

Subsidiary Legislation made under s.8.

Geo-Blocking Regulations 2018

LN.2018/270

Commencement

3.12.2018

Transposing:

Regulation (EU) 2018/302

ARRANGEMENT OF REGULATIONS

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In exercise of the powers conferred on him by section 8 of the Consumer Protection (EU Cooperation) Act 2007 as read with section 23(g)(i) of the Interpretation and General Clauses Act and all other enabling powers, and in order to implement Regulation (EU) 2018/302 of the European Parliament and of the Council of 28 February 2018 on addressing unjustified geo-blocking and other forms of discrimination based on customers' nationality, place of residence or place of establishment within the internal market and amending Regulations (EC) No 2006/2004 and (EU) 2017/2394 and Directive 2009/22/EC, the Minister has made the following Regulations—

Title.

1. These Regulations may be cited as the Geo-Blocking Regulations 2018.

Commencement.

2. These Regulations come into operation on 3 December 2018.

Interpretation.

- 3.(1) In these Regulations, unless the context otherwise requires—

“Article” means an article of the Geo-Blocking Regulation;

“Geo-Blocking Regulation” means Regulation (EU) 2018/302 of the European Parliament and of the Council of 28 February 2018 on addressing unjustified geo-blocking and other forms of discrimination based on customers' nationality, place of residence or place of establishment within the internal market and amending Regulations (EC) No 2006/2004 and (EU) 2017/2394 and Directive 2009/22/EC;

“electronic address” means any number or address used for the purposes of sending or receiving documents or information by electronic means.

“Enforcement body” means the body named in regulation 4 for the purposes of enforcing the Geo-blocking regulation.

- (2) Any term used but not defined in these Regulations shall be interpreted in accordance with the provisions of the Geo-Blocking Regulation.

Enforcement body.

- 4.(1) The Office of Fair Trading is designated as the enforcement body in Gibraltar for the purposes of Article 7 of the Geo-Blocking Regulation.

(2) The enforcement body may exercise the powers under section 18 of the Financial Services (Distance Marketing) Act 2006 for the purposes of implementing the Geo-Blocking Regulation.

Assistance to consumers.

5. The Office of Fair Trading is designated as the body responsible for the purposes of Article 8 of the Geo-Blocking Regulation.

Enforcement notices.

6.(1) The enforcement body may issue an enforcement notice to a trader requiring the trader to take action (including to stop doing anything) in either or both of the following situations—

- (a) the enforcement body is of the opinion that the trader has failed or is failing to comply with the Geo-Blocking Regulation; or
- (b) the enforcement body is of the opinion that the trader is likely to fail to comply with the Geo-Blocking Regulation.

(2) The action which the enforcement body may require the trader to take under subregulation (1) is either one or both of the following—

- (a) action to secure compliance with the Geo-Blocking Regulation; or
- (b) action to remove or mitigate any risk of non-compliance with the Geo-Blocking Regulation.

(3) An enforcement notice must state—

- (a) the matters constituting the failure or likelihood of failure;
- (b) the action which must be taken under subregulation (2);
- (c) the time period within which the action must be taken;
- (d) in general terms, that there is a right of appeal against the enforcement notice and how that right can be exercised; and
- (e) the consequences of failing to comply with the enforcement notice.

(4) The enforcement body may withdraw the enforcement notice by informing the trader in writing.

Civil penalties.

7.(1) Subject to regulation 8, the enforcement body may issue a civil penalty notice to a trader requiring the trader to pay a civil penalty when the enforcement body is satisfied, on the balance of probabilities, that the trader has failed or is failing to comply with all or part of an enforcement notice issued under regulation 6 or information notice issued under regulation 11.

(2) The enforcement body may determine the amount of the civil penalty but the amount must not exceed £10,000.

(3) The civil penalty notice must state-

- (a) the matters constituting the failure;
- (b) the amount of the civil penalty;
- (c) how payment must be made;
- (d) the period within which payment must be made, which must not be less than the period of 28 days beginning with the day on which the civil penalty notice is issued;
- (e) in general terms, that there is a right to appeal against the civil penalty notice and how that right can be exercised; and
- (f) the consequences of failing to comply with the civil penalty notice.

(4) Following the payment period, the enforcement body may recover the civil penalty–

- (a) as a civil debt; or
- (b) on the order of the court, as if payable under a court order.

(5) The enforcement body may withdraw the civil penalty notice by informing the trader in writing.

(6) A trader may appeal to the magistrates' court against the civil penalty notice on one or more of the following grounds-

- (a) that the decision was based on an error of fact;
- (b) that the decision was wrong in law;

- (c) that the amount of the civil penalty is unreasonable;
- (d) that the decision was unreasonable for any other reason; or
- (e) any other reason.

Notice of intent.

8.(1) The enforcement body must not issue a civil penalty notice under regulation 7 to a trader unless-

- (a) the enforcement body has issued a notice of intent to the trader stating that it proposes to issue a civil penalty notice to the trader; and
- (b) the period for representations referred to in subregulation (5) has expired.

(2) The notice of intent must state-

- (a) the matters constituting the failure to comply with the relevant law in question or the enforcement notice or information notice;
- (b) the maximum amount of the civil penalty issued under regulation 7;
- (c) that the civil penalty will be payable within a period specified in the civil penalty notice, which must not be less than 28 days beginning with the day on which the civil penalty notice is issued;
- (d) in general terms, that there is a right to make representations against the notice of intent and how that right can be exercised; and
- (e) that the enforcement body has power to vary the amount of civil penalty referred to in the notice.

(3) The trader may make representations about the proposal to issue a civil penalty notice to the enforcement body.

(4) The right to make representations includes, but is not limited to, making representations about the amount of civil penalty which the enforcement body has power to impose under regulation 7(2).

(5) The representations must be-

- (a) in writing; and
- (b) given to the enforcement body within a period of 28 days beginning with the day on which the notice of intent was issued.

(6) The enforcement body may withdraw the notice of intent by informing the trader in writing.

Further provision about appeals.

9.(1) Following an appeal under regulation 7(6), the magistrates' court may-

- (a) cancel a notice;
- (b) vary a notice;
- (c) confirm a notice; or
- (d) remit any decision relating to the notice to the enforcement body.

(2) A civil penalty notice which is the subject of an appeal is suspended pending the decision of the court.

Multiple enforcement.

10.(1) The enforcement body may issue (whether or not at the same time)-

- (a) an enforcement notice; and
- (b) a civil penalty notice,

to the same trader in respect of the same failure to comply with a relevant law.

(2) Subject to subregulation (3), the enforcement body must not issue a civil penalty notice under regulation 7 to the same trader more than once for the same failure.

(3) If a civil penalty notice is issued to a trader under regulation 7 but subsequently withdrawn, the enforcement body may issue a further civil penalty notice to the trader for the failure described in the notice.

Information notices.

11.(1) The enforcement body may issue an information notice to a trader requiring the trader to give information to the enforcement body.

(2) Before issuing an information notice, the enforcement body must be of the opinion that it requires the information described in the information notice to perform any one or more of the enforcement body's functions by virtue of these Regulations.

(3) An information notice must state-

- (a) the information which is required by the enforcement body;
- (b) the time period within which the information must be given to the enforcement body; and
- (c) in general terms, the consequences of failing to comply with the information notice.

(4) The enforcement body may require the information to be given in a particular form (for example in an electronic form) by stating this and describing the form in the information notice.

(5) The enforcement body may withdraw the information notice by informing the trader in writing.

Further provision about issuing notices.

12.(1) This regulation applies to the issuing of notices under regulations 6, 7, 8 and 11.

(2) A notice takes effect when issued.

(3) A notice may be issued to a trader by-

- (a) handing it to the trader;
- (b) leaving it at the trader's proper address;
- (c) sending it by post to the trader at that address; or
- (d) sending it to the trader by electronic means in accordance with subregulation (7).

(4) A notice to a body corporate may be issued to the secretary or clerk of that body.

(5) For the purposes of this regulation, which relates to service of documents by post, the proper address of a trader is–

- (a) in the case of a body corporate or its secretary or clerk, the address of the body's registered or principal office; or
- (b) in any other case, the trader's last known address.

(6) If a trader has specified an address in Gibraltar, other than the trader's proper address within the meaning of subregulation (5), as the one at which the trader or someone on the trader's behalf will accept notices of the same description as a notice under regulation 6, 7, 8 or 11, that address is also treated for the purposes of this regulation as the trader's proper address.

(7) A notice may be issued to a trader by electronic means only if–

- (a) the trader has indicated that notices of the same description as a notice under regulation 6, 7, 8 or 11 (as the case may be) may be issued to the trader by being sent to an electronic address and in an electronic form specified for that purpose; and
- (b) the notice is sent to that address in that form.

(8) A notice issued to a trader by electronic means is, unless the contrary is proved, to be treated as having been issued at 9 am on the working day immediately following the day on which it was sent.

Offences.

13. A trader commits an offence if the trader–

- (a) gives the enforcement body information which–
 - (i) the trader knows is false or misleading; and
 - (ii) is given in connection with the performance of the enforcement body's functions by virtue of these Regulations; or
- (b) without reasonable excuse, fails to produce a document or record for the competent body, when required to do so.

Penalties.

14. A trader who commits an offence under regulation 13 is liable on summary conviction, to a fine not exceeding level 5 on the standard scale or to imprisonment for a term not exceeding 12 months, or to both.