

EU Consumer Law Acquis Compendium

Legislation

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Full name and/or number of the statute (in original language):

European Communities (Contracts for Time Sharing of Immovable Property—Protection of Purchasers) Regulations 1997 and 2000

Translation of the name:

European Communities (Contracts for Time Sharing of Immovable Property—Protection of Purchasers) Regulations 1997 and 2000

Reference in Official Journal (if appropriate):

S.I. No. 204 of 1997

Date of coming into force:

19.05.1997

Subsequent amendments:

S.I. No. 144 of 2000, in force since 25.05.2000

Text:

European Communities (Contracts For Time Sharing Of Immovable Property — Protection Of Purchasers) Regulations, 1997.

I, RICHARD BRUTON, Minister for Enterprise and Employment, 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 effect to Council Directive No. 94/47/EC1 of 26 October 1994 on the protection of purchasers in respect of certain aspects of contracts relating to the purchase of the right to use immovable properties on a timeshare basis, hereby make the following Regulations:

10.J. No. L280/83 of 29 October 1994.

1.

(1) These Regulations may be cited as the European Communities (Contracts for Time Sharing of Immovable Property — Protection of Purchasers) Regulations, 1997.

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(2) These Regulations shall come into operation on 19th May, 1997.

2.

(1) In these Regulations:—

"Annex" means the Annex to Directive 94/47/EC of the European Parliament and the Council, the relevant provisions of which are set out in the Schedule of these Regulations;

"authorised officer" means a person appointed as an officer under Regulation 15 (1);

"contract" means any contract or group of contracts concluded for at least three years under which, directly or indirectly, on payment of a certain global price, a real property right or any other right relating to the use of one or more immovable properties for a specified or specifiable period of the year, which may not be less than one week, is established or is the subject of a transfer or an undertaking to transfer;

"the Director" means the Director of Consumer Affairs;

"immovable property" means any building or part of a building for use as accommodation to which the right which is the subject of the contract relates;

"purchaser" means any natural person who, acting in transactions covered by these Regulations, for purposes which may be regarded as outside the person's professional capacity, has the right which is the subject of a contract transferred to the person or for whom the right which is the subject of the contract is established;

"vendor" means any natural or legal person, who, acting in transactions covered by these Regulations and in the person's professional capacity, establishes, transfers or undertakes to transfer the right which is the subject of a contract;

(2) In these Regulations—

(a) a reference to a regulation is a reference to a regulation in these Regulations, unless it is indicated that a reference to some other statutory instrument is intended, and

(b) a reference to a paragraph or subparagraph is a reference to the paragraph or subparagraph of the provision in which the reference occurs, unless it is indicated that a reference to some other provision is intended.

3. In addition to any other power of function conferred or imposed on him or her by or under these Regulations, the Director has the following functions:

(a) to keep under general review practices or proposed practices in relation to any of the obligations imposed on persons by any provision of these Regulations;

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(b) to carry out investigations of any such practices or proposed practices where the Director considers that, in the public interest, such investigations are proper or the Minister requests the Director to carry out such investigations; and

(c) to request persons engaged in or proposing to engage in such practices as are, or are likely to be, contrary to the obligations imposed on them by or under these Regulations to discontinue or refrain from such practices.

4.

(1) A vendor shall provide to any person requesting information on particular immovable property (a real property or any other right relating to the use of which, on a timeshare basis is available for purchase by contract) a document which shall give—

(a) a general description of the property or properties;

(b) at least brief and accurate information on the matters referred to in items (a) to (g), (i) and (l) in the Annex; and

(c) information on how further information about the property or properties may be obtained.

(2) Subject to Regulation 5, the information contained in a document referred to in paragraph (1) shall become terms contractually binding on the parties to any contract entered into in respect of any immovable property to which it relates.

(3) The document shall be drawn up in the language or one of the languages of the Member State in which the person requesting the information contained in the document resides, or in the language or one of the languages of the Member State of which the person is a national, and which is an official language of the European Community.

(4) Any advertising referring to the immovable property shall indicate the possibility of obtaining the document referred to in paragraph (1) and where it may be obtained.

5.

(1) Unless the parties expressly agree otherwise, only changes resulting from circumstances beyond the vendor's control may be made to the information provided in the document referred to in Regulation 4(1).

(2) In order to be included in the terms of the contract, any changes to that information shall be communicated to the purchaser before the contract is concluded and shall be expressly mentioned in the contract.

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6.

(1) A contract to which these Regulations apply—

(a) shall be in writing,

(b) must include at least the terms referred to in the Annex,

(c) at the purchaser's option, shall be drawn up in the language or one of the languages of the Member State in which the purchaser resides or in the language of one of the languages of the Member State of which the purchaser is a national and which is an official language of the European Community, unless the Member State in which the purchaser resides requires that the contract be drawn up, in all cases, in at least its language or languages which must be an official language or official languages of the European Community.

(2) The vendor shall provide the purchaser with a certified translation of the contract in English or, at the purchaser's option, in Irish.

7.

(1) With prejudice to the European Communities (Unfair Terms in Consumer Contracts) Regulations, 1995 (S.I. No. 27 of 1995), the purchaser shall have the right—

(a) to withdraw from the contract, without giving any reason, within 10 days of both parties signing the contract, or of both parties signing a binding preliminary contract, and if the tenth day is a public holiday, the period shall be extended to the first working day after the public holiday,

(b) subject to paragraph (2), to cancel the contract within three months of the date of both parties signing the contract, or of both parties signing a binding preliminary contract, if the contract does not include the information contained in items (a), (b), (c), (d) (l) and (2), (h), (i), (k), (l) and (m) in the Annex, and

(c) if by the end of the three months period provided for in paragraph (b) the purchaser has not exercised the right to cancel and the contract does not include the information referred to in paragraph (b)—to the withdrawal period of 10 days commencing on the day following the end of the three month period.

(2) Where the information required by paragraph (1) (b) to be provided is provided within the three months referred to in that subparagraph, the withdrawal period referred to in paragraph (1) (a) shall then commence.

8. If the purchaser intends to exercise the rights provided for in Regulation 7, the person shall, before the expiry of the relevant deadline, notify the person whose name and address appear in the contract for that purpose as required in pursuance of item (1) in the Annex.



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The deadline shall be deemed to have been met if the notification, if it is in writing, issues before the relevant withdrawal period expires.

9. Where the purchaser exercises the right to cancel the contract as provided for in Regulation 7 (1) (b), the purchaser shall not be required to defray any costs.

10.

(1) The acceptance by a vendor or the vendor's agent of any advance payment from a purchaser before the end of the period during which the purchaser may, under Regulation 7 (1), withdraw from a contract shall be prohibited.

(2) A person guilty of an offence under paragraph (1) shall be liable on summary conviction to a fine of not exceeding £1,500.

11. If the price for the purchase of a real property right or any other right in immovable property relating to its use on a timeshare basis is fully or partly covered by credit granted by—

(a) the vendor, or

(b) a third party on the basis of an agreement between the third party and the vendor,

and the purchaser exercises the purchaser's right to cancel or withdraw from the contract as provided in Regulation 7, the credit agreement shall be cancelled without penalty.

12. Any clause of a contract whereby a purchaser renounces the purchaser's freedom or rights under these Regulations or whereby a vendor is freed from the vendor's responsibilities arising from these Regulations shall not be binding on the purchaser, under conditions as set out in sections 55 of the Sale of Goods Act, 1893, (as inserted by section 22 of the Sale of Goods and Supply of Services Act, 1980), and section 40 (1) of the Sale of Goods and Supply of Services Act, 1980.

13.

(1) Any person, including the Director may, on giving notice of the application to any person against whom the order the subject of the application is sought, apply to the High Court for an order prohibiting the sale or offering for sale of a real property right or other right in immovable property on a timeshare basis.

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(2) Where the Director has made a request in pursuance of his or her functions under Regulation 3 (c) and the request has not been complied with, the Director may apply to the High Court for an order prohibiting the sale or offering for sale of a real property right or other right in immovable property on a timeshare basis.

(3) An applicant for an order under paragraph (1), or the Director in the case of an application for an order under paragraph (2) shall not be required to prove—

(a) actual loss or damage, or

(b) recklessness or negligence on the part of the person against whom the order is sought.

(4) In the exercise of its jurisdiction for the purposes of this Regulation, the Court shall take account of all interests involved and, in particular, the public interest.

(5) Where an application has been made to the High Court under paragraph (1) or (2), the Court may—

(a) order a vendor of immovable properties on a timeshare basis to furnish evidence as to the accuracy of any factual claims made during the sale of immovable properties on a timeshare basis, if taking into account the legitimate interests of the vendor and any other party to the proceedings it appears appropriate in the circumstances of the particular case, and

(b) take any factual claim to be inaccurate if the evidence demanded in accordance with subparagraph (a) is not furnished or is considered by the Court to be insufficient.

14. In determining whether or not a document provided under Regulation 4 or contract covering the sale of immovable property on a timeshare basis is adequate, account shall be taken of all its features, and in particular of any information it contains concerning the matters set out in the Annex.

15.

(1) The Minister or the Director may, in writing, appoint so many whole-time officers of the Minister for Enterprise and Employment as the Minister or the Director, as the case may be, thinks fit to be authorised officers for the purposes of these Regulations.

(2) An authorised officer shall be furnished with a warrant of the officer's appointment as an authorised officer and, when exercising any power conferred on an authorised officer by these Regulations, shall, if requested by any person affected, produce the warrant to that person.

(3) An authorised officer may, for the purposes of obtaining information which may enable the Director to perform the Director's functions under these Regulations—

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(a) at all reasonable times enter any premises at which any business or activity in connection with a business is carried on and inspect the premises or search for and inspect any books, documents or records relating to the business or activity on those or any other premises,

(b) require any person who carries on such business or activity and any person employed in connection therewith to produce to the authorised officer any such book, document or record which are in that person's power or control (and in the case of such information in a non-legible form to reproduce it in a legible form) or to give to the authorised officer such information in relation to any entries in any such books, documents and records as the authorised officer may reasonably require in relation to any entries in such books, documents and records,

(c) inspect and take copies of or extracts from any such books, documents and records,

(d) require any such person to give to the authorised officer any information the authorised officer may require as to the persons carrying on such business or activity (including, in particular, in the case of an unincorporated body of persons, information as to the membership of the body and of its committee of management or other controlling authority) or employed in connection therewith, and

(e) require any such person to give to the authorised officer any other information which the officer may reasonably require about such business or activity.

(4) An authorised officer shall not, other than with the consent of the occupier, enter a private dwelling unless the authorised officer has obtained a warrant from the District Court under paragraph (7) authorising such entry.

(5) Where an authorised officer, in the exercise of the authorised officer's powers under this Regulation, is prevented from entering any premises, an application may be made under paragraph (7) for a warrant authorising such entry.

(6) An authorised officer, where he or she considers it necessary, may be accompanied by a member of the Garda Síochána when exercising any power conferred on an authorised officer under these Regulations.

(7) If a judge of the District Court is satisfied on the sworn information of an authorised officer that there are reasonable grounds for suspecting that there is information required by an authorised officer under this Regulation held on any premises or any part of any premises, the judge may issue a warrant authorising an authorised officer, accompanied by other authorised officers, at any time or times within one month from the date of issue of the warrant, on production of the warrant if so requested, to enter the premises or part of the premises, if need be by reasonable force, and exercise all or any of the powers conferred on an authorised officer under this Regulation.

(8) An application under paragraph (7) shall be made to the judge of the District Court in the district court area where the premises is situated.

(9) A person who—

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(a) obstructs or interferes with an authorised officer in the exercise of the officer's powers under this Regulation,

(b) fails to comply with a request from an authorised officer under this Regulation, or

(c) makes a statement to an authorised officer which the person knows is false or misleading,

shall be guilty of an offence.

(10) A person guilty of an offence under this Regulation shall be liable on summary conviction to a fine not exceeding £1,500.

(11) An offence under this section may be prosecuted summarily by the Director.

SCHEDULE

Annex to the Directive.

Minimum list of items to be included in the document or contract referred to in Regulations 4, 6, 7 and 8.

(a) The identifies and domiciles of the parties, including specific information on the vendor's legal status at the time of the conclusion of the contract and the identity and domicile of the owner.

(b) The exact nature of the right that is the subject of the contract and a clause setting out the conditions governing the exercise of that right within the territory of the Member State(s) in which the property or properties concerned relates is or are situated and,

(1) stating whether those conditions have been fulfilled, or

(2) if those conditions have not been fulfilled, stating what conditions remain to be fulfilled.

(c) When the property has been determined, an accurate description of that property and its location.

(d) Where the immovable property is under construction:

(1) the state of completion,

(2) a reasonable estimate of the deadline for the completion of the immovable property,

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(3) where it concerns a specific immovable property, the number of the building permit and the name(s) and full address(es) of the competent authority or authorities,

(4) the state of completion of the services rendering the immovable property fully operational (gas, electricity, water and telephone connections),

(5) a guarantee regarding completion of the immovable property or a guarantee regarding reimbursement of any payment made if the property is not completed and, where appropriate, the conditions governing the operation of those guarantees.

(e) The services (lighting, water, maintenance, refuse collection) to which the purchaser has or will have access, and on what conditions.

(f) The common facilities, such as swimming pool, sauna, etc., to which the purchaser has or may have access, and, where appropriate, on what conditions.

(g) The principles on the basis of which the maintenance of and repairs to the immovable property and its administration and management will be arranged.

(h) The exact period within which the right which is the subject of the contract may be exercised and, if necessary, its duration; the date on which the purchaser may start to exercise the contractual right.

(i) The price to be paid by the purchaser to exercise the contractual right; an estimate of the amount to be paid by the purchaser for the use of common facilities and services; the basis for the calculation of the amount of charges relating to occupation of the property, the mandatory statutory charges (for example, taxes and fees) and the administrative overheads (for example, management, maintenance and repairs).

(j) A clause stating that acquisition will not result in costs, charges or obligations other than those specified in the contract.

(k) Whether or not it is possible to join a scheme for the exchange or resale of the contractual rights, and any costs involved should an exchange and/or resale scheme be organised by the vendor or by a third party designated by him or her in the contract.

(l) Information on the right to cancel or withdraw from the contract and indication of the person to whom any letter of cancellation, or withdrawal, should be sent, specifying also the arrangements under which such letters may be sent; precise indication of the amount and the nature of the costs which the purchaser will be required to defray pursuant to Regulation 9 if he or she exercises his or her right to withdraw; where appropriate, information on the arrangements for the cancellation of the credit agreement linked to the contract in the event of cancellation of the contract or withdrawal from it.

(m) The date and place of each party's signing of the contract.

GIVEN under my Official Seal, this 13th day of May, 1997.

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RICHARD BRUTON, Minister for Enterprise and Employment.

EXPLANATORY NOTE.

These Regulations give effect to European Parliament and Council Directive No. 94/47/EC on the protection of purchasers in respect of certain aspects of contracts relating to the purchase of the right to use immovable properties on a timeshare basis.

The Regulations provide that consumers may withdraw from the contract within a 10 day cooling off period or, in the absence/non-provision of certain information, within 3 months.

The Regulations also provide that those seeking information on timeshare properties must be supplied with a brochure, giving a description of the property, details on the vendor, location of property, its current status (e.g. under completion), associated services and facilities, the price and right to cancellation. The contract must include the foregoing and other information e.g. right or otherwise of resale or exchange for another property.

Under the Regulations the vendor is prohibited from seeking deposits.

S.I. No. 144 of 2000

European Communities (Contracts for Time Sharing of Immovable Property-Protection of Purchasers) (Amendment) Regulations, 2000

I, RICHARD BRUTON, Minister for Enterprise and Employment, 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 effect to Council Directive No. 94/47/EC1 of 26 October 1994 on the protection of purchasers in respect of certain aspects of contracts relating to the purchase of the right to use immovable properties on a timeshare basis, hereby make the following Regulations:

I, MARY HARNEY, Minister for Enterprise, Trade and Employment, 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 Directive 94/47/EC of the European Parliament and the Council of 26 October 1994, hereby make the following regulations:

1 O.J. No. L280, 29.10.94, p.83

1. These Regulations may be cited as the European Communities (Contracts for Time Sharing of Immovable Property - Protection of Purchasers) (Amendment) Regulations, 2000.

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2. In these Regulations "the Principal Regulations" means the European Communities (Contracts for Time Sharing of Immovable Property - Protection of Purchasers) Regulations, 1997 (S.I. No. 204 of 1997).

3.

(1) Regulation 2(1) of the Principal Regulations is amended -

(a) by the substitution for the definition of "Annex" of the following definition:

" 'Annex' means the Annex to the Directive, the relevant provisions of which are set out in the Schedule to these Regulations;"

(b) by the insertion after the definition of "contract" of the following definition:

" 'Directive' means Directive 94/47/EC of the European Parliament and the Council of 26 October 1994;"

1 O.J. No.L280, 29.10.94, p.83

(c) by the insertion after the definition of "immovable property" of the following definition:

" 'Member State' means a Member State of the European Communities;"

(2) A word or expression which is used in these Regulations and which is also used in the Directive has, unless the context otherwise requires, the same meaning in these Regulations as it has in the Directive.

4. Regulation 6 of the Principal Regulations is amended by -

(a) the substitution in paragraph (1) for subparagraph (c) of the following subparagraphs:

"(c) at the purchaser's option, shall be drawn up in the language or one of the languages of the Member State in which the purchaser resides or in the language or one of the languages of the Member State of which the purchaser is a national and which is an official language of the European Community,

(d) at the purchaser's requirement, in the case of a purchaser residing within the State, shall be drawn up in all cases in at least the English language or the Irish and English languages.", and

(b) the substitution for paragraph (2) of the following paragraph:

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"(2) The Vendor shall provide the purchaser with a certified translation of the contract in the language or one of the languages of the Member State in which the immovable property is situated, which shall be an official language or official languages of the European Community."

5. The Principal Regulations are amended by the substitution for Regulation 10 of the following Regulation:

"10.

(1) A vendor or a vendor's agent shall not accept any advance payment from a purchaser before the end of the period during which the purchaser may, under Regulation 7(1), withdraw from a contract.

(2) A vendor or a vendor's agent who contravenes paragraph (1) is guilty of an offence."

6. The following Regulation is inserted after Regulation 12 of the Principal Regulations:

"12A. Where a purchaser purchases an immovable property which is situated in the territory of a Member State and the applicable law of the contract concerning that property is not in accordance with the Directive, then -

(a) the law of the Member State transposing the Directive in whose territory the property is situated, or

(b) failing that these Regulations,

shall apply."

7. Paragraphs (10) and (11) of Regulation 15 of the Principal Regulations are deleted.

8. The following Regulation is inserted after Regulation 15 of the Principal Regulations:

"16.

(1) A vendor or a vendor's agent who fails to comply with Regulation 4, 5, 6 or 8 is guilty of an offence.

(2) A person guilty of an offence under these Regulations shall be liable on summary conviction to a fine not exceeding £1,500.

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(3) An offence under these Regulations may be prosecuted summarily by the Director."

GIVEN under my Official Seal, 25th May 2000.

MARY HARNEY, Minister for Enterprise, Trade and Employment.

EXPLANATORY NOTE

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

These Regulations amend the original transposing Regulations entitled the European Communities (Contracts for Time Sharing of Immovable Property - Protection of Purchasers) Regulations, 1997 (S.I. No. 204 of 1997). The effect of the Regulations is to ensure that the purchaser's option to obtain a timeshare contract in his/her language is copper fastened, to clearly provide that the contract is drawn up in the language where the timeshare property is situated and to introduce penalties for non-compliance with the provisions of the 1997 Regulations. The Regulations also ensure that the purchaser is not deprived of the protection afforded by the Directive if the property concerned is situated within the territory of a Member State.

Published by the Stationary Office, Dublin 2.

Consolidated Version of Regulation 1997 and Regulation 2000

I, RICHARD BRUTON, Minister for Enterprise and Employment, 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 effect to Council Directive No. 94/47/EC1 of 26 October 1994 on the protection of purchasers in respect of certain aspects of contracts relating to the purchase of the right to use immovable properties on a timeshare basis, hereby make the following Regulations:

I, MARY HARNEY, Minister for Enterprise, Trade and Employment, 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 Directive 94/47/EC of the European Parliament and the Council of 26 October 1994, hereby make the following regulations:

1.

(1) These Regulations may be cited as the European Communities (Contracts for Time

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Sharing of Immovable Property — Protection of Purchasers) Regulations, 1997.

(2) These Regulations shall come into operation on 19th May, 1997.

2.

(1) In these Regulations:—

"Annex" means the Annex to the Directive, the relevant provisions of which are set out in the Schedule to these Regulations;

"authorised officer" means a person appointed as an officer under Regulation 15 (1);

"contract" means any contract or group of contracts concluded for at least three years under which, directly or indirectly, on payment of a certain global price, a real property right or any other right relating to the use of one or more immovable properties for a specified or specifiable period of the year, which may not be less than one week, is established or is the subject of a transfer or an undertaking to transfer;

'Directive' means Directive 94/47/EC of the European Parliament and the Council of 26 October 1994;

"the Director" means the Director of Consumer Affairs;

"immovable property" means any building or part of a building for use as accommodation to which the right which is the subject of the contract relates;

'Member State' means a Member State of the European Communities;

"purchaser" means any natural person who, acting in transactions covered by these Regulations, for purposes which may be regarded as outside the person's professional capacity, has the right which is the subject of a contract transferred to the person or for whom the right which is the subject of the contract is established;

"vendor" means any natural or legal person, who, acting in transactions covered by these Regulations and in the person's professional capacity, establishes, transfers or undertakes to transfer the right which is the subject of a contract;

(2) In these Regulations—

(a) a reference to a regulation is a reference to a regulation in these Regulations, unless it is indicated that a reference to some other statutory instrument is intended, and

(b) a reference to a paragraph or subparagraph is a reference to the paragraph or subparagraph of the provision in which the reference occurs, unless it is indicated that a reference to some other provision is intended.



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3. In addition to any other power of function conferred or imposed on him or her by or under these Regulations, the Director has the following functions:

(a) to keep under general review practices or proposed practices in relation to any of the obligations imposed on persons by any provision of these Regulations;

(b) to carry out investigations of any such practices or proposed practices where the Director considers that, in the public interest, such investigations are proper or the Minister requests the Director to carry out such investigations; and

(c) to request persons engaged in or proposing to engage in such practices as are, or are likely to be, contrary to the obligations imposed on them by or under these Regulations to discontinue or refrain from such practices.

4.

(1) A vendor shall provide to any person requesting information on particular immovable property (a real property or any other right relating to the use of which, on a timeshare basis is available for purchase by contract) a document which shall give—

(a) a general description of the property or properties;

(b) at least brief and accurate information on the matters referred to in items (a) to (g), (i) and (l) in the Annex; and

(c) information on how further information about the property or properties may be obtained.

(2) Subject to Regulation 5, the information contained in a document referred to in paragraph (1) shall become terms contractually binding on the parties to any contract entered into in respect of any immovable property to which it relates.

(3) The document shall be drawn up in the language or one of the languages of the Member State in which the person requesting the information contained in the document resides, or in the language or one of the languages of the Member State of which the person is a national, and which is an official language of the European Community.

(4) Any advertising referring to the immovable property shall indicate the possibility of obtaining the document referred to in paragraph (1) and where it may be obtained.

5.

(1) Unless the parties expressly agree otherwise, only changes resulting from

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circumstances beyond the vendor's control may be made to the information provided in the document referred to in Regulation 4(1).

(2) In order to be included in the terms of the contract, any changes to that information shall be communicated to the purchaser before the contract is concluded and shall be expressly mentioned in the contract.

5.

(1) Unless the parties expressly agree otherwise, only changes resulting from circumstances beyond the vendor's control may be made to the information provided in the document referred to in Regulation 4(1).

5.

(2) In order to be included in the terms of the contract, any changes to that information shall be communicated to the purchaser before the contract is concluded and shall be expressly mentioned in the contract.

6.

(1) A contract to which these Regulations apply—

(a) shall be in writing,

(b) must include at least the terms referred to in the Annex,

(c) at the purchaser's option, shall be drawn up in the language or one of the languages of the Member State in which the purchaser resides or in the language or one of the languages of the Member State of which the purchaser is a national and which is an official language of the European Community,

(d) at the purchaser's requirement, in the case of a purchaser residing within the State, shall be drawn up in all cases in at least the English language or the Irish and English languages.", and

(2) The Vendor shall provide the purchaser with a certified translation of the contract in the language or one of the languages of the Member State in which the immovable property is situated, which shall be an official language or official languages of the European Community.



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6.

(1) A contract to which these Regulations apply—

(a) shall be in writing,

(b) must include at least the terms referred to in the Annex,

(c) at the purchaser's option, shall be drawn up in the language or one of the languages of the Member State in which the purchaser resides or in the language or one of the languages of the Member State of which the purchaser is a national and which is an official language of the European Community,

(d) at the purchaser's requirement, in the case of a purchaser residing within the State, shall be drawn up in all cases in at least the English language or the Irish and English languages.", and

6.

(2) The Vendor shall provide the purchaser with a certified translation of the contract in the language or one of the languages of the Member State in which the immovable property is situated, which shall be an official language or official languages of the European Community.

7.

(1) With prejudice to the European Communities (Unfair Terms in Consumer Contracts) Regulations, 1995 (S.I. No. 27 of 1995), the purchaser shall have the right—

(a) to withdraw from the contract, without giving any reason, within 10 days of both parties signing the contract, or of both parties signing a binding preliminary contract, and if the tenth day is a public holiday, the period shall be extended to the first working day after the public holiday,

(b) subject to paragraph (2), to cancel the contract within three months of the date of both parties signing the contract, or of both parties signing a binding preliminary contract, if the contract does not include the information contained in items (a), (b), (c), (d) (l) and (2), (h), (i), (k), (l) and (m) in the Annex, and

(c) if by the end of the three months period provided for in paragraph (b) the purchaser has not exercised the right to cancel and the contract does not include the information referred to in paragraph (b)—to the withdrawal period if 10 days commencing on the day following the end of the three month period.

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(2) Where the information required by paragraph (1) (b) to be provided is provided within the three months referred to in that subparagraph, the withdrawal period referred to in paragraph (1) (a) shall then commence.

7.

(1) With prejudice to the European Communities (Unfair Terms in Consumer Contracts) Regulations, 1995 (S.I. No. 27 of 1995), the purchaser shall have the right—

(a) to withdraw from the contract, without giving any reason, within 10 days of both parties signing the contract, or of both parties signing a binding preliminary contract, and if the tenth day is a public holiday, the period shall be extended to the first working day after the public holiday,

(b) subject to paragraph (2), to cancel the contract within three months of the date of both parties signing the contract, or of both parties signing a binding preliminary contract, if the contract does not include the information contained in items (a), (b), (c), (d) (l) and (2), (h), (i), (k), (l) and (m) in the Annex, and

(c) if by the end of the three months period provided for in paragraph (b) the purchaser has not exercised the right to cancel and the contract does not include the information referred to in paragraph (b)—to the withdrawal period if 10 days commencing on the day following the end of the three month period.

7.

(2) Where the information required by paragraph (1) (b) to be provided is provided within the three months referred to in that subparagraph, the withdrawal period referred to in paragraph (1) (a) shall then commence.

8. If the purchaser intends to exercise the rights provided for in Regulation 7, the person shall, before the expiry of the relevant deadline, notify the person whose name and address appear in the contract for that purpose as required in pursuance of item (1) in the Annex. The deadline shall be deemed to have been met if the notification, if it is in writing, issues before the relevant withdrawal period expires.

9. Where the purchaser exercises the right to cancel the contract as provided for in Regulation 7 (1) (b), the purchaser shall not be required to defray any costs.

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10.

(1) A vendor or a vendor's agent shall not accept any advance payment from a purchaser before the end of the period during which the purchaser may, under Regulation 7(1), withdraw from a contract.

(2) A vendor or a vendor's agent who contravenes paragraph (1) is guilty of an offence.

10.

(1) A vendor or a vendor's agent shall not accept any advance payment from a purchaser before the end of the period during which the purchaser may, under Regulation 7(1), withdraw from a contract.

(2) A vendor or a vendor's agent who contravenes paragraph (1) is guilty of an offence.

11. deleted

12. Any clause of a contract whereby a purchaser renounces the purchaser's freedom or rights under these Regulations or whereby a vendor is freed from the vendor's responsibilities arising from these Regulations shall not be binding on the purchaser, under conditions as set out in sections 55 of the Sale of Goods Act, 1893, (as inserted by section 22 of the Sale of Goods and Supply of Services Act, 1980), and section 40 (1) of the Sale of Goods and Supply of Services Act, 1980.

12A.

Where a purchaser purchases an immovable property which is situated in the territory of a Member State and the applicable law of the contract concerning that property is not in accordance with the Directive, then -

(a) the law of the Member State transposing the Directive in whose territory the property is situated, or

(b) failing that these Regulations,

shall apply.



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13.

(1) Any person, including the Director may, on giving notice of the application to any person against whom the order the subject of the application is sought, apply to the High Court for an order prohibiting the sale or offering for sale of a real property right or other right in immovable property on a timeshare basis.

(2) Where the Director has made a request in pursuance of his or her functions under Regulation 3 (c) and the request has not been complied with, the Director may apply to the High Court for an order prohibiting the sale or offering for sale of a real property right or other right in immovable property on a timeshare basis.

(3) An applicant for an order under paragraph (1), or the Director in the case of an application for an order under paragraph (2) shall not be required to prove—

(a) actual loss or damage, or

(b) recklessness or negligence on the part of the person against whom the order is sought.

(4) In the exercise of its jurisdiction for the purposes of this Regulation, the Court shall take account of all interests involved and, in particular, the public interest.

(5) Where an application has been made to the High Court under paragraph (1) or (2), the Court may—

(a) order a vendor of immovable properties on a timeshare basis to furnish evidence as to the accuracy of any factual claims made during the sale of immovable properties on a timeshare basis, if taking into account the legitimate interests of the vendor and any other party to the proceedings it appears appropriate in the circumstances of the particular case, and

(b) take any factual claim to be inaccurate if the evidence demanded in accordance with subparagraph (a) is not furnished or is considered by the Court to be insufficient.

14. In determining whether or not a document provided under Regulation 4 or contract covering the sale of immovable property on a timeshare basis is adequate, account shall be taken of all its features, and in particular of any information it contains concerning the matters set out in the Annex.

15. deleted

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16.

- (1) A vendor or a vendor's agent who fails to comply with Regulation 4, 5, 6 or 8 is guilty of an offence.
- (2) A person guilty of an offence under these Regulations shall be liable on summary conviction to a fine not exceeding £1,500.
- (3) An offence under these Regulations may be prosecuted summarily by the Director.

SCHEDULE

Annex to the Directive.

Minimum list of items to be included in the document or contract referred to in Regulations 4, 6, 7 and 8.

(a) The identifies and domiciles of the parties, including specific information on the vendor's legal status at the time of the conclusion of the contract and the identity and domicile of the owner.

(b) The exact nature of the right that is the subject of the contract and a clause setting out the conditions governing the exercise of that right within the territory of the Member State(s) in which the property or properties concerned relates is or are situated and,

(1) stating whether those conditions have been fulfilled, or

(2) if those conditions have not been fulfilled, stating what conditions remain to be fulfilled.

(c) When the property has been determined, an accurate description of that property and its location.

(d) Where the immovable property is under construction:

(1) the state of completion,

(2) a reasonable estimate of the deadline for the completion of the immovable property,

(3) where it concerns a specific immovable property, the number of the building permit and the name(s) and full address(es) of the competent authority or authorities,

(4) the state of completion of the services rendering the immovable property fully operational (gas, electricity, water and telephone connections),

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(5) a guarantee regarding completion of the immovable property or a guarantee regarding reimbursement of any payment made if the property is not completed and, where appropriate, the conditions governing the operation of those guarantees.

(e) The services (lighting, water, maintenance, refuse collection) to which the purchaser has or will have access, and on what conditions.

(f) The common facilities, such as swimming pool, sauna, etc., to which the purchaser has or may have access, and, where appropriate, on what conditions.

(g) The principles on the basis of which the maintenance of and repairs to the immovable property and its administration and management will be arranged.

(h) The exact period within which the right which is the subject of the contract may be exercised and, if necessary, its duration; the date on which the purchaser may start to exercise the contractual right.

(i) The price to be paid by the purchaser to exercise the contractual right; an estimate of the amount to be paid by the purchaser for the use of common facilities and services; the basis for the calculation of the amount of charges relating to occupation of the property, the mandatory statutory charges (for example, taxes and fees) and the administrative overheads (for example, management, maintenance and repairs).

(j) A clause stating that acquisition will not result in costs, charges or obligations other than those specified in the contract.

(k) Whether or not it is possible to join a scheme for the exchange or resale of the contractual rights, and any costs involved should an exchange and/or resale scheme be organised by the vendor or by a third party designated by him or her in the contract.

(l) Information on the right to cancel or withdraw from the contract and indication of the person to whom any letter of cancellation, or withdrawal, should be sent, specifying also the arrangements under which such letters may be sent; precise indication of the amount and the nature of the costs which the purchaser will be required to defray pursuant to Regulation 9 if he or she exercises his or her right to withdraw; where appropriate, information on the arrangements for the cancellation of the credit agreement linked to the contract in the event of cancellation of the contract or withdrawal from it.

(m) The date and place of each party's signing of the contract.

GIVEN under my Official Seal, this 13th day of May, 1997.

RICHARD BRUTON, Minister for Enterprise and Employment.

EXPLANATORY NOTE.

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These Regulations give effect to European Parliament and Council Directive No. 94/47/EC on the protection of purchasers in respect of certain aspects of contracts relating to the purchase of the right to use immovable properties on a timeshare basis.

The Regulations provide that consumers may withdraw from the contract within a 10 day cooling off period or, in the absence/non-provision of certain information, within 3 months.

The Regulations also provide that those seeking information on timeshare properties must be supplied with a brochure, giving a description of the property, details on the vendor, location of property, its current status (e.g. under completion), associated services and facilities, the price and right to cancellation. The contract must include the foregoing and other information e.g. right or otherwise of resale or exchange for another property.

Under the Regulations the vendor is prohibited from seeking deposits.