

I. ADMINISTRATIVE ENFORCEMENT

Which administrative mechanisms are available to enforce the Directives?

The UK implementing legislation is enforced by the powers conferred on the relevant enforcement authorities under that legislation, the Enterprise Act 2002 ("EA 2002") and/or the Consumer Rights Act 2015 ("CRA").

1. **Directive 1999/44/EC**

- Implemented by the Consumer Rights Act 2015 (from 1 October 2015).
- Enforced by the Competition and Markets Authority ("CMA") and local weights and measures authorities (Trading Standards) or, in Northern Ireland, the Department for the Economy ("DfE") (formerly the Department of Enterprise, Trade and Investment).

2. **Directive 2011/83/EU**

- Implemented by the Consumer Rights (Payment Surcharges) Regulations 2012 ("2012 Regulations"), the Consumer Protection (Information, Cancellation and Additional Charges) Regulations 2013 ("2013 Regulations") (the 2012 Regulations and the 2013 Regulations together the "2012 & 2013 Regulations") and the CRA.
- Enforced by local weights and measures authorities (Trading Standards) or, in Northern Ireland, by DfE.

3. **Directive 93/13/EEC**

- Implemented by the CRA (from 1 October 2015).
- Enforced by the CMA, local weights and measures authorities (Trading Standards), DfE in Northern Ireland, the Financial Conduct Authority, the Office of Communications, the Information Commissioner, the Gas and Electricity Markets Authority ("GEMA"), the Water Services Regulation Authority, the Office of Rail and Road, the Northern Ireland Authority for Utility Registration and the Consumers' Association (a non-public body designated by the Secretary of State).

4. **Directive 2005/29/EC**

- Implemented by Consumer Protection from Unfair Trading Regulations 2008 (the "2008 Consumer Regulations").
- Enforced by the CMA and local weights and measures authorities (Trading Standards) or, in Northern Ireland, by DfE (other than enforcement of civil remedies under Part 4A).

5. **Directive 2006/114/EC**

- Implemented by Business Protection from Misleading Marketing Regulations 2008 (the "2008 Regulations").
- Enforced by the CMA, GEMA (other than bringing proceedings for an offence) and local weights and measures authorities (Trading Standards) or, in Northern Ireland, by DfE.

6. **Directive 98/6/EC**

- Implemented by Price Marking Order 2004.
- Enforced by local weights and measures authorities (Trading Standards).

7. **Directive 90/314/EEC**

- Implemented by The Package Travel, Package Holidays and Package Tours Regulations 1992 (the "1992 Regulations")
- Enforced by the local weights and measures authorities (Trading Standards) for Regulations 5, 7, 8, 16 and 22 or, in Northern Ireland, by DfE.

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	<p>8. Directive 2008/122/EC</p> <ul style="list-style-type: none"> • Implemented by Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010 (as amended) ("2010 Regulations"). • Enforced by local weights and measures authorities (Trading Standards) or, in Northern Ireland, by DfE. <p>9. Directive 2009/22/EC Corresponding provisions are found in Part 8 of EA 2002.</p>
<p>Who can file administrative complaints? Can investigations be initiated ex officio?</p>	<p>There is no specific rule.</p>
<p>Do any specific procedural requirements apply to filing administrative complaints?</p>	<p>No. However, consumers can in general submit their complaints by contacting the Citizens Advice consumer helpline (https://www.citizensadvice.org.uk/consumer/get-more-help/if-you-need-more-help-about-a-consumer-issue/) or, in Northern Ireland, Consumerline (https://www.nidirect.gov.uk/articles/how-complain), in each case by phone, letter or using an online form.</p>
<p>Do the administrative authorities have an obligation to investigate the complaint?</p>	<p>No, unless specified in the relevant legislation.</p> <p>Directive 2011/83/EU Yes, unless it appears to be frivolous or vexatious, or another enforcement authority has notified the CMA that it will consider the complaint.</p> <p>Directive 2005/29/EC No. However, when deciding whether to enforce the 2008 Consumer Regulations, the enforcement authorities must have regard to the desirability of encouraging control of unfair commercial practices by the means it considers appropriate, having regard to all the circumstances of the case.</p>
<p>Are there any specific requirements regarding the provision of evidence to the competent authorities?</p>	<p>The CRA contains various investigatory powers and relevant requirements and procedures to be followed. Such powers include the power to: require the production of information and documents; purchase products; enter premises; inspect products on the premises; test weighing or measuring equipment; seize and detain goods; seize documents; break open container; and require assistance that the officer reasonably considers necessary.</p> <p>As for the specific rules under the legislation implementing relevant Directives:</p> <p>Directive 93/13/EEC</p> <ul style="list-style-type: none"> • An enforcer may give notice requiring the information specified in the notice to be provided. The notice must be in writing and specify the purpose for which the information is concerned. The notice may specify the time limit for compliance and the manner in which the person must comply, as well as the form the information must be provided in. The notice may require the creation of documents and provision of documents specified by the enforcer. • If a person fails to comply with a notice from an enforcer, the enforcer may apply to court for an order.

II. ENFORCEMENT THROUGH COURT ACTION	
Which court actions are available to enforce the Directives?	<p>In addition to general rules which apply under civil proceedings rules, under the EA 2002:</p> <ul style="list-style-type: none"> • If there are acts or omissions which are (i) carried out in the course of business, harm the collective interests of consumers and are carried out in breach of contract or duty ("Domestic infringement") or (ii) in breach of the Directives listed in I. above other than Directive 2006/114/EC ("Community infringements"), the court may issue an enforcement order. • The court may also make an interim enforcement order against the person engaged in or likely to be engaged in the conduct described above or take steps which the court believes will secure that he does not continue, repeat or engage in such conduct. • The court can also make an enforcement order or an interim enforcement order if the infringing party gives an undertaking and fails to comply with it. <p>Relevant enforcement authorities can apply to the court for these enforcement orders.</p> <p>Under the CRA, in order to enforce a notice requesting information, an enforcer can also start a court action in the High Court or the county court, or in Scotland, in the Court of Session or the sheriff court.</p> <p>As for the specific rules under the legislation implementing relevant Directives:</p> <p>Directive 1999/44/EC In respect of contracts to supply goods where there is a guarantee in relation to those goods, a court action may be started in the High Court or a county court and in Scotland, in the Court of Session or a sheriff court.</p> <p>Directive 2011/83/EU The court may grant an injunction, or in Scotland an interdict or order of specific implement, to secure compliance with the 2012 & 2013 Regulations.</p> <p>Directive 2006/114/EC The court may grant an injunction to secure compliance with the 2008 Regulations.</p>
Who can start a court action?	<ul style="list-style-type: none"> • The CMA, local weights and measures authorities (Trading Standards) and, in Northern Ireland, DfE can start court proceedings by making an application for an enforcement order in respect of any infringement or likely Domestic infringement or Community infringement. • Community enforcers (those specified in the list published in the Official Journal of the European Union under Article 4.3 of Directive 98/27/EC) may make an application to the court for an enforcement order in respect of Community infringements (which include a breach of Directives 98/6/EC, 1999/44/EC and/or 2008/122/EC). • Consumers may also have the right to start court proceedings depending on the circumstances (for example where a breach of a statutory requirement amounts to a breach of contract). <p>As for the specific rules under the legislation implementing relevant Directives:</p> <p>Directive 1999/44/EC</p>

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	<p>In respect of contracts to supply goods where there is a guarantee in relation to those goods, local weights and measures authorities (Trading Standards) can apply to the court for an injunction, or in Scotland, for an order of specific implement requiring compliance.</p> <p>Directive 2011/83/EU For off-premises contracts, if a trader fails to give a consumer the information required, only a local weights and measures authorities (Trading Standards) or, in Northern Ireland, DfE can bring proceedings.</p> <p>Directive 93/13/EEC</p> <ul style="list-style-type: none"> • A regulator may apply to the court for an injunction, or in Scotland, for an interdict against the person using, or proposing or recommending the use of a term of a consumer contract if the term purports to exclude or restrict liability for death or personal injury resulting from the person's negligence. • Before applying for an injunction or an interdict, a regulator other than the CMA must notify the CMA that it intends to do so. The regulator may only make an application for an injunction or an interdict 14 days after notifying the CMA, or with the CMA's consent. <p>Directive 2005/29/EC For remedies in Part 4A of the 2008 Consumer Regulations, a consumer may bring a claim in civil proceedings to enforce his right except that, in Scotland, proceedings to enforce the right to unwind may be brought before the sheriff or in the Court of Session. The court must make an order that gives effect to a consumer's such rights and any associated obligations of the consumer under Part 4A.</p> <p>Directive 2006/114/EC</p> <ul style="list-style-type: none"> • If an enforcement authority is a local weights and measures authority (Trading Standards), it must notify the CMA at least 14 days (or shorter if the CMA consents) before bringing proceedings for an offence. • If the enforcement authority is a local weights and measures authority (Trading Standards) or GEMA, it must notify the CMA at least 14 days (or shorter if the CMA consents) before applying for an injunction. • If more than one enforcement authority in Great Britain is planning to bring proceedings, the CMA may direct which enforcement authority is to bring the proceedings, or decide that only it may do so. <p>Directive 98/6/EC Only a local weights and measures authority (Trading Standards) may start proceedings.</p>
<p>Can court actions be initiated by competitors?</p>	<p>There is no specific provision in the implementing legislation although competitors might have legal standing to initiate a claim for damages if they have suffered damage or loss as a result of the action or inaction of another.</p>
<p>Can the case be handled through an accelerated procedure?</p>	<p>No.</p>
<p>Are there any specific requirements regarding the provision of evidence</p>	<p>Directive 2005/29/EC Under EA 2002, where an application for an enforcement order or an interim enforcement order is made against a breach of this Directive,</p>

<p>to the court?</p>	<p>the court may require the infringing party to provide evidence as to the accuracy of a factual claim it has made as part of advertising or marketing connected with the promotion, sale or supply of a product to consumers. If the infringing party fails to provide evidence or provides inadequate evidence, the court may consider that the infringing party's factual claim is inaccurate.</p> <p>Directive 2006/114/EC In considering an application for an injunction, the court may require the person named in the application to provide evidence as to accuracy of the factual claim against them. The court may consider that the factual claim is inaccurate if a person fails to provide evidence or provides inadequate evidence.</p>
<p>Are there specific procedural reliefs for consumers or consumer associations?</p>	<p>No.</p>
<p>III. SANCTIONS</p>	
<p>What are the possible civil sanctions and remedies for the infringement of the provisions of the Directives?</p>	<p>Aside from the civil remedies available under contract or other rules, certain implementing legislation contains provision on civil remedies as follows:</p> <p>Directive 1999/44/EC: The consumer has a short-term right to reject the goods, the right to repair or replacement of the goods, and the right to a price reduction or a final right to reject the goods.</p> <ul style="list-style-type: none"> • <u>Short-term right to reject</u> <ul style="list-style-type: none"> ○ A consumer is entitled to a refund and has a duty to return the goods or allow the trader to collect them. ○ Unless a longer period is agreed with the trader, a consumer must exercise this right before the end of 30 days beginning with the first day after (i) the ownership or possession of the goods passes to the consumer; (ii) the goods have been delivered; and (iii) the trader has notified the consumer that the required actions have been taken to allow the consumer to use the goods. • <u>Right to repair or replacement</u> <ul style="list-style-type: none"> ○ If a consumer exercises this right, the trader must repair or replace the goods within a reasonable time and without significant inconvenience to the consumer, and bear any necessary costs incurred in doing so (including labour, materials or postage). A consumer cannot require the trader to repair or replace the goods if this is impossible or disproportionate compared to the other remedies available to the consumer. ○ The court may make an order for specific performance, or in Scotland for specific implement by the trader of its obligation to repair or replace, to enforce this right. • <u>Right to a price reduction or final right to reject</u> <ul style="list-style-type: none"> ○ The right to a price reduction is the right to reduce the price of the goods and to receive a refund from the trader. A refund can be a full amount of the price. ○ The final right to reject entitles the consumer to reject the goods and treat the contract as at an end. Any refund may be reduced by a deduction for use to take account of the time the consumer had the goods in the period since they were delivered (and the court may make an order on such terms, unless the consumer only had the goods because the trader failed to collect them at

the agreed time).

- No deduction may be made if the final right to reject is exercised in the first 6 months, beginning with the first day after (i) the ownership or possession of the goods passes to the consumer, (ii) the goods have been delivered and (iii) the trader has notified the consumer that the required actions have been taken to allow the consumer to use the goods, unless the goods consist of a motor vehicle or are of a description specified by an order made by the Secretary of State by statutory instrument.
- A consumer with the right to a price reduction or final right to reject can only exercise one of these rights (not both), and only where (i) the goods do not conform to the contract after one repair or replacement, (ii) the goods can be neither repaired nor replaced, or (iii) the trader is in breach of the requirement to repair or replace the goods within a reasonable time.
- **Right to reject:**
 - If a trader breaches the obligation to have the right to sell or transfer the goods at the time ownership is to be transferred, the consumer has the right to reject the goods.
- A consumer are not prevented from seeking other remedies for breach of a term required to be included in the contract by virtue of the CRA, on the grounds that the goods do not conform to the contract, or for a breach of a requirement stated in the contract. These remedies include: claiming damages, seeking specific performance, seeking an order for specific implement, relying on the breach against a claim by the trader for the price, and exercising a right to treat the contract as at an end for breach of an express term.
- The court may make an unconditional order or on such terms as it sees fit in respect of payment of damages, the price and otherwise.

Directive 2011/83/EU

A breach of certain provisions by the trader amount to a breach of contract and therefore civil remedies for a breach of contract may be available to consumers. See other section for more details. The court may grant an injunction, or in Scotland an interdict or order of specific implement, to secure compliance with the 2012 & 2013 Regulations.

Directive 93/13/EEC

The court may grant an injunction, or in Scotland, an interdict, on such conditions as it sees appropriate and may include provision about a term to which the application relates or any term of a consumer contract of a similar kind or with a similar effect.

Directive 2005/29/EC

There are three types of civil sanctions: unwinding the contract, discount and damages.

- **Right to unwind the contract**
 - The contract is terminated so that the consumer and the trader are released from their obligations under it if 1 to 3 below are satisfied:
 1. (i) The consumer enters into a contract with a trader for the sale or supply of a product by the trader ("business to consumer contract"), (ii) the consumer enters into a contract with a trader for the sale of goods to the trader ("consumer to business contract"), or (iii) the consumer makes a payment to a trader for the supply of a product ("consumer payment").
 2. (i) The trader engages in a prohibited practice in relation to the product, or (ii) in relation to goods or digital content, a producer engages in a prohibited practice and the trader is

aware of the prohibited practice or could reasonably be expected to be aware of it.

3. The prohibited practice is a significant factor in the consumer's decision to enter into the contract or make the payment. A prohibited practice for which civil remedies are available are limited to a practice which is a misleading or aggressive action where it causes or is likely to cause the average consumer to make any decision to enter into a contract with a trader for the sale or supply of a product by the trader or make a payment to a trader for the supply of a product. This includes the situation where a consumer makes a payment in full or partial settlement of his liabilities or purported liabilities in response to a trader's demand.

- The consumer's right to unwind the contract applies in respect of a business to consumer contract if the consumer indicates to the trader that it rejects the product within the relevant period at a time when the product is capable of being rejected. The consumer is entitled to a refund (subject to certain conditions), and if the contract was for the sale or supply of goods, the consumer must allow the trader to collect the goods.
- Under a consumer to business contract, the consumer has a right to get the goods returned from the trader and must repay the trader if the trader has paid for the goods (subject to certain conditions). If such right does not exist, the consumer has a right to payment of the difference between the market price of the goods and the amount the trader paid for them.
- Under a consumer payment, the consumer has the right to a full or partial refund.
- **Right to discount**
 - The consumer can receive back from the trader the relevant percentage of the payment. A consumer has the right to a discount in respect of a business to consumer contract if the consumer has made one or more payments to the trader for the product and the consumer has not exercised the right to unwind the contract.
 - The reduction ranges from 25% to 100% having regard to the seriousness of the prohibited offence unless (i) the amount payable under the contract exceeds £5,000, (ii) the market price of the product at the time of entry into the contract is lower than the amount payable under the contract, and (iii) there is clear evidence of the difference between the price of the product and the amount payable for it under the contract.
- **Right to damages**

A consumer has the right to damages for reasonably foreseeable loss if the consumer incurred financial loss, or the consumer suffered alarm, distress or physical inconvenience or discomfort from the trader's prohibited practice.

The remedies set out above are in addition to the remedies a consumer has under common law and equity, although a consumer cannot make a claim both under common or equity and the provisions of the 2008 Consumer Regulations.

Directive 2006/114/EC

The court may grant an injunction to secure compliance with the 2008 Regulations.

Directive 90/314/EEC

Certain information is implied into the contract with the consumer as a condition (e.g. that the contract will provide a prescribed minimum amount of information relevant to the package). See other section for

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	<p>further details. A breach of a condition of a contract could entitle the other party (consumer) to terminate the contract under English law.</p> <p>Directive 2008/122/EC</p> <ul style="list-style-type: none"> • Where the consumer is a UK resident or the trader carries on sales activities in the UK, and a holiday accommodation contract to which the 2010 Regulations apply is not in English, the contract is unenforceable against the consumer. • A breach of certain other duties of the trader (Reg. 12(1), 15(1), 16(1) 17(1), 18(1) and 23(3)) are actionable.
<p>What are the possible criminal sanctions for the infringement of the Directives' provisions?</p>	<p>Directive 2011/83/EU A fine for failing to give pre-contractual information or a right to cancel.</p> <p>Directive 2005/29/EC A fine.</p> <p>Directive 2006/114/EC A fine.</p> <p>Directive 98/6/EC A fine.</p> <p>Directive 90/314/EEC A fine.</p>
<p>What are the possible administrative sanctions for the infringement of the Directives' provisions?</p>	<p>An enforcement order granted by the court or undertaking by the infringing party may require the infringing party to take enhanced consumer measures within a period specified by the court under EA 2002. Enhanced consumer measures include: (i) measures offering compensation to consumers who have suffered loss, (ii) measures offering such consumers the right to terminate the contract, (iii) measures for the collective interests of consumers if individual affected consumers cannot be identified (such measures together "Redress Measures"), (iv) taking steps to prevent or reduce the risk of the occurrence or repetition of the infringing conduct and (v) implementing measures to enable consumers to choose more effectively between suppliers of goods or services. Various conditions apply for these measures to be included.</p> <p>Directive 93/13/EEC A regulator may accept an undertaking from the person against whom it has applied or is entitled to apply for an injunction or interdict. If a regulator other than the CMA accepts an undertaking, it must notify the CMA of the conditions on which the undertaking is accepted and the person who gave it.</p> <p>Directive 2006/114/EC If an enforcement authority considers that there has been or there is likely to be a breach of the 2008 Regulations, it may accept an undertaking from a person that he will comply with the regulations.</p>
<p>What are the contractual consequences of an administrative order or a judgment on an individual transaction under the Directives?</p>	<p>An enforcement order or undertaking may require the infringing party to allow the consumer to terminate the contract (EA 2002).</p> <p>Directive 1999/44/EC The relevant contract is treated as repudiated when the consumer treats it as at an end under the right to reject the goods. Otherwise, a contract is not treated as repudiated solely because of a breach of the CRA.</p>

	<p>Directive 2011/83/EU</p> <ul style="list-style-type: none"> • Where a trader imposes surcharges which are prohibited, the provision of a contract requiring the consumer to pay such charges is unenforceable and the contract is treated as requiring the excess to be repaid to the consumer under the 2012 Regulations. • Certain obligations (such as the obligations to provide pre-contractual information) are treated as a term of the contract under the CRA. A breach of such obligations will therefore amount to a breach of the relevant contract. The information that is required to be included in the contract by virtue of the 2013 Regulations (other than the main characteristics of the goods) is treated as a term of the contract and a consumer has the right to recover any costs incurred as a result of a breach of such term, up to the amount of the price paid or the value of the goods under the CRA. <p>Directive 93/13/EEC Unfair terms of consumer contracts are not binding on the consumer. If a term of a consumer contract is not binding because it found to be unfair, the contract continues to have effect in every other respect, so far as practicable.</p> <p>Directive 2005/29/EC The relevant contracts are terminated where a consumer has the right to unwind (see above). Otherwise, an agreement is not void or unenforceable solely because of a breach of the 2008 Consumer Regulations.</p> <p>Directive 90/314/EEC It is an implied condition to (i) include certain information in a package tour contract, (ii) provide all terms in writing and in comprehensible and accessible manner and (iii) provide a written copy of these terms to the consumer other than in Scotland. A contract could be terminated if there is a breach of these conditions.</p>
<p>Can authorities order the trader to compensate consumers who have suffered harm as a result of the infringement?</p>	<p>An enforcement order or undertaking by the infringing party may include Redress Measures requiring the infringing party to offer compensation to consumers who have suffered loss as a result of the infringing conduct (EA 2002).</p>
<p>Can the administrative authorities or the courts require the publication of their decisions?</p>	<p>Directive 93/13/EEC The CMA must arrange for the publication of the details of applications made by regulators for an injunction or an interdict, any injunctions or interdicts granted by the court and any undertakings accepted by regulators.</p> <p>Directive 2006/114/EC</p> <ul style="list-style-type: none"> • The court may require the person against whom an injunction is granted to publish the injunction and a corrective statement in the manner and form specified by the court. • The CMA must publish details of any undertakings given, any applications for injunctions and any orders made by the court in response to such applications or orders to enforce a previous court order.
<p>IV. OTHER TYPES OF ENFORCEMENT</p>	
<p>Are there any self-regulatory enforcement systems in your</p>	<p>Directive 2005/29/EC and Directive 2006/114/EC Compliance with the UK Code of Non-broadcast Advertising, Sales Promotion and Direct Marketing ("CAP Code") is a market practice in</p>

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<p>jurisdiction that deal with aspects of the Directives?</p>	<p>the UK.</p> <p>If there is a breach of the CAP Code, the marketer is first asked to amend or withdraw it. The Advertising Standards Authority ("ASA"), an independent body, investigates complaints against marketing communications in non-broadcast media. The ASA Council decides whether the CAP Code has been breached and its ruling is subject to an independent review if there is a substantial flaw of process and/or ruling or additional relevant evidence became available after the investigation. The ASA's rulings including the names of the marketers and their non-compliance are published (https://www.asa.org.uk/codes-and-rulings/rulings.html). Persistent offenders may be required to have some or all of their marketing communications vetted by the CAP Copy Advice team until the ASA and the Committee of Advertising Practice are satisfied that future communications will comply with the CAP Code. If marketing communications continue to appear despite the negative ASA rulings, the ASA can refer the matter to Trading Standards, which has the statutory power to enforce the 2008 Consumer Regulations and the 2008 Regulations.</p>
<p>Are there any out-of-court dispute settlement bodies available that deal with aspects of the Directives (e.g. mediation, conciliation or arbitration schemes ombudsmen)?</p>	<p>Yes, as the UK has implemented Directive 2013/11/EU on alternative dispute resolution for consumer disputes. However, use of the ADR is not mandatory except for certain regulated industries.</p> <p>For disputes under the legislation implementing Directive 90/314/EEC , whilst there is no statutory provision, if the tour company is a member of ABTA, a complaint can be submitted to them online. If the tour operator is a member of the Association of Independent Tour Operators (AITO), they can call upon an arbitration services provider (for a fee).</p>