008 (CPRs) implement the EU Directive 2005/29/EC on Unfair Commercial Practices into UK law.

The new law protects consumers from a host of deceptive and intimidating sales practices which were previously deemed "unfair" but were not illegal, and imposes a general duty not to trade unfairly.

Is the legislation important for manufacturers and retailers of electrical goods? Yes it is. The legislation has a direct bearing on the everyday business of selling carried on by retailers, and breaches may result in criminal prosecution, particularly of individuals, and penalties including heavy fines and imprisonment.

In essence, the CPRs prohibit misleading or aggressive commercial practices, and also list 31 specific practices which were previously considered unfair but are now illegal. (See www.offt.gov.uk/shared_offt/business_leafllets/530162/oft979.pdf for the full list).

DUTIES AND SPECIFICS

The general duty imposed not to trade unfairly, is a "catch-all" that will allow enforcers to take action against unfair commercial practices which are not on the banned practices list and which are not specifically covered by the misleading or aggressive commercial practices bans. Retailers should be aware that an "unfair" practice might be something that "materially distorts or is likely to materially distort the economic behaviour of the average consumer with regard to the product."

Clearly, this could take in any statement, or indeed, any omission of material facts, made by a retail sales person in the act of selling

products, that could persuade the consumer to buy something that, if they knew the true facts, they might not have bought.

More specifically, a misleading action is a commercial practice which makes false statements about specific key factors, or in itself or in its presentation deceives or is likely to deceive the average consumer about those specific key factors (even where the information is factually correct). Omissions of material information on a product, or providing that information in an ambiguous manner, may also be considered to be a misleading practice.

So, for example, omitting to tell a consumer that the CRT you're selling is analogue only, and what the future significance of that might be for them, could be interpreted as misleading by omission.

APPLICATION AND ENFORCEMENT

The products to which the CPRs apply are defined as "any goods or services." So that would mean not only tangible products, but also intangibles such as, for example, the provision of broad band services, or provision of credit from a finance company.

The OFT, Local Authority Trading Standards Services and the Department of Enterprise, Trade and Investment in Northern Ireland will all have a duty to enforce the CPRs.

Enforcement Officers may use their powers to inspect goods and enter business premises to investigate possible breaches of the CPRs. Where they have reasonable cause to suspect that a breach of the CPRs has occurred they will also be able to require traders to produce documents relating to their business but not those which are legally privileged.

Enforcement officers may also seize and detain goods relevant to their investigations. Any intentional obstruction of an enforcement officer or making a deliberately false statement to an officer is a criminal offence.

If an enforcement order is obtained, any breach of it could be a contempt of court which could result in up to 2 years imprisonment and/or an unlimited fine.

There are several criminal offences under the CPRs: contravention of the general duty not to trade unfairly; misleading actions; misleading

omissions; aggressive commercial practices; specific unfair commercial practices.

Businesses should note that both companies and individuals can commit offences under the CPRs.

If you are found guilty of an offence under the CPRs then you could face, on conviction in the Magistrates' Court, a fine not exceeding £5,000; on conviction on indictment in the Crown Court, a fine or imprisonment not exceeding 2 years, or both.

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