

Chapter 19

Non-FSMA powers

19.11 Financial Services (Distance Marketing) Regulations 2004

19.11.1 These Regulations gave effect to the Distance Marketing Directive.²⁴ Under the Regulations, the *FCA* can enforce breaches of the Regulations concerning “specified contracts”. Specified contracts are certain contracts for the provision of financial services which are made at a distance and do not require the simultaneous physical presence of the parties to the contract.

²⁴ Directive 2002/65/EC

19.11.2 The *FCA* may apply to the courts for an injunction or interim injunction against a person who appears to it to be responsible for a breach of the Regulations. The *FCA* may also accept undertakings from the person who committed the breach that he will comply with the Regulations. The *FCA* must publish details of any applications it makes for injunctions; the terms of any orders that the court subsequently makes; and the terms of any undertakings given to it or to the court.

19.11.3 The *FCA* may also prosecute offences under the Regulations which relate to specified contracts. It will generally be appropriate for the *FCA* to seek to resolve the breach by obtaining an undertaking before it applies for an injunction or initiates a prosecution. Where a failure by a firm to meet the requirements of the Regulations also amounts to a breach of the *FCA's rules*, the *FCA* will consider all the circumstances of the case when deciding whether to take action for a breach of its *rules* or under the Regulations. This will include, amongst other things, having regard to appropriate factors set out in ■ DEPP 6 and the considerations in ■ EG 12.