



STATUTORY INSTRUMENTS.

**S.I. No. 160 of 2013**



EUROPEAN COMMUNITIES (UNFAIR TERMS IN CONSUMER  
CONTRACTS) (AMENDMENT) REGULATIONS 2013

## EUROPEAN COMMUNITIES (UNFAIR TERMS IN CONSUMER CONTRACTS) (AMENDMENT) REGULATIONS 2013

I, RICHARD BRUTON T.D., Minister for Jobs, Enterprise and Innovation, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972) and for the purpose of giving further effect to Council Directive No. 93/13/EEC of the European Parliament and of the Council of 5 April 1993<sup>1</sup>, on unfair terms in consumer contracts hereby make the following regulations:

1. (1) These Regulations may be cited as the European Communities (Unfair Terms in Consumer Contracts) (Amendment) Regulations 2013.

(2) These Regulations shall apply to contracts concluded on or after the date on which these Regulations come into operation.

2. In these Regulations—

“Principal Regulations” means the European Communities (Unfair Terms in Consumer Contracts) Regulations 1995 (S.I. No. 27 of 1995);

“Regulations of 2000” means the European Communities (Unfair Terms in Consumer Contracts) (Amendment) Regulations 2000 (S.I. No. 307 of 2000).

3. Regulation 2 of the Principal Regulations is amended by—

(a) inserting the following definitions:

“ ‘Agency’ means the National Consumer Agency;

‘authorised body’ means the Agency, the Central Bank of Ireland or a consumer organisation,” and

(b) deleting the definition of “the Director”.

4. Regulation 5 of the Principal Regulations is amended by substituting the following paragraph for paragraph (3)(inserted by Regulation 4(b) of the Regulations of 2000):

“(3) Paragraph (2) of this Regulation does not apply to proceedings under paragraph (1) or (4) of Regulation 8 of these Regulations.”.

5. The Principal Regulations are amended by substituting the following Regulation for Regulation 8:

<sup>1</sup>OJ No. L. 95, 21.4.1993, p.29

*Notice of the making of this Statutory Instrument was published in “Iris Oifigiúil” of 21st May, 2013.*

“8. (1) An authorised body may apply to the Circuit Court or High Court for a declaration that any term drawn up for general use in contracts concluded by sellers or suppliers is unfair and may, at the discretion of the Court, be granted an order prohibiting the use or continued use of such a term or similar terms of like effect.

(2) An authorised body shall cause to be published notice of intention to apply to the Circuit Court or High Court for a declaration under paragraph (1) of this Regulation in *Iris Oifigiúil* and at least two national newspapers and in such further or other manner as the Court may direct.

(3) Every person claiming to have an interest in an application under paragraph (1) of this Regulation shall be entitled to appear before and be heard by the Court on the hearing of the application.

(4) Further and ancillary to the power provided for under paragraph (1) of this Regulation, an authorised body may apply for an injunction (including an interim injunction) against any seller or supplier using, or recommending use of, a term which the authorised body considers to be an unfair term drawn up for general use in contracts concluded with consumers and the Court may grant an injunction on such terms as it deems appropriate.

(5) An application under paragraph (1) or (4) of this Regulation by an authorised body, other than the Agency, shall be on notice to the Agency.

(6) An injunction granted pursuant to paragraph (4) of this Regulation may relate not only to use of a particular contract term drawn up for general use but to any similar term, or a term having like effect, used or recommended for use by any seller or supplier.

(7) On any application under paragraph (1) or (4) of this Regulation it shall not be necessary for an authorised body to prove—

(a) actual loss or damage, or

(b) recklessness or negligence on the part of the seller or supplier.

(8) In the exercise of its jurisdiction under paragraphs (1) and (4) of this Regulation the Court shall take account of all the interests involved and in particular the public interest.

(9) Paragraphs (1) and (4) of this Regulation are without prejudice to the right of a consumer to rely upon the provisions of these Regulations in any case before a court of competent jurisdiction.

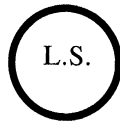
(10) An application under this Regulation to the Circuit Court shall be made to the judge of the Circuit Court in which the seller or supplier is ordinarily resident or carries on any profession, trade or business.

(11) If, in relation to an application under this Regulation to the Circuit Court, that Court becomes of the opinion, during the hearing of the application, that it is not appropriate for the Circuit Court to deal with the application, it may, if it so thinks fit, transfer the application to the High Court.

(12) Paragraph (11) of this Regulation is without prejudice to the jurisdiction of the Circuit Court to determine an application under this Regulation which, at the time of the making of the application, it was satisfied it had jurisdiction to deal with.

(13) Where an application is transferred to the High Court under paragraph (11) of this Regulation, the High Court shall be deemed to have made any order of a procedural nature that was made by the Court from which it is so transferred in the proceedings in relation to the application.”.

6. Regulation 10 of the Principal Regulations is amended by substituting “Agency” for “Director” in each place where it occurs.



GIVEN under my Official Seal,  
15 May 2013.

RICHARD BRUTON,  
Minister for Jobs, Enterprise and Innovation.

EXPLANATORY NOTE

*(This note is not part of the Instrument and does not purport to be a legal interpretation)*

These Regulations give further effect to the Directive No. 93/13/EEC on unfair terms in consumer contracts. The Regulations extend the civil remedies available under the European Communities (Unfair Terms in Consumer Contracts) Regulations, 1995 (S.I. No. 27 of 1995), which transposed the Directive.

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