

CONSUMER PROTECTION (FAIR TRADING) ACT 2003
(SECTION 43)

CONSUMER PROTECTION (FAIR TRADING)
(OPT-OUT PRACTICES) REGULATIONS 2009

ARRANGEMENT OF REGULATIONS

Regulation

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[15 April 2009]

Citation

1. These Regulations are the Consumer Protection (Fair Trading) (Opt-Out Practices) Regulations 2009.

Definitions

- 2.—(1) In these Regulations —

“continuing basis”, in relation to the supply of goods or services, includes the renewal of an existing written contract for the supply of goods or services at the option of the consumer on terms specified in the existing contract;

“free trial basis”, in relation to the supply of goods or services, means an arrangement whereby goods or services are supplied free of charge for a specified period;

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“free trial period”, in relation to goods or services supplied on a free trial basis, means the specified period during which the goods or services are supplied free of charge;

“unsolicited goods or services” means goods or services that are supplied in relation to a consumer transaction to a consumer who did not request them, but does not include goods or services supplied to a consumer who knew or ought to have known that they were intended for delivery to another person unless it was reasonable to believe that the goods or services, if delivered to that other person, would have been unsolicited goods or services.

(2) A request for goods or services (for the purposes of the definition of “unsolicited goods or services” in paragraph (1)) or an intention to accept and pay for goods or services (for the purposes of regulations 3(1), 5(9)(b) and 6(1)) or consent to a material change (for the purposes of regulation 4(2)) must not be inferred only from the passage of time or from the consumer’s —

- (a) payment for the goods or services;
- (b) use of, dealing with or disposal of the goods or services;
- (c) request to purchase another similar good or service; or
- (d) inaction.

Unsolicited goods or services

3.—(1) Unless and until the consumer expressly acknowledges to the supplier in writing his or her intention to accept and pay for the unsolicited goods or services, the consumer may use, deal with or dispose of the goods or services as if they were an unconditional gift to him or her from the supplier.

(2) Unless the consumer has given the acknowledgment mentioned in paragraph (1), the supplier has no cause of action for any loss, use, misuse, possession, damage or misappropriation in respect of the goods or services or the value obtained by the use of the goods or services.

(3) In any proceedings taken in any court between a consumer and a supplier where it is alleged that the goods or services supplied by the

supplier to the consumer are unsolicited goods or services and a dispute arises as to whether —

- (a) the consumer requested the goods or services, for the purposes of the definition of “unsolicited goods or services” in regulation 2(1);
- (b) the consumer expressly acknowledged in writing his or her intention to accept or pay for the goods or services, for the purposes of paragraph (1) or regulation 6(1); or
- (c) the consumer consented in writing to a material change, for the purposes of regulation 4(2),

section 41 of the Act applies so that the supplier bears the burden of proving that the requirement referred to in sub-paragraph (a), (b) or (c) (as the case may be) has been complied with.

Supply on continuing basis

4.—(1) Regulation 3 does not apply to goods or services supplied to a consumer on a continuing basis under a contract between the consumer and supplier, unless the goods or services are deemed to be unsolicited goods or services under this regulation.

(2) If a consumer is being supplied with goods or services on a continuing basis and there is a material change in the goods or services, or in the supply of the goods or services, the goods or services are deemed to be unsolicited goods or services from the time of the material change unless the consumer consented in writing to the material change.

(3) A consumer is not taken to have consented to a material change for the purposes of paragraph (2) merely because the supplier gave notice to the consumer to the effect that the supplier will supply the materially changed goods or services to the consumer unless the consumer instructs the supplier not to supply those goods or services.

(4) For the purposes of paragraph (2), a “material change” does not include —

- (a) a change to the price of the goods or services or a renewal of an existing supply of the goods or services, if the goods or services are not otherwise changed; or

- (b) a change that a reasonable person in the position of the consumer would not view as being material.

Supply on free trial basis

5.—(1) If goods or services (whether or not unsolicited) are supplied to a consumer on a free trial basis, in relation to a consumer transaction, the supplier must give a reminder notice to the consumer in accordance with this regulation.

(2) The reminder notice must be given to the consumer —

- (a) at least 3 days (excluding Saturdays, Sundays and public holidays) before the end of the free trial period or, if the free trial period is 3 days or shorter, at the commencement of the free trial period; and
- (b) not earlier than 14 days (excluding Saturdays, Sundays and public holidays) before the end of the free trial period.

(3) Subject to paragraphs (5)(a) and (6)(a), the reminder notice must be sent to the address to which the goods or services are supplied.

(4) The reminder notice must contain the following information presented in a clear and conspicuous manner:

- (a) the date when the free trial period ends;
- (b) the address or telephone number at which the consumer may notify the supplier before the end of the free trial period whether the consumer wishes to continue to receive the supply of the goods or services.

(5) If the goods or services are supplied to the consumer at an electronic mail address, the reminder notice must —

- (a) be sent to that electronic mail address; and
- (b) specify an electronic mail address or an Internet location address for the purposes of paragraph (4)(b).

(6) If the goods or services are supplied to the consumer at a telephone number, the reminder notice must —

- (a) be sent to that telephone number; and

(b) specify a telephone number for the purposes of paragraph (4)(b).

(7) An electronic mail address, an Internet location address or a telephone number specified for the purposes of paragraph (4)(b) must be valid and capable of receiving communications in reasonable numbers from the consumers to whom reminder notices are sent.

(8) This regulation does not prevent the supplier from providing any other additional means by which the consumer may notify the supplier whether the consumer wishes to continue to receive the supply of the goods or services.

(9) A consumer who pays for goods or services supplied on a free trial basis may give to the supplier a demand, in writing, for a refund of any payment made for the goods or services (whether supplied during or after the free trial period) if —

- (a) the supplier failed to give the consumer a reminder notice in accordance with this regulation; and
- (b) the consumer did not, at any time after the commencement of the supply of the goods or services to him or her on a free trial basis, expressly acknowledge to the supplier in writing his or her intention to accept and pay for the goods or services.

(10) Regulation 6(2) to (7) applies to a demand given under paragraph (9) in like manner as it applies to a demand given under regulation 6(1), except that references to unsolicited goods or services are taken to refer to goods or services supplied on a free trial basis.

(11) In any proceedings taken in any court between a consumer and a supplier where a dispute arises as to whether the supplier has given a reminder notice to the consumer in accordance with this regulation, section 41 of the Act applies so that the supplier bears the burden of proving that the supplier has so given the reminder notice.

(12) This regulation applies without prejudice to any rights or obligations of the consumer under regulation 3 in the case of unsolicited goods or services.

(13) This regulation does not apply to the supply of goods or services on a free trial basis under a contract with a consumer, where under the terms of the contract, if the consumer exercises his or her right to terminate the contract during the free trial period, the consumer may be denied a full refund of any payment made under the contract or may incur liability to pay any indemnity, compensation or fee.

Consumer's remedy

6.—(1) A consumer who pays for unsolicited goods or services may give to the supplier a demand, in writing, for a refund of any payment made for the goods or services if the consumer did not expressly acknowledge to the supplier in writing his or her intention to accept and pay for the goods or services.

(2) A demand under paragraph (1) is sufficient if it indicates, in any way, the intention of the consumer to demand a refund of a payment made for unsolicited goods or services.

(3) A demand under paragraph (1) must be made within 12 months after the payment sought to be refunded was made.

(4) Within 60 days after the supplier receives a demand under paragraph (1), the supplier must refund to the consumer the payment received for the unsolicited goods or services.

(5) Subject to paragraph (6), a breach of paragraph (4) is actionable as a breach of statutory duty in a court.

(6) The value of the claim in an action under paragraph (5) must not exceed \$30,000.

(7) No action under paragraph (5) may be commenced later than 12 months from the date that the demand for a refund was made.

Exclusion for certain national schemes

7.—(1) These Regulations do not apply to the supply of insurance cover under the CareShield Life Scheme, the Dependants' Protection Insurance Scheme, the ElderShield Scheme, the Home Protection Insurance Scheme, the MediShield Life Scheme and the Lifelong Income Scheme.

(2) In this regulation —

“CareShield Life Scheme” means the severe disability insurance scheme called the CareShield Life Scheme established by section 5(1) of the CareShield Life and Long-Term Care Act 2019;

“Dependants’ Protection Insurance Scheme” means the Dependants’ Protection Insurance Scheme established and maintained by the Central Provident Fund Board under section 41 of the Central Provident Fund Act 1953;

“ElderShield Scheme” means the severe disability insurance scheme called the ElderShield Scheme established by section 11(1)(b) of the CareShield Life and Long-Term Care Act 2019, and includes the former ElderShield Scheme under that Act;

“Home Protection Insurance Scheme” means the Home Protection Insurance Scheme established and maintained by the Central Provident Fund Board under section 29 of the Central Provident Fund Act 1953;

“Lifelong Income Scheme” means the Lifelong Income Scheme established and maintained by the Central Provident Fund Board under section 27K of the Central Provident Fund Act 1953;

“MediShield Life Scheme” means the medical insurance scheme called the MediShield Life Scheme established under section 3 of the MediShield Life Scheme Act 2015.