

**CONSUMER PROTECTION (FAIR TRADING) ACT
(CHAPTER 261)**

**CONSUMER PROTECTION (FAIR TRADING)
(OPT – OUT PRACTICES) REGULATIONS**

S 66/2011

REVISED EDITION 2023

SUBSIDIARY LEGISLATION

**CONSUMER PROTECTION (FAIR TRADING)
(OPT – OUT PRACTICES) REGULATIONS**

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SUBSIDIARY LEGISLATION

Regulations made under section 20

**CONSUMER PROTECTION (FAIR TRADING)
(OPT – OUT PRACTICES) REGULATIONS**

Commencement: 1st January 2012

Citation

1. These Regulations may be cited as the Consumer Protection (Fair Trading) (Opt – Out Practices) Regulations.

Interpretation

2. (1) In these Regulations, unless the context otherwise requires —

“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;

“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 sub-regulation (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)) shall not be inferred only from the passage of time or from the consumer’s —

(a) payment for the goods or services;

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- (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 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 from the supplier.

(2) Unless the consumer has given the acknowledgment referred to in paragraph (1), the supplier shall not have a 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 the consumer and a supplier where it is alleged that the goods or services supplied by the supplier are unsolicited goods 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 intention to accept or pay for the goods or services, for the purposes of sub-regulation (1) or regulation 6(1); or

(c) the consumer consented in writing to a material change, for the purposes of regulation 4(2),

section 18 applies so that the supplier shall bear the burden of proving that the requirements referred to in 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 shall not be taken to have consented to a material change for the purposes of sub-regulation (2) merely because the supplier gave notice to the consumer to the following 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 sub-regulation (2), a “material change” does not include —

(a) a change to the price of goods or services or a renewal of an existing supply of 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 shall give a reminder notice to the consumer in accordance with this regulation.

(2) The reminder notice shall 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 sub-regulations (5)(a) and (6)(a), the reminder notice shall be sent to the address to which the goods or services are supplied.

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

(a) the date when the free trial period ends; and

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(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 shall —

(a) be sent to that electronic mail address; and

(b) specify an electronic mail address or an Internet location address for the purposes of sub-regulation (4)(b).

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

(a) be sent to that telephone number; and

(b) specify a telephone number for the purposes of sub-regulation (4)(b).

(7) An electronic mail address, an Internet location address or a telephone number specified for the purposes of sub-regulation (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 for the consumer to 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 such 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 such goods or services to him on a free trial basis, expressly acknowledge to the supplier in writing his intention to accept and pay for the goods or services.

(10) Regulation 6(2) to (7) applies to a demand made under sub-regulation (9) in like manner as it applies to a demand under regulation 6(1) except that references to unsolicited goods or services shall be taken to refer to goods or services supplied on a free trial basis.

(11) In any proceedings taken in any court between the 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 18 applies so that the supplier shall bear the burden of proving that he 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 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 such goods or services if the consumer did not expressly acknowledge to the supplier in writing his intention to accept and pay for the goods or services.

(2) A demand under sub-regulation (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 sub-regulation (1) shall 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 sub-regulation (1), the supplier shall refund to the consumer the payment received in respect of the unsolicited goods or services.

(5) Subject to sub-regulation (6), a breach of sub-regulation (4) shall be actionable as a breach of statutory duty in a court.

(6) The value of the claim in an action under sub-regulation (5) shall not exceed \$20,000.

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