



Department  
for Business  
Innovation & Skills

**BIS GUIDANCE ON:**

**The Consumer Protection  
(Payment Surcharges)  
Regulations 2012**

MARCH 2013

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# GUIDANCE ON THE CONSUMER RIGHTS (PAYMENT SURCHARGES) REGULATIONS 2012

## Introduction

This note provides an outline of the Consumer Rights (Payment Surcharges) Regulations 2012<sup>1</sup> (hereinafter “the Regulations”) and their requirements. You should not treat this guidance as a substitute for the Regulations themselves, which are available from <http://www.legislation.gov.uk/uksi/2012/3110/made> (please note that the site does not always incorporate amendments to legislation). The Department hopes you will find the guidance helpful, but you should bear in mind that whether there has been a breach of the Regulations in any particular case is a matter for a court to decide and the guidance will not bind a court. If in doubt you should seek your own legal advice.

Businesses sometimes add surcharges to the price of goods or services when the consumer chooses to pay by a particular method, for example by using a credit or debit card. The Regulations prohibit traders in England, Wales, Scotland and Northern Ireland from charging consumers more than the cost borne by the trader for the use of a given means of payment. In other words, they ban excessive payment surcharges being charged to consumers whilst allowing traders to recover the costs of processing payments.

The policy objectives are to:-

- Increase price transparency, enhancing consumers’ ability to choose effectively between different products and services; and
- Make payment surcharges cost reflective, steering consumers to the most efficient payment method

- and thereby to remove barriers to effective competition both for the products and services being purchased and between payment methods<sup>2</sup>.

## Summary of the Regulations

- The Regulations ban traders from charging consumers more than the cost borne to them for accepting a given means of payment.
- The Regulations only apply to contracts concluded between traders and consumers.
- The Regulations apply to contracts however they are concluded - online, in a shop etc.
- Certain business sectors are excluded from the Regulations.

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<sup>1</sup> SI 2012/3110.

<sup>2</sup> In conjunction with the Consumer Protection from Unfair Trading Regulations 2008 which ensure that payment surcharges are fair and transparent to consumers.

- Micro-businesses and start-up companies are also excluded from the Regulations until 13 June 2014.
- Enforcers have the power to seek civil injunctions against traders who breach the Regulations and consumers are entitled to receive a refund of the excess surcharge they have paid and can if necessary bring a private claim to recover any such excess surcharge.

## Common questions on payment surcharges and the Regulations

### **Q. Will all payment surcharges be prohibited?**

No. Traders will – if they wish – still be able to require payment surcharges but the amount will be limited to the costs they bear for accepting payments by the particular method of payment. So, if, for example, there is a surcharge for payment by credit card but not for other means of payment such as cash, the surcharge can be no higher than the additional costs the trader incurs in processing credit card payments.

### **Q. What about ‘administration charges’ or ‘booking fees’?**

It depends on whether the charge or fee is dependent on the means of payment – and it doesn’t matter what the additional charges or fees are called.

If an additional payment varies with the method of payment, the amount can only cover any additional cost the trader has to pay for accepting that means of payment.

But if there is the same charge no matter what the payment method is – or if the trader only allows one method of payment, such as payment by credit card, and imposes an additional charge – then the amount is not restricted by the Regulations. The charge would be part of the overall headline payment, and consumers would need to compare the overall price with what another trader charges.

### **Q. What costs can a trader legitimately recover through a payment surcharge?**

Only the particular costs to a trader that are exclusively attributable to using a particular means of payment. Operational costs can only be recovered if they can be separately identified as arising from activities dedicated exclusively to particular payments methods.

In practice, the size and nature of these costs will vary with the type of business concerned, the particular means of payment and the terms of any relevant contractual arrangements – such as with acquiring banks in the case of credit cards. It will be for each trader who wishes to impose payment surcharges to assess the costs it incurs which are exclusively attributable to using a particular payment means and to ensure that the payment surcharge does not exceed those costs.

### **Q. Can a trader apply a payment surcharge on the basis of the average cost incurred in processing payment by a particular means?**

Yes.

### **Q. Do the Regulations apply to all transactions?**

No. They only apply to contracts between a ‘trader’ and a ‘consumer’ – and a few sectors have been excluded, as explained below. As well as a commercial company the trader can

be a public body or a charity provided they are supplying goods and services to consumers on a contractual basis. For example, car parking offered by a local authority owned car park.

Some public bodies add payment surcharges when they are carrying out other functions. An example is the Driver and Vehicle Licensing Agency (DVLA) which issues tax discs and accepts credit card payments subject to a fee.

Such an arrangement would not be subject to the Regulations. However, there is HM Treasury guidance to public authorities on fees and charges under which the normal rule is that charges should reflect costs. The DVLA, for example, does not profit from credit card fees.

**Q. Does it matter whether I bought the goods in a shop or online?**

No. The Regulations apply regardless of the method of sale. They cover contracts concluded on business premises, away from business premises and at a distance, such as via the internet or a telephone.

**Q. I'm a small firm. Do the Regulations apply to me?**

**Q. I'm buying from a small firm. Is the firm able to charge me a payment surcharge which exceeds its processing costs?**

The Regulations do not apply to existing micro-businesses and to new businesses until 12 June 2014. After then they apply in the same way as they apply to other traders.

Broadly, a micro-business is one with fewer than 10 employees (calculated on a full time equivalent basis) on 6 April 2013 and thereafter. A new business is one which a person, or a number of persons or an unincorporated association, begin to carry on between then and 12 June 2014.

**Q. I believe I may have been charged an excessive payment surcharge. What do I do?**

In the first instance you may take it up with the trader concerned to seek the refund of the charge that you are entitled to. If you continue to be dissatisfied you may take legal action to obtain the refund, or you may complain to your local authority's trading standards officers or, if appropriate, the Department for Enterprise, Trade and Investment in Northern Ireland.

## Background

### The Consumer Rights Directive

The Regulations implement Article 19 of the European Union's Consumer Rights Directive<sup>3</sup> of 25 October 2011 ('the Directive'). The Directive itself aims to simplify consumer rights in certain important areas – mostly relating to buying and selling.

The Regulations (which come into force on 6 April 2013 and apply to contracts entered into on or after that date) implement this provision early: the UK is required to implement the Directive by 13 June 2014.

Article 19 reads:

'Member States shall prohibit traders from charging consumers, in respect of the use of a given means of payment, fees that exceed the cost borne by the trader for the use of such means.'

The Article should be read alongside other provisions of the Directive which cover such matters as the definitions of 'consumer' and 'trader' and the contracts which are within its scope. Except where specifically noted in this guidance (in respect of cases where it is open to us to vary the Directive's requirements), the Regulations closely follow the approach and the wording of the corresponding provisions in the Directive. As legislation which implements EU requirements, the Regulations ought to be interpreted in accordance with the provisions and purposes of the Directive and the Government's approach is intended to assist in this task.

Other advantages of this approach are:

- it is consistent with the Government's presumption that a 'copy out' approach should be used, in order to reduce the risk of gold plating;
- it also reduces the opposite risk of under-implementation of the Directive;
- it achieves relative brevity and simplicity, and is more likely to be 'proofed' against future changes, including changes in UK legislation and in technology;
- similarly, there is less chance of future European case law cutting across the UK's interpretation of scope.

### Interaction with other consumer legislation

The Consumer Protection from Unfair Trading Regulations 2008<sup>4</sup> (which implement the Unfair Commercial Practices Directive (2005/29/EC)) – the 'CPRs' – are relevant to the transparency and presentation of payment surcharges<sup>5</sup>.

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<sup>3</sup> Directive 2011/83/EU of the European Parliament and of the Council on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council (OJ L 304, 22.11.2011, p. 64.).

<sup>4</sup> <http://www.legislation.gov.uk/ukxi/2008/1277/contents/made>

<sup>5</sup> For guidance on how to comply with the CPRs, please see: [http://www.of.gov.uk/shared\\_of/business\\_leaflets/cpregs/oft1008.pdf](http://www.of.gov.uk/shared_of/business_leaflets/cpregs/oft1008.pdf)

Broadly, the CPRs prohibit unfair commercial practices of traders which affect the transactional decision making of consumers. A transactional decision can include decisions other than purchase decisions (for example a decision whether to make further enquiries about a product). Where a trader misleads consumers about a payment surcharge, for example because the overall presentation of the price of a product does not make clear that there is a surcharge to be added, this may breach regulation 5 or 6 of the CPRs (misleading actions and omissions). Where a trader omits or hides information about a payment surcharge, this may breach regulation 6 of the CPRs (misleading omissions).

The CPRs have no effect on the amount of a payment surcharge.

## Scope of the Regulations

- The Regulations apply only to contracts concluded between a ‘consumer’ and a ‘trader’.
- A consumer is a person who enters the contract for purposes which are wholly or mainly outside the person’s trade, business, craft or profession<sup>6</sup>.
- A trader is a person acting (personally or through an agent) for purposes relating to that person’s trade, business, craft or profession<sup>7</sup>.
- Business-to-business contracts are not therefore subject to the Regulations.
- The Regulations apply to contracts (unless the contract is an excluded one) to the extent that they are a sales or a service contract<sup>8</sup>, or a contract for the supply of water, gas, electricity, district heating or digital content.
- Excluded contracts are specifically defined: they concern certain contracts in the spheres of social services, health services, gambling, banking and certain other financial services, immovable property and rental of residential property, timeshare, foodstuffs and certain other goods for household consumption in specified circumstances, as well as ones concluded by automated vending machines or automated commercial services or with a telecommunications operator for use of a telephone, or for the use of a single telephone, internet or fax connection, or under which goods are sold by way of execution or otherwise by authority of law.

### Business to consumer contracts

The definitions of consumer and trader set out the essential position of the parties where the prohibition on excessive charges applies. One noteworthy consequence is that third sector and public bodies providing goods and services to consumers on a contractual basis are covered by the Regulations. For example, services, such as use of local authority sports facilities, where supplied on a contractual basis, would fall within the prohibition.

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<sup>6</sup> Regulation 2.

<sup>7</sup> Regulation 2.

<sup>8</sup> These are contracts where the trader transfers or agrees to transfer the ownership of goods to a consumer or supplies or agrees to supply a service to a consumer and in both cases the consumer pays or agrees to pay the price.

The contract between trader and consumer must be a sales or services contract, or a contract for the supply of water, gas, electricity, district heating or digital content (all as further defined in the Regulations)<sup>9</sup>.

The Regulations also apply regardless of the method of sale. For example, contracts concluded on business premises (e.g. a shop) or away from business premises (off-premises, e.g. at the consumer's home) or at a distance (e.g. mail order, internet, telephone or fax).

## Excluded contracts

The Regulations do not apply<sup>10</sup> to certain excluded contracts which are listed below. With two exceptions, this follows the restrictions on the scope of the Directive in Article 3(3) of the Directive. The exceptions are that package travel falling within the scope of the Package Travel Directive 90/314/EEC<sup>11</sup> and certain contracts established by a public office-holder<sup>12</sup> are not excluded. The Government has not taken up the option in the Directive to exclude low-value, off-premises transactions.

### **(a) Contracts for social services including social housing, childcare and support of families and persons permanently or temporarily in need, including long-term care.**

This should be read with the relatively long and detailed Recital (29) of the Directive. This states among other things that social services include, on the one hand, services for particularly disadvantaged or low income persons as well as services for persons and families in need of assistance in carrying out routine, everyday tasks and, on the other hand, services for all people who have a special need for assistance, support, protection or encouragement in a specific life phase.

The Department takes from the Recital that social services:

- cover, amongst other things, services for children and youth, assistance services for families, single parents and older persons, and services for migrants;
- cover both short-term and long-term care services, for instance services provided by home care services or provided in assisted living facilities and residential homes or housing (nursing homes);
- include not only those provided by the State at a national, regional or local level by providers mandated by the State or by charities recognised by the State but also those provided by private operators;
- are to be interpreted not only as covering such services provided by the state but also those provided by charities and private operators.

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<sup>9</sup> Regulation 3.

<sup>10</sup> Regulation 5.

<sup>11</sup> Implemented in the UK by the Package Travel, Package Holidays and Package Tours Regulations 1992 (SI 1992/3288).

<sup>12</sup> This exclusion is targeted primarily at contracts established by notaries in civil law jurisdictions. It is not possible for contracts to be concluded in the UK common law jurisdictions and so there is no need for the exclusion in the Regulations.



**(b) Contracts for health services provided, whether or not via healthcare facilities, by health professionals to patients to assess, maintain or restore their state of health, including the prescription, dispensation and provision of medicinal products and medical devices**

Health professionals include doctors of medicine, nurses responsible for general care, dentists, midwives and pharmacists, as recognised by the European Directive on the recognition of professional qualifications<sup>13</sup>. As indicated by Recital (30), the rationale for their exclusion is that the protections of the Directive are not appropriate where healthcare is provided by regulated health professionals.

**(c) Contracts for gambling within the meaning of the Gambling Act 2005**

This includes contracts for betting, gaming and participating in a lottery and playing a game of chance for money.

**(d) Contracts for services of a banking, credit, insurance, personal pension, investment or payment nature**

This provision follows the definition in Article 2(12) of the Directive which is the same as that in the Unfair Commercial Practices Directive and Directive 2002/65/EC on the distance selling of financial services. Against this background, in the Department's view, this exclusion covers (amongst other things) withdrawals from a cashpoint and foreign exchange contracts.

**(e) Contracts for the creation of immovable property or of rights in immovable property**

Recital (26) clarifies that the excluded contracts "include for instance sales of immovable property still to be developed and hire-purchase".

**(f) Contracts for rental of accommodation for residential purposes**

Contracts for rental of non-residential purposes (for example a contract to rent a garage) are covered by the exclusion (as Recital (26) confirms) and hence would not fall within the Regulations' scope.

**(g) Contracts for the construction of new buildings, or the construction of substantially new buildings by the conversion of existing buildings**

Recital (26) clarifies that a substantial conversion is one comparable to the construction of a new building, for example where only the façade of an old building is retained. It also makes clear that contracts related to the construction of annexes to buildings (for example a garage or a veranda) and those related to repair and renovation of buildings other than substantial conversion, are not within the exclusion i.e. they fall within the scope of the Regulations.

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<sup>13</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:255:0022:0142:en:PDF>

**(h) Contracts which fall within the scope of Directive 2008/122/EC of the European Parliament and of the Council on the protection of consumers in respect of certain aspects of timeshare, long-term holiday product, resale and exchange contracts.**

This Directive<sup>14</sup> is implemented in the UK by the Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010<sup>15</sup> and hence the exclusion covers the same contracts that are regulated under those Regulations.

**(i) Contracts for the supply of foodstuffs, beverages or other goods intended for current consumption in the household, and which are supplied by a trader on frequent and regular rounds to the consumer's home, residence or workplace**

This exclusion clearly covers the regular round of a traditional milkman or a less traditional organic fruit and vegetable box delivery.

This exclusion does not generally cover a home delivery from a supermarket, as such deliveries are not generally made on frequent and regular rounds in a particular neighbourhood.

**(j) Contracts concluded by means of automatic vending machines or automated commercial premises**

Examples of contracts concluded by vending machines or automated commercial premises would include purchasing car parking tickets or train tickets at a machine.

**(k) Contracts concluded with a telecommunications operator through a public telephone for the use of the telephone**

**(l) Contracts concluded for the use of one single connection, by telephone, internet or fax, established by a consumer**

These exclusions cover, for example, a contract for an internet connection in an internet café.

Where the consumer entered into an ongoing contract, for example for a landline phone in the home, the Regulations would apply.

**(m) Contracts by way of execution or otherwise by authority of law.**

This exclusion covers, for example, contracts for the sale of goods made pursuant to a court order of execution, to enforce recovery of a debt.

## Micro-business exemption

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<sup>14</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:033:0010:0030:EN:PDF>

<sup>15</sup> <http://www.legislation.gov.uk/ukxi/2010/2960/contents/made>

The Regulations do not apply to existing micro-businesses and new businesses until 12 June 2014<sup>16</sup>. Further details on what businesses are exempt from the ban can be found in the Schedule to the Regulations. Broadly:

- A micro-business is a business that has fewer than 10 employees (calculated on a full time equivalent basis) immediately before the regulations come into force on 6 April 2013.
- Subject to certain transitional arrangements, the exemption ends if the business ceases to be a micro-business.
- A new business is a business which a person, or a number of persons or an unincorporated association, begin to carry on during the period beginning with 6 April and ending with 12 June 2014.

## The prohibition of excessive payment surcharges

Regulation 4 sets out the prohibition on above cost payment surcharges:

A trader must not charge consumers, in respect of a given means of payment, fees that exceed the costs borne by the trader for the use of that means.

The clear policy objective is that payment surcharges should not be used by traders as a means to generate profit or margin. Therefore, traders should not require consumers to pay a surcharge for payment by a particular means which exceeds the cost which the trader incurs for using that means. Underlying this is a principle that the trader's profit or margin should be earned through the headline price of goods or services.

Neither the Regulations nor the Directive define or elaborate upon what are a 'means of payment', a 'fee' or the 'costs borne by the trader'. It is clear that the terms mean the same in the Regulations and the Directive. As noted above, the Regulations closely follow the approach and often the precise wording of the corresponding provisions in the Directive and ought to be interpreted in accordance with it. Like Article 19, regulation 4 reflects the broad principle of the prohibition, without being prescriptive about particular types of costs. In practice there is large variation both in the different means of payment and, more particularly, in the types of costs which the trader will incur in using the various means of payment and which set the maximum amount of the surcharge to be paid by the consumer. Traders will need to set any surcharge based on their particular circumstances, and will be able to include all genuine relevant costs.

### Means of payment

Regulation 4 does not refer to any particular method of payment such as credit or debit cards. Therefore the provision applies to all means of payment; and a 'given' means of payment would be a means that a trader decides to accept in any particular case.

Means of payment clearly include (but are not limited to) cash, cheques, credit cards, debit cards, prepaid cards, charge cards, credit transfers and direct debits. As the technology relating to payments develops, any new methods of paying will also be subject to the prohibition.

Charges for a means of payment under regulation 4 include charges for multiple means of payment (e.g. cheque or payment card), as long as there is at least one means of payment for which there is not such a charge. A charge for all means of payment accepted by a trader does not fall under regulation 4.

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<sup>16</sup> Regulation 6.

## Fee

A charge (or 'fee') to a consumer which does not vary depending on the method of payment will not be subject to the prohibition. These charges are sometimes described as processing fees or booking fees or administration charges. However, charges which do vary depending on the method of payment (including charges which can be avoided by the consumer using a particular means of payment) will be subject to the prohibition. That is the case even if the payment surcharge is described by the trader as a processing fee, booking fee or administration charge.

Where such a fee or charge is payable in all cases, but the amount varies according to the use of a particular means of payment, the prohibition would apply to the part of the fee or charge that is varied.

'Fees' should, in the Department's view, include a payment surcharge payable other than in cash. This would be very unusual, but it is possible for example that a payment surcharge might be discharged using a voucher. The prohibition on an above cost surcharge would apply in the normal way.

## The costs borne by the trader

Although the principle that a payment surcharge must not exceed the cost to the trader of using the relevant means of payment is clear, the Directive does not stipulate what costs can be taken into account when calculating the 'cost borne by the trader'. The Regulations take the same approach, based on a copy-out.

In practice, the size and nature of those costs will vary with the type of business concerned, the particular means of payment and the contractual arrangements on which the business relies to use those means. In the case of payment card transactions, in respect of which payment surcharges are most likely to be levied, such costs may differ for different types of card transaction and may vary considerably with the turnover, business sector and other characteristics of the trader. In many cases larger businesses have sufficient bargaining power to negotiate substantially lower charges from acquiring banks and intermediaries (such as payment service providers); whilst small and medium sized traders may be charged fees for the installation and rental of payment terminals and other equipment.

The Department considers that under the Regulations and the Directive only the particular direct costs to a trader that are exclusively attributable to using a particular means of payment could be recoverable through a payment surcharge. A cost which is too indirect, such that an equivalent cost would have been incurred anyway for other means of payment, cannot properly be characterised as a cost 'for' the use of the relevant means of payment.

The Department does not consider that indirect costs, such as general administrative overheads or staff training, should be included in the calculation of costs borne by the trader. Indirect costs should be reflected in the headline price of goods and services, as they ought to be for any general cost categories. Operating costs could be included only where they can be shown to result directly from processing the method of payments; in such cases, the appropriate cost would likely be the marginal cost.

For card payments the attributable costs could include direct costs such as:

- The Merchant Service Charge, which traders pay to their acquiring bank.
- IT and equipment costs used for particular means of payment such as card terminals, for example point of sale devices.
- Risk management - active fraud detection and prevention measures which vary depending on their business and whether transactions take place face to face or remotely.
- Processing fees such as charges for reversing or refunding a payment.

- Any operational costs that can be separately identified as internal administrative costs arising from activities dedicated exclusively to card payments. For example, where traders opt to buy in services from intermediaries who provide equipment, fraud detection and processing services (especially online payments) for card payments, they should be able to recover the costs they incur through a payment surcharge.

In many cases, these costs could be evidenced by invoices from equipment and service providers.

Indirect costs which cannot be separately identified as being attributable to the use of cards should not be included; this would most likely include such things as website management, staff training, utility bills and other general overheads that would be incurred even if card payments were not taken.

### Aggregation and averaging of costs

Traders will need to identify the specific costs attributable to specific types of payments, if they wish to pass these on to consumers, in order to comply with the prohibition in the Regulations.

The Department considers that in principle the costs could legitimately be assessed either 'per transaction' or on an aggregate basis for all transactions using a particular means of payment and averaged out across transactions. In most cases, it will be far more practicable for a trader to categorise<sup>17</sup> a given means of payment (such as credit cards), to measure the costs which it incurs for accepting that means and then to allocate them to each transaction on an averaged basis. The trader may need to make a forecast (which would need to be reasonable) of the volume of transactions it will undertake in a given period. Depending on the circumstances it may then be appropriate for the trader to make a surcharge on a flat fee basis, or on a basis which applies a percentage to the headline price.

### Discounts for particular means of payment

Discounts from the headline price for the use of a particular means of payment (for example for payment by direct debit) are common in certain sectors (for example in the energy sector) and generally popular with traders and consumers. They are generally efficient and the Government has no wish to discourage discounts of this nature. Traders generate cost savings by collecting regular payments by direct debit and the Government believes it is legitimate. If the discount offered for a particular means of payment reflects the cost savings for the trader, and the additional amounts payable by consumers using other means of payment reflect the additional cost borne by the trader for the use of these other means, this would not be in breach of the Regulations or Article 19.

## Enforcement

The Directive requires that Member States effectively enforce the provisions contained within the Directive. This includes a requirement to provide effective and proportionate penalties to deter any breaches of the provisions. There are provisions for enforcing the Regulations in the Enterprise Act 2002 (Part 8 Domestic Infringements) Order 2013 as well as in the Regulations themselves.

### The Enterprise Act 2002 (Part 8 Domestic Infringements) Order 2013

<sup>17</sup> The Regulations and Article 19 do not specifically limit the trader's discretion to choose how precisely it wishes to categorise different means of payment for the purposes of imposing a payment surcharge.

Part 8 of the Enterprise Act 2002 provides a framework for the enforcement of certain consumer legislation. The Regulations are listed as a piece of consumer legislation that can be enforced under Part 8 by virtue of the Enterprise Act 2002 (Part 8 Domestic Infringements) Order 2013.

Part 8 gives specified enforcers the power to apply to the courts for enforcement orders if they become aware that the trader has engaged, is engaging or is likely to engage in conduct which constitutes an infringement. The enforcers may act if the infringement harms the collective interests of consumers.

If the enforcer successfully establishes collective harm and a breach of the payment surcharges provision, the court can grant an enforcement order. This can require (among other things) that the trader does not continue or repeat the conduct. These orders are injunctive in nature and prohibit future breaches of the provision rather than penalising previous breaches.

The enforcers with power to enforce the regulations under Part 8 include the Office of Fair Trading, trading standards officers and the Department for Enterprise, Trade and Investment in Northern Ireland, as well as certain sector regulators in their specified sectors.

### Civil injunctions under the Regulations

In addition to the general consumer enforcement powers provided for by Part 8 of the Enterprise Act, the Regulations themselves also provide for a more specific regime of injunctions or in Scotland, interdicts or orders for specific implement, to provide enforcement<sup>18</sup>.

In contrast to enforcement under Part 8 of the Enterprise Act, enforcers under the specific regime are not required to prove collective harm to consumers before they apply for an enforcement order. Also unlike Part 8, an order may only be granted where an infringement has actually taken place.

An injunction under this regime would simply require that the trader complies with the Regulations.

The enforcement duty under this regime is limited to Trading Standards and the Department for Enterprise, Trade and Investment in Northern Ireland. These enforcers would have a duty to consider complaints made by consumers within the scope of their respective roles. These complaints could, in suitable cases, form the basis for an application for an injunction or, in Scotland, an order for interdict/implement. All other enforcers would only have the power to enforce under Part 8, as set out above.

### A Consumer's right of redress

The Regulations also provide for consumers to be able to seek redress privately, without recourse being needed to public enforcement, where a contract subjects them to an above cost payment surcharge.

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<sup>18</sup> Regulations 7, 8 and 9.

Regulation 10 provides that where a trader charges a fee in contravention of the prohibition against excess payment surcharges, payment of the fee is unenforceable or, if it has already been paid, the fee is refundable. The consumer may enforce these rights, if necessary, in civil proceedings before the courts.

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