Draft Regulations laid before Parliament under section 62(3)(f) of the Consumers, Estate Agents and Redress Act 20007 and under paragraph 2(2) of Schedule 2 to the European Communities Act 1972 for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2008 No. 0000

CONSUMER PROTECTION

The Cancellation of Contracts made in a Consumer's Home or Place of Work etc. Regulations 2008

Made - - - -	*2008*
Coming into force - -	*1st October 2008*

The Secretary of State being a Minister designated(**1**) for the purposes of section 2(2) of the European Communities Act 1972(**2**) in relation to measures relating to consumer protection, in exercise of the powers conferred upon him by that section and section 59 of the Consumers, Estate Agents and Redress Act 2007(**3**) makes the following Regulations.

In accordance with section 62(3)(f) of the Consumers, Estate Agents and Redress Act 2007 and paragraph 2(2) of Schedule 2 to the European Communities Act 1972, a draft of this instrument was laid before Parliament and approved by resolution of each House of Parliament.

Citation and commencement

1. These Regulations may be cited as the Cancellation of Contracts made in a Consumer's Home or Place of Work etc. Regulations 2008 and shall come into force on 1st October 2008.

Interpretation

2.—(1) In these Regulations:

"the 1974 Act" means the Consumer Credit Act 1974(**4**);

"cancellable agreement" has the same meaning as in section 189(1) of the 1974 Act;

"cancellation notice" means a notice in writing given by the consumer which indicates that he wishes to cancel the contract;

(**1**) S.I.1993/2661.
(**2**) 1972 c.68; section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c.51).
(**3**) 2007 c.17.
(**4**) 1974 c.39.

"cancellation period" means the period of 7 days starting with the date of receipt by the consumer of a notice of the right to cancel;

"consumer" means a natural person who in making a contract to which these Regulations apply is acting for purposes which can be regarded as outside his trade or profession;

"consumer credit agreement" means an agreement between the consumer and any other person by which the other person provides the consumer with credit of any amount;

"credit" includes a cash loan and any other form of financial accommodation, and for this purpose "cash" includes money in any form;

"enforcement authority" means any person mentioned in regulation 21;

"fixed sum credit" has the same meaning as in section 10(1) of the 1974 Act(**5**);

"notice of the right to cancel" means a notice given in accordance with regulation 7;

"related credit agreement" means a consumer credit agreement under which fixed sum credit which fully or partly covers the price under a contract which may be cancelled under regulation 7 is granted—

(i) by the trader; or

(ii) by another person, under an arrangement made between that person and the trader;

"solicited visit" has the meaning given in regulation 6(3);

"specified contract" has the meaning given in regulation 9; and

"trader" means a person who, in making a contract to which these Regulations apply, is acting in his commercial or professional capacity and anyone acting in the name or on behalf of a trader.

(2) Paragraph 8(2) of Schedule 3 has effect for the purposes of paragraphs 7 and 8(1).

Consequential amendments, revocations and saving

3. Schedule 1 (Consequential Amendments) shall have effect.

4.—(1) Schedule 2 (Revocations) shall have effect.

(2) The Consumer Protection (Cancellation of Contracts Concluded away from Business Premises) Regulations 1987(**6**) ("the 1987 Regulations") shall continue to have effect in relation to a contract to which they applied before their revocation by these Regulations.

(3) These Regulations shall not apply to a contract to which the 1987 Regulations applied before their revocation.

Scope of application

5. These Regulations apply to a contract, including a consumer credit agreement, between a consumer and a trader which is for the supply of goods or services to the consumer by a trader and which is made—

(a) during a visit by the trader to the consumer's home or place of work, or to the home of another individual;

(b) during an excursion organised by the trader away from his business premises; or

(c) after an offer made by the consumer during such a visit or excursion.

(**5**) Section 10 of the Consumer Credit Act 1974 was amended by section 5(2) of the Consumer Credit Act 2006 (c.14).
(**6**) S.I. 1987/2117 as amended by S.I. 1988/958, S.I. 1998/3050, S.I. 2001/3649, S.I. 2003/1400, S.I. 2006/3384.

6.—(1) These Regulations do not apply to—

(a) any contracts listed in Schedule 3 (Excepted Contracts);

(b) a cancellable agreement;

(c) a consumer credit agreement which may be cancelled by the consumer in accordance with the terms of the agreement conferring upon him similar rights as if the agreement were a cancellable agreement; or

(d) a contract made during a solicited visit or a contract made after an offer made by a consumer during a solicited visit where the contract is—

(i) a regulated mortgage, home purchase plan or home reversion plan if the making or performance of such a contract constitutes a regulated activity for the purposes of the Financial Services and Markets Act 2000(**7**);

(ii) a consumer credit agreement secured on land which is—

(aa) regulated under the 1974 Act; or

(bb) to the extent that it is not regulated under the 1974 Act, exempt under that Act; or

(iii) any other consumer credit agreement regulated under the 1974 Act.

(2) Where any agreement referred to in paragraph (1)(b), (c) or (d)(iii) is a related credit agreement the provisions of regulations 11 and 12 shall apply to the cancellation of that agreement.

(3) A solicited visit means a visit by a trader, whether or not he is the trader who supplies the goods or services, to a consumer's home or place of work or to the home of another individual, which is made at the express request of the consumer but does not include—

(a) a visit by a trader which is made after he, or a person acting in his name or on his behalf—

(i) telephones the consumer (otherwise than at the consumer's express request) and indicates during the course of the telephone call (either expressly or by implication) that he, or the trader in whose name or on whose behalf he is acting, is willing to visit the consumer; or

(ii) visits the consumer (otherwise than at the consumer's express request) and indicates during the course of that visit (either expressly or by implication) that he, or the trader in whose name or on whose behalf he is acting, is willing to make a subsequent visit to the consumer; or

(b) a visit during which the contract which is made relates to goods and services other than those concerning which the consumer requested the visit of the trader, provided that when the visit was requested the consumer did not know, or could not reasonably have known, that the supply of such goods or services formed part of the trader's commercial or professional activities.

Right to cancel a contract to which these Regulations apply

7.—(1) A consumer has the right to cancel a contract to which these Regulations apply within the cancellation period.

(2) The trader must give the consumer a written notice of his right to cancel the contract and such notice must be given at the time the contract is made except in the case of a contract to which regulation 5(1)(c) applies in which case the notice must be given at the time the offer is made by the consumer.

(3) The notice must—

(**7**) 2000 c.8 to which there are amendments not relevant to these Regulations.

(a) be dated;

(b) indicate the right of the consumer to cancel the contract within the cancellation period;

(c) be easily legible;

(d) contain—

(i) the information set out in Part I of Schedule 4; and

(ii) a cancellation form in the form set out in Part II of that Schedule provided as a detachable slip and completed by or on behalf of the trader in accordance with the notes; and

(e) indicate if applicable—

(i) that the consumer may be required to pay for the goods or services supplied if the performance of the contract has begun with his written agreement before the end of the cancellation period;

(ii) that a related credit agreement will be automatically cancelled if the contract for goods or services is cancelled.

(4) Where the contract is wholly or partly in writing the notice must be incorporated in the same document.

(5) If incorporated in the contract or another document the notice of the right to cancel must—

(a) be set out in a separate box with the heading "Notice of the Right to Cancel"; and

(b) have as much prominence as any other information in the contract or document apart from the heading and the names of the parties to the contract and any information inserted in handwriting.

(6) A contract to which these Regulations apply shall not be enforceable against the consumer unless the trader has given the consumer a notice of the right to cancel and the information required in accordance with this regulation.

Exercise of the right to cancel a contract

8.—(1) If the consumer serves a cancellation notice within the cancellation period then the contract is cancelled.

(2) A contract which is cancelled shall be treated as if it had never been entered into by the consumer except where these Regulations provide otherwise.

(3) The cancellation notice must indicate the intention of the consumer to cancel the contract and does not need to follow the form of cancellation notice set out in Part II of Schedule 4.

(4) The cancellation notice must be served on the trader or another person specified in the notice of the right to cancel as a person to whom the cancellation notice may be given.

(5) A cancellation notice sent by post is taken to have been served at the time of posting, whether or not it is actually received.

(6) Where a cancellation notice is sent by electronic mail it is taken to have been served on the day on which it is sent.

Cancellation of specified contracts commenced before expiry of the right to cancel

9.—(1) Where the consumer enters into a specified contract and he wishes the performance of the contract to begin before the end of the cancellation period, he must request this in writing.

(2) Where the consumer cancels a specified contract in accordance with regulation 8 he shall be under a duty to pay in accordance with the reasonable requirements of the cancelled contract for goods or services that were supplied before the cancellation.

(3) If the consumer fails to provide the request in writing referred to in paragraph (1) then—

(a) the trader is not obliged to begin performance of the specified contract before the end of the cancellation period; and

(b) the consumer is not bound by the duty referred to in paragraph (2) if he cancels the contract in accordance with regulation 8.

(4) For the purposes of this regulation and regulation 13, a "specified contact" means a contract for any of the following—

(a) the supply of newspapers, periodicals or magazines;

(b) advertising in any medium;

(c) the supply of goods the price of which is dependent on fluctuations in the financial markets which cannot be controlled by the trader;

(d) the supply of goods to meet an emergency;

(e) the supply of goods made to a customer's specifications or clearly personalised and any services in connection with the provision of such goods;

(f) the supply of perishable goods;

(g) the supply of goods which by their nature are consumed by use and which, before the cancellation, were so consumed;

(h) the supply of goods which, before the cancellation, had become incorporated in any land or thing not comprised in the cancelled contract;

(i) the supply of goods or services relating to a funeral; or

(j) the supply of services of any other kind.

Recovery of money paid by consumer

10.—(1) On the cancellation of a contract under regulation 8 any sum paid by or on behalf of the consumer in respect of the contract shall become repayable except where these Regulations provide otherwise.

(2) If the consumer or any person on his behalf is in possession of any goods under the terms of the cancelled contract then he shall have a lien on them for any sum repayable to him under paragraph (1).

(3) Where any security has been provided in relation to the cancelled contract, the security shall be treated as never having had effect for that purpose and the trader must immediately return any property lodged with him solely as security for the purposes of the cancelled contract.

Automatic cancellation of related credit agreement

11.—(1) A cancellation notice which cancels a contract for goods or services shall have the effect of cancelling any related credit agreement.

(2) Subject to paragraphs (3) and (4), where a related credit agreement has been cancelled under paragraph (1)—

(a) the trader must, if he is not the same person as the creditor under that agreement, immediately on receipt of the cancellation notice inform the creditor that the notice has been given;

(b) any sum paid by or on behalf of the consumer in relation to the credit agreement must be reimbursed, except for any sum which would have to be paid under sub-paragraph (c);