



Isle of Man

Ellan Vannin

AT 6 of 2016

**CONSUMER PROTECTION
(AMENDMENT) ACT 2016**



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Index

Section	Page
PART 1 – INTRODUCTORY	5
1 Short title.....	5
2 Commencement.....	5
3 Expiry.....	5
PART 2 – AMENDMENT OF THE CONSUMER PROTECTION ACT 1991	6
4 Amendment of the Consumer Protection Act 1991.....	6
5 Section 24 repealed – enforcement (Parts II and III of the Consumer Protection Act 1991).....	6
6 Section 26 amended.....	6
7 Section 29 amended.....	6
8 Section 46 amended – contracts to which Part VII applies (cancellation of certain contracts).....	6
9 Section 46A inserted – offence to enter into certain contracts.....	7
10 Section 47 amended – cancellation of contract.....	7
11 Section 47A amended – failure to provide notice of cancellation rights.....	8
12 Section 47B amended – defence of due diligence.....	8
13 Section 47C amended – liability of persons other than the principal offender.....	9
14 New section 47CA – test purchases.....	9
15 Section 47D amended – enforcement powers.....	9
16 Section 47E amended – obstruction of OFT’s officers.....	9
17 Section 52 substituted – no contracting-out.....	9
18 Section 53 amended – interpretation of Part VII of the Consumer Protection Act 1991.....	10
19 Section 57A amended – contracts to which this Part applies.....	12
20 Section 60 amended and associated consequential amendment – interpretation: general.....	12
21 Section 62 amended – self-incrimination and legal professional privilege.....	12

22	New section 62A – application to the Island of certain subordinate legislation and power to amend the Consumer Protection Act 1991.....	12
23	New Schedule 2B inserted – meaning of “excepted contract” for the purposes of section 46.....	13

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CONSUMER PROTECTION (AMENDMENT) ACT 2016

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AN ACT to amend the Consumer Protection Act 1991 in respect of cold calling and the cancellation of certain contracts; and for connected purposes.

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Council and Keys in Tynwald assembled, and by the authority of the same, as follows:—

PART 1 – INTRODUCTORY

1 Short title

The short title of this Act is the Consumer Protection (Amendment) Act 2016.

2 Commencement

- (1) This Act (other than this section and section 1) comes into operation on such day or days as the Isle of Man Office of Fair Trading by order appoints and different days may be appointed for different provisions and for different purposes.
- (2) An order under subsection (1) may make such consequential, incidental, transitional and saving provisions as the Isle of Man Office of Fair Trading considers necessary or expedient.

3 Expiry

- (1) This Act expires —
 - (a) on the day after its promulgation if all of its provisions are in operation on its promulgation; or
 - (b) otherwise, on the day after the last provision is brought into operation.

- (2) The expiry does not —
- (a) revive any enactment amended by this Act as the enactment operated before the amendment commenced;
 - (b) revive anything not in operation or existing when the amendment took effect; or
 - (c) affect the continuing operation of the amendment.

PART 2 – AMENDMENT OF THE CONSUMER PROTECTION ACT 1991

4 Amendment of the Consumer Protection Act 1991

The *Consumer Protection Act 1991* is amended in accordance with sections 5 to 23.

5 Section 24 repealed – enforcement (Parts II and III of the Consumer Protection Act 1991)

Section 24 is repealed.

6 Section 26 amended

In section 26(1) for “a duly authorised officer” substitute **“an officer”**.

7 Section 29 amended

In the heading to section 29 for “authorised officer” substitute **“officer of OFT”**.

8 Section 46 amended – contracts to which Part VII applies (cancellation of certain contracts)

(1) Section 46 is amended as follows.

(2) For subsection (1) substitute —

“(1) This Part applies to a contract (a “**relevant contract**”) between a consumer and a trader which is for the supply of goods or services to the consumer by a trader and which is made —

- (a) during an unsolicited visit by the trader to the consumer’s home or place of work, or to the home of another individual;
- (b) during an excursion organised by the trader away from the trader’s permanent or temporary business premises;

- (c) as the result of a telephone call by or on behalf of the trader to the consumer which the consumer neither initiated nor requested; or
 - (d) after an offer made by the consumer during such a visit, excursion or telephone call.
- (1A) Subsection (1) is subject to the qualifications in subsections (1B) and (1C).
 - (1B) This Part does not apply to an excepted contract.
 - (1C) OFT may by order prescribe —
 - (a) contracts to which this Part does not apply;
 - (b) persons or classes of persons to whose contracts this Part does not apply;
 - (c) other circumstances where this Part is not to apply.

An order under this subsection may amend or repeal any provision of this Part (including a provision contained in Schedule 2B) if it appears to OFT to be necessary or expedient to do so in consequence of or in connection with the provision made by the order. **22**.
- (3) For subsections (2) and (3) substitute —
 - 23** (2) Schedule 2B has effect to define “**excepted contract**” **22**.

9 Section 46A inserted – offence to enter into certain contracts

After section 46 insert —

23 46A Offence to enter into certain contracts

- (1) A person commits an offence if, as a trader, he or she enters into a relevant contract.
- (2) A person guilty of an offence under subsection (1) is liable—
 - (a) on conviction on indictment, to custody for not more than 2 years, a fine or both;
 - (b) on summary conviction, to custody for a term not exceeding 6 months, a fine not exceeding £10,000, or both. **22**.

10 Section 47 amended – cancellation of contract

- (1) Section 47 is amended as follows.
- (2) In subsection (1) —
 - (a) for “No contract to which this Part applies shall be” substitute **23** A relevant contract is not **22**; and

- (b) for “7 days” substitute **14** 14 days **22**.
- (3) For subsection (2) substitute —
- 14** (2) The notice must be dated and delivered to the consumer —
- (a) if the consumer and the trader are in the same place when the contract is made, at the time the contract is made; and
- (b) in any other case within 48 hours of the time at which the contract is made. **22**
- (4) In subsection (3) for the words preceding “a notice in writing” substitute
- 14** If within the period of 14 days —
- (a) following the making of the contract in a case falling within subsection (2)(a); or
- (b) following the delivery of a notice under subsection (1) in a case falling within subsection (2)(b),
- the consumer serves **22**.

11 Section 47A amended – failure to provide notice of cancellation rights

- (1) Section 47A is amended as follows.
- (2) In subsection (1) —
- (a) for “a contract to which this Part applies” substitute **14** a relevant contract **22**; and
- (b) omit “(or, in the case mentioned in subsection 46(1)(c), has failed)”.
- (3) In subsection (2)—
- (a) after paragraph (a) **14** and **22** is inserted; and
- (b) paragraph (c) and the “and” immediately preceding it are repealed.
- (4) For subsection (3) substitute —
- 14** (3) A person guilty of an offence under subsection (1) is liable —
- (a) on conviction on information to custody for a term not exceeding 2 years, a fine or both;
- (b) on summary conviction, to custody for a term not exceeding 6 months, a fine not exceeding £10,000 or both. **22**.
- (5) Subsection (4) is repealed

12 Section 47B amended – defence of due diligence

In section 47B(1) for “section 47A” substitute **14** section 46A or 47A **22**.

13 Section 47C amended – liability of persons other than the principal offender

In section 47C(1) and (2) for “section 47A” substitute **“section 46A or 47A”**.

14 New section 47CA – test purchases

After section 47C insert –

“47CA Test purchases

OFT may make such purchases of goods, and secure the provision of such services, as may appear expedient for the purpose of determining whether or not the provisions of this Part are being complied with. **”**

15 Section 47D amended – enforcement powers

(1) Section 47D is amended as follows

(2) In subsection (1)–

- (a) for “a duly authorised officer” substitute **“an officer”**; and
- (b) for “section 47A” substitute **“section 46A or 47A”**.

(3) After subsection (5) insert –

(6) In this section “document” includes information recorded in any form.

(7) The reference in subsection (1) to production of documents is, in the case of a document which contains information recorded otherwise than in a legible form, a reference to the production of a copy of the information in a legible form. **”**

16 Section 47E amended – obstruction of OFT’s officers

(1) Section 47E is amended as follows

(2) In subsection (1)(c) omit “authorised”.

(3) For the section heading substitute **“Obstruction of OFT’s officers”**.

17 Section 52 substituted – no contracting-out

For section 52 substitute –

“52 No contracting-out

(1) A term contained in a contract is void if, and to the extent that, it purports to disapply this Part (or any of its provisions) if this Part would otherwise apply.

- (2) A term contained in a relevant contract is void if, and to the extent that, it would —
- (a) make the proper law of the contract the law of a place outside the Island; or
 - (b) require any matter to be determined otherwise than by arbitration or by the Manx courts.
- (3) For the purposes of subsection (2)(b) —
- “arbitration” is to be construed in accordance with the *Arbitration Act 1976*; and
- “the Manx courts” means —
- (a) the High Court;
 - (b) the Judicial Committee of the Privy Council; and
 - (c) the Court of Justice of the European Communities. **22**

18 Section 53 amended – interpretation of Part VII of the Consumer Protection Act 1991

- (1) Section 53 is amended as follows.
- (2) In subsection (1)—
- (a) at the beginning of the alphabetical list of definitions insert —
 - 22** “**arbitration**” means arbitration in accordance with the *Arbitration Act 1976*; **22**
 - (b) omit the definition of “charge on land”;
 - (c) for the definition of “consumer” substitute —
 - 22** “**consumer**” means an individual who in making a relevant contract is acting for purposes which can be regarded as outside his or her business; **22**;
 - (d) for the definition of “trader” substitute —
 - 22** “**trader**” means a person who, in making a relevant contract, is acting in his or her business capacity and includes anyone acting in the name or on behalf of the trader; **22**;
 - (e) at the appropriate points in the alphabetical list insert the following definitions —
 - 22** “**relevant contract**” has the meaning given in section 46(1); **22**;
 - 22** “**solicited visit**” has the meaning given in subsection (1A) (and “**unsolicited visit**” shall be construed accordingly); **22**
 - 22** “**telephone call**” includes —
 - (a) any form of voice communication by means of a telecommunication system;

- (b) any form of communication comprising or including the transmission of sound by means of the internet;²²; and

²³ “**unsolicited visit**” see the definition of “**solicited visit**” above.²⁴

- (3) After subsection (1) insert —

²⁵ (1A) A “**solicited visit**” is a visit by a trader, whether or not he or she is the trader who supplies the goods or services, to a consumer’s home or place of work or to the home of another individual, which is made at the express request of the consumer.

But neither of the following is a solicited visit —

- (a) a visit by a trader which is made after he or she, or a person acting in his or her name or on his or her behalf —

- (i) contacts the consumer (otherwise than at the consumer’s express request) and indicates during the course of the contact (either expressly or by implication) that he or she, or the trader in whose name or on whose behalf he or she is acting, is willing to visit the consumer; or

- (ii) visits the consumer (otherwise than at the consumer’s express request) and indicates during the course of that visit (either expressly or by implication) that he or she, or the trader in whose name or on whose behalf he or she is acting, is willing to make a subsequent visit to the consumer;

- (b) a visit during which a contract is made which relates to goods or services which are materially different, either in nature or quantity, from those originally requested by the consumer.

(1B) For the purposes of subsection (1A)(a) a visit is not solicited by virtue of the contact or visit being preceded by advertising material which the trader has delivered, or has caused to be delivered to the —

- (a) consumer’s home;
- (b) consumer’s place of work; or
- (c) home of another individual.

(1C) For the purposes of this section —

“advertising” means any form of representation which is made in connection with a business in order to promote the supply or transfer of a product or service; and

“contact” includes (without limiting the breadth of that word) contacting by telephone or by means of an electronic communication within the meaning of section 12 of the *Electronic Transactions Act 2000*.²⁶

19 Section 57A amended – contracts to which this Part applies

After section 57A(4) insert –

(5) This Part does not apply to a relevant contract made in the circumstances set out in section 46(1)(c). **(2)**

20 Section 60 amended and associated consequential amendment – interpretation: general

(1) Section 60(1) is amended as follows –

(a) omit the definition of “the Board”.

(b) for the definition of “officer” substitute –

“officer” means a person authorised in writing to assist OFT in discharging its functions under this Act; **(2)** and

(c) after that definition insert –

“OFT” means the Isle of Man Office of Fair Trading; **(2)**.

(2) Consequent upon subsection (1)(a) and (c), for “the Board” in every other place where that phrase occurs in the *Consumer Protection Act 1991* substitute **OFT**.

21 Section 62 amended – self-incrimination and legal professional privilege

For the marginal note immediately preceding section 62 substitute –

62 Self-incrimination and legal professional privilege.

22 New section 62A – application to the Island of certain subordinate legislation and power to amend the Consumer Protection Act 1991

After section 62 insert –

62A Power to amend Act and apply certain subordinate legislation of the United Kingdom

(1) OFT may by order –

(a) modify this Act in such manner as appears to it expedient for the purpose of making this Act correspond (subject to such modifications as it considers appropriate) with the corresponding legislation of the United Kingdom;

(b) apply to the Island as part of the law of the Island, subject to such modifications as may be specified in the order, any subordinate legislation of the United Kingdom concerning matters relating to consumer protection.

- (2) An order under subsection (1) may include provision repealing or amending any provision of an enactment which is inconsistent with, or is unnecessary or requires modification in consequence of, the order or any subordinate legislation of the United Kingdom applied to the Island by the order.
- (3) An order under subsection (1)(b) may do all or any of the following –
- (a) specify the modifications subject to which the subordinate legislation of the United Kingdom applies to the Island;
 - (b) set out the subordinate legislation of the United Kingdom applied by the order, incorporating the modifications subject to which it applies to the Island;
 - (c) in the case of an order applying subordinate legislation of the United Kingdom which amends previous subordinate legislation of the United Kingdom applied to the Island, set out the previous legislation so applied as amended, incorporating the modifications subject to which that legislation applies to the Island.
- (4) In this section references to legislation of the United Kingdom includes references to legislation applying in any part of the United Kingdom. **22**.

23 New Schedule 2B inserted – meaning of “excepted contract” for the purposes of section 46

After Schedule 2A (list of terms which may be regarded as unfair) insert –

23 Schedule 2B

MEANING OF “EXCEPTED CONTRACT” FOR THE PURPOSES OF SECTION 46

[SECTION 46(2)]

1 Meaning of “excepted contract”

A contract is an excepted contract if it is within any of the following paragraphs.

2 Land transactions

- (1) A contract is within this paragraph if it is one –
- (a) for the sale or other disposition of land, or any estate or interest in land (including a charge on land);
 - (b) to finance the purchase of land;

- (c) for a bridging loan in connection with the purchase of land; or
- (d) for the construction or extension of a building or other erection on land.

In paragraph (a), “charge on land” includes any security charged on land.

- (2) But a contract is not within this paragraph if it is a contract for the supply of goods and their incorporation in any land or a contract for the repair or improvement of a building or other erection on land, where the contract is not financed by a loan secured by a land mortgage.

3 Deliveries by roundsmen

A contract is within this paragraph if it one for the supply of food, drink or other goods intended for current consumption by use in the consumer’s household and supplied by regular roundsmen.

4 Routine catalogue sales

- (1) A contract is within this paragraph if it is one for the supply of goods or services which satisfies all the conditions in subparagraphs (2) to (4).
- (2) The condition is that the terms of the contract are contained in a trader’s catalogue which is readily available to the consumer to read in the absence of the trader or his representative before the conclusion of the contract.
- (3) The condition is that the parties to the contract intend that continuity of contact will be maintained between the trader or his representative and the consumer in relation to the transaction in question or any subsequent transaction.
- (4) The condition is that both the catalogue and the contract contain or are accompanied by a prominent notice indicating that the consumer has a right —
 - (a) to return to the trader or the trader’s representative goods supplied to the consumer within the period of not less than 14 days from the day on which the goods are received by the consumer; and
 - (b) otherwise to cancel the contract within that period without incurring any liability, other than any liability which may arise from the failure of the consumer to take reasonable care of the goods while they are in the consumer’s possession.

5 Insurance contracts

A contract is within this paragraph if it is a contract of insurance.

6 Low value contracts

A contract is within this paragraph if it is one under which the total payments to be made by the consumer do not exceed such amount as may be prescribed. .