

ORDINANCE 17 OF 2001

**AN ORDINANCE
TO REGULATE THE RIGHTS AND OBLIGATIONS
OF CONSUMERS AND TRADERS IN RESPECT OF
CONTRACTS CONCLUDED OFF BUSINESS PREMISES
AND TO PROVIDE FOR MATTERS CONNECTED
THEREWITH**

T.W. RIMMER
ADMINISTRATOR

6th September 2001.

BE it enacted by the Administrator of the Sovereign Base Areas of Akrotiri and Dhekelia as follows:-

PART I

PRELIMINARY PROVISIONS

1. This Ordinance may be cited as the Consumer Protection (Doorstep Selling and Other Contracts Made Off Trade Premises) Ordinance 2001.

Short title.

2. In this Ordinance unless the context otherwise requires -

Interpretation.

“competent service” means the Commission for the Protection of Competition of the Republic or such other service as may be charged by the Chief Officer with the duties entrusted to the competent service under this Ordinance;

“consumer” means an individual who, in concluding a contract to which this Ordinance applies, acts for purposes other than for his trade, business, or profession;

“Court” means the Judge’s Court of the Areas;

“goods” has the meaning assigned to that term by section 2 of the Sale of Goods Ordinance;

Cap. 267 (Laws of Cyprus);
Ordinance
16/2000.

“part-exchange” in relation to goods, means goods belonging to the consumer offered to and accepted by the trader, at an agreed price by way of part payment for the goods or services provided under the contract to which this Ordinance applies;

“services” means the undertaking to provide and the provision of services by a person for gain or reward, other than the supply of goods, excluding the provision of services by an employee to an employer under a contract of employment;

“trader” means a person who, in concluding a contract to which this Ordinance applies, whether by himself or through another, acts for purposes of his trade, business or profession;

“trade premises” in relation to any trader means the premises at which the trader normally conducts his trade, business or profession, and “off the trader’s trade premises” and cognate expressions in relation to any trader mean any place other than his trade premises.

Contracts to which
Ordinance applies.

3. - (1) Subject to section 4, this Ordinance shall apply to any contract under which a trader is to provide goods or services to a consumer and which is concluded off the trader’s trade premises.

(2) A contract concluded in the circumstances described in either paragraph (a) or paragraph (b) below shall be regarded (if it otherwise would not be) as a contract concluded off a trader’s trade premises, that is to say –

- (a) a contract which is concluded in the course of a visit by a trader -
 - (i) to a consumer’s home,
 - (ii) to a consumer’s place of work, or
 - (iii) to a consumer at any other place which is not the trader’s trade premises,

where the visit is not at the express request of the consumer, or where, notwithstanding that the consumer has expressly requested the visit, the contract relates to goods or services other than those for which the visit was requested provided that the consumer did not know, or could not reasonably have known, that the supply of those other goods or services formed part of the trader’s commercial or professional activities; or

- (b) the contract is concluded after an offer was made by the consumer in circumstances similar to those described in paragraph (a) above, whether or not the consumer was bound by that offer before its acceptance by the trader.

Contracts to which
Ordinance does not
apply.

4. This Ordinance shall not apply to -

- (a) a contract for the construction, sale or rental of immovable property or a contract concerning other rights relating to immovable property other than a contract for –
 - (i) the supply of goods for incorporation in immovable property and for such incorporation, or
 - (ii) a contract for repairing immovable property;
- (b) a contract for the supply of foodstuffs, beverages or other goods intended for consumption in the home of the consumer and supplied by way of a regular delivery by a roundsman;
- (c) a contract for the supply of goods or services, where all three of the following conditions are met -

- (i) the contract is concluded on the basis of a trader's catalogue which the consumer has had the opportunity of consulting in the absence of the trader or of his representative;
 - (ii) it is intended that there will be continuing contact between the trader's representative and the consumer in relation to that or any subsequent transaction; and
 - (iii) both the catalogue and the contract clearly inform the consumer of his right to return to the supplier any goods that might be, or might have been supplied to the consumer, within a period ("the cancellation period") of fourteen days commencing on the later of the day after the day that the contract is concluded and the day that the contract is to be performed by the trader, or of the consumer's right otherwise to cancel the contract within the cancellation period, without any obligation of any kind on the consumer other than to take reasonable care of any goods which may be, or may have been delivered to him;
- (d) a contract of insurance; or
 - (e) a contract for securities.

PART II

REGULATION OF CONTRACTS CONCLUDED OFF A TRADER'S PREMISES

5. No contract for the supply of goods or services to which this Ordinance applies shall be enforceable against a consumer, unless it is made in writing and –

Requirements for contracts to be enforceable.

- (a) states clearly and legibly the date it is concluded and the name, telephone number and address of the trader;
- (b) describes in detail the goods or services to be provided;
- (c) states clearly and legibly that the consumer has the right to cancel the contract by written notice ("a notice of cancellation") within a period determined in the manner described in section 4(c)(iii) without any obligation of any kind other than to take reasonable care of any goods involved;
- (d) is accompanied by a form of a notice of cancellation in the form set out in the Schedule;
- (e) states the name and address of the person to whom the notice of cancellation may be given in the event that the consumer should wish to cancel the contract;
- (f) where appropriate, specifies any goods given in part-exchange under the contract and the price agreed for such goods;
- (g) is signed by the trader and the consumer.

Schedule.

6. - (1) Unless the parties have otherwise agreed, the trader shall perform the contract within a period of fourteen days commencing on the day following the day of the conclusion of the contract.

Performance and non-performance of contract.

(2) Where the trader is or will be unable, for whatever reason, to perform the contract within the time stipulated by the contract, he shall forthwith inform the consumer of that fact and shall, within a period of fourteen days commencing on the day following the day of the conclusion of the contract refund to the consumer any amount that the trader has received under the contract.

Duty of trader to inform consumer of his rights of cancellation.

7. - (1) Without prejudice to section 5(c), a trader shall inform a consumer by a separate written notice of the consumer's right of cancellation exercisable within the period laid down in section 8, together with the name and address of the person against whom such right may be exercised.

(2) Such notice shall be dated and give details enabling the contract to be identified. The notice shall be given to the consumer -

- (a) in the case of a contract falling within section 3(1) (not being a contract also falling within section 3(2)(b)), or section 3(2)(a), when, or not later than when, the contract is concluded;
- (b) in the case of a contract falling within section 3(2)(b), when the offer is made by the consumer.

Cancellation of contract by the consumer.

8. - (1) The consumer shall have the right to cancel a contract to which this Ordinance applies by giving a notice of cancellation -

- (a) within a period of fourteen days commencing on the later of the day following the conclusion of the contract and the day that the contract is to be performed by the trader; or
- (b) (if it expires later than the period mentioned in paragraph (a) above) within the period provided for by the contract.

(2) A notice of cancellation shall state -

- (a) that the consumer has decided to cancel the contract;
- (b) the date of the notice;
- (c) the name and address of the person to whom the notice is being given, pursuant to the written terms of the contract.

(3) A notice of cancellation may be given in the form of a cancellation accompanying the contract or in any other written form which satisfies the requirements of subsections (1) and (2) above.

(4) A notice of cancellation sent by post shall be deemed to be given on the day of its posting, whether or not it has been received.

(5) The giving of a notice of cancellation shall have the effect of releasing the consumer from any obligation under the cancelled contract, other than the obligation to take reasonable care of any goods in his possession by virtue of the contract.

9. - (1) Where a contract is cancelled in accordance with the provisions of section 8, any amount paid by or on behalf of the consumer under the contract or by virtue of any credit agreement such as is referred to in section 10(1), shall become immediately refundable.

(2) Where goods are in the possession of a consumer under the terms of a contract which has been cancelled under this Ordinance, the consumer shall have a right of lien over the goods with regard to any amount which becomes refundable to him under subsection (1) above.

Refund of payments etc. on cancellation of contract.

(3) Where any security has been provided in relation to a contract which has been cancelled under this Ordinance, such security shall be deemed not to have been provided and any property therein given to the trader by way of security shall forthwith be returned to the consumer.

10. - (1) Where a contract has been cancelled under the provisions of section 8 and the consumer had agreed, at the instigation of the trader, before the cancellation of the contract, to take advantage of credit facilities provided by the trader or by a third person under a credit agreement for the purpose of paying for the goods or services concerned or part thereof, including any additional costs for their supply or provision, then whether or not the credit agreement is included in the contract or is a separate contract, and whether or not the credit agreement defines the purpose of the credit provided, such credit agreement shall be deemed to be cancelled together with the cancellation of the contract and, subject to the provisions of subsection (2) below, the consumer shall have no liability as regards the credit agreement.

Cancellation of connected credit agreement.

(2) Where, under the circumstances referred to in subsection (1) above, any amount has been paid by the person who provided credit to the trader or the consumer under a credit agreement, such amount shall be forthwith refunded, and in the event of any delay in such refund, the trader or, as the case may be, the consumer, shall pay interest on the unrefunded amount at the rates specified in the credit agreement.

11. - (1) Subject to the provisions of subsection (2) below, a consumer who, on the cancellation of a contract pursuant to section 8, is in possession of any goods by virtue of the contract, shall return the goods to the trader subject to the consumer's right of lien over the goods and his obligation to take reasonable care of the goods whilst they are in his possession.

Return of goods after cancellation of contract.

(2) A consumer shall have no obligation to return –

- (a) perishable goods;
- (b) goods which by reason of their nature are for consumption and which, before the cancellation, were so consumed;
- (c) goods which are supplied to meet an emergency; or
- (d) goods which, before cancellation of the contract, have been incorporated into movable or immovable property not comprised in the cancelled contract,

but shall nevertheless have an obligation to pay a reasonable price for the use or enjoyment of the goods and services prior to the cancellation of the contract.

(3) A consumer shall not be under any duty to deliver any goods to a trader except at the consumer's own premises and only in pursuance of a written request served on him by the trader either before or at the time when the goods are collected from those premises.

(4) If a consumer –

- (a) delivers any goods (whether at his own premises or elsewhere) to any person to whom the consumer could have served under section 8 a notice of cancellation of a contract relating to the goods, or

- (b) sends the goods in question at his own expense to such a person,

he shall be discharged from any duty to retain the goods in question or to deliver them to the trader.

(5) When a consumer delivers any goods in accordance with subsection (4)(a) above, his obligation to take reasonable care of the goods shall cease and if he sends any goods in accordance with subsection (4)(b) above, he shall be under a duty to take reasonable care to see that the goods are received by the trader and are not damaged in transit, but otherwise his duty to take reasonable care of the goods shall cease.

(6) Where, at any time during the period of twenty-one days following the day of cancellation of a contract the consumer receives a request such as is mentioned in subsection (3) above, and unreasonably refuses or unreasonably fails to comply with it, his duty to take reasonable care of the goods shall continue until he delivers or sends the goods as mentioned in subsection (4) above, but if within that period he does not receive such a request, his duty to take reasonable care of the goods shall cease at the end of that period.

(7) Where, upon the expiration of a further period of twenty-one days from the expiration of the period referred to in subsection (6) above, the consumer does not receive a request in accordance with subsection (3) above, the consumer may use or dispose of the goods as if the goods were an unconditional gift to him and any rights of the trader over them shall be extinguished.

(8) Where any security has been provided in respect of a cancelled contract, the obligation imposed on the consumer concerned by subsection (1) above shall not come into operation until the trader fulfils any duty imposed on him under section 9(3).

12. - (1) Where a contract provides that the trader may accept goods in part-exchange and such goods have been delivered to him, then the trader shall, within ten days of the cancellation of the contract, return the goods to the consumer in a condition which is substantially the same as it was when they were delivered to the trader.

(2) Where a trader is unable to comply with the provisions of subsection (1) above, the consumer shall accept an amount equal to the agreed value of the part-exchanged goods specified in the contract, or, where the cancelled contract does not specify such a value, an amount which is reasonable in respect of the goods.

(3) Where, after the cancellation of a contract which provides for part-exchange of goods, the consumer holds goods supplied to him under the said contract, he shall have a lien over them until the requirements of subsections (1) and (2) above are complied with.

(4) Where, by the expiration of a period of twenty-one days commencing on the day following the day of the cancellation of a contract which provides for part-exchange of goods, the requirements of subsections (1) and (2) above have not been complied with, the consumer shall have thereafter (but subject to subsection (5) below) the right to use any of the goods over which he has a lien under subsection (3) above, for any purpose for which such goods are normally used.

(5) Where, upon the expiration of a further period of twenty-one days commencing on the day following the day of the expiration of the period referred to in subsection (4) above, the consumer continues to have a lien over any goods under subsection (3) above, then he may use, handle or dispose of the goods as if the goods were an unconditional gift to him and any rights of the trader over the goods shall be extinguished.

PART III

PROTECTION OF CONSUMERS THROUGH COURT ORDERS

13. - (1) The competent service shall have a duty to investigate, upon complaint or of its own volition, any suspected breach by a trader of any provision of this Ordinance.

Investigation of breaches.

(2) Where, upon an investigation conducted pursuant to subsection (1) above, the competent service considers that there has been a breach of any provision of this Ordinance, it may request the Court by application to issue a mandatory or prohibitory injunction, including a temporary order, against any person whom it considers to be involved in or responsible for such breach.

(3) During such an investigation the competent service may, if it considers it expedient, take into account any undertakings given to it by any person or on his behalf, with regard to the breach and the prospect of remedying or terminating the breach.

(4) The competent service shall justify its decision not to apply to the Court under subsection (2) above regarding any complaint which, under this section, it has a duty to investigate.

14. - (1) On the hearing of an application under section 13(2) the Court shall have power, subject to the provisions of the Civil Procedure Ordinance, the Courts Ordinance and the Civil Procedure Rules to issue a mandatory or prohibitory injunction, including a temporary order, requiring –

Court orders.
Cap. 6 (Laws of Cyprus) and Ordinances 18/66, 9/70, 3/83 and 22/89.
Ordinances 3/60, 7/61, 19/62, 5/63, 3/65, 9/77, 12/84 and 6/88.
S.L. Vol. II p. 120 (Rules), 321/54, 549/56 and 295/58 (Cyprus), and P.I. Nos. 65/66, 28/69, 61/69, 7/73, 12/74, 88/76, 8/79, 9/79, 13/83, 27/84, 65/86, 68/87, 18/88, 16/90, 126/92, 41/93, 50/93, 17/94, 51/95 and 13/99.

- (a) the immediate cessation or non-repetition of the breach in question;
- (b) the taking of such corrective measures, determined at the discretion of the Court, within a specified time for the remedying of the breach;
- (c) the publication of the whole or part of the relevant decision of the Court or the publication of a notice for the purpose of countering the likely effects of the defendant's continuing the breach;
- (d) the taking of any other action or measure which may be deemed necessary or reasonable in the circumstances of the particular case.

15. Subject to the provisions of this Part, any legally constituted organisation or union which, under any Ordinance or its articles of association has a sufficient interest in the protection of the collective interests of consumers in general, shall have a right to apply to the Court for the issue of a mandatory or a prohibitory injunction under subsection (2) of section 13.

Right of organisations or unions for the protection of consumers to apply to Court.

Power of competent service to disseminate information.

16. The competent service may arrange for the dissemination of such information and advice, including orders of the Court regarding the application of this Ordinance, as it deems useful in the interests of the public and of all persons who may be affected by the application of the provisions of this Ordinance.

PART IV

MISCELLANEOUS PROVISIONS

Term of contract void if inconsistent or in conflict with Ordinance.

17. - (1) To the extent that any term of a contract to which this Ordinance applies, conflicts or is inconsistent with any provisions of this Ordinance, the term shall be void.

(2) Where any provision of this Ordinance imposes a duty or liability on a consumer in specified circumstances, a term in a contract to which this Ordinance applies is inconsistent with that provision if it purports to impose, directly or indirectly, an additional duty or liability on him in those circumstances.

Waiver of consumer rights void.

18. Any purported waiver by the consumer of the rights conferred upon him by this Ordinance shall be void and be of no effect.

Regulations.

19. The Administration may make regulations generally for the more effective application of this Ordinance and for putting it into effect. Such regulations may make different provisions for different cases or classes of case and may contain such incidental, supplementary or transitional provisions as appear to the Administration to be necessary or expedient for the purposes of this Ordinance or of the regulations.

SCHEDULE

(Section 5(d))

FORM OF CANCELLATION OF CONTRACT

**(Complete and return this form ONLY IF YOU WISH
TO CANCEL THE CONTRACT)**

To: [*The trader to fill in the name and address of the person to whom this notice may be given*].

I/We hereby cancel the/our contract.

[*The trader must write here the reference number, code or other particulars to enable the contract to be identified. He may also write here the name and address of the consumer*].

Consumer's signature:

Date:

6th September 2001
(173/16A)

D.J. BONNER,
Chief Officer

