

Changes to Consumer Law in the UK – Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013

On 13 June 2014, the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 came into force replacing the previous law on distance selling and doorstep selling. It also included new information provisions for distance sales. The rules apply to contracts between business and consumers made after the introduction of the Regulations.

Businesses which sell to consumers, whether in store, online, by telephone or by any other means, which have not already done so, should review and update their sales processes, terms of business and cancellation and refund policies to ensure compliance with the Regulations.

A “consumer” for the purposes of the Regulations, is an individual acting for purposes which are wholly or mainly outside of his or her trade, business, craft or profession.

Why the change?

The Regulations implemented most of the provisions of the EU Consumer Rights Directive (Directive 2011/83/EU). The aim of the Directive was to harmonise consumer protection rules in the EU and subject to certain limited exceptions and partial exemptions, the Directive applies to all consumer contracts for goods and services whether made “on-premises” (e.g. in store), distance sales (e.g. online) or “off-premises” sales (e.g. door to door sales).

Certain contracts are excluded including gambling contracts and contracts for banking or credit services and the rules only partially apply to other types of contracts such as for customised goods and for the supply of accommodation or services related to leisure activities on a specific date.

The Regulations form part of a wider overhaul of consumer law in the UK. The Payment Surcharges Regulations previously introduced a ban on excessive payment surcharges into UK law; this was also a requirement of the Directive.

What changed under the Regulations?

New information requirements

- The Regulations provide a list of information which traders must provide consumers with before goods or services are purchased. The information requirements are now more extensive and differ depending on whether the sale is made on-premises, off-premises or at a distance.
- For example, for most on-premises sales, a copy of the trader's complaint handling policy (where applicable) and details of relevant

after-sales services or guarantees must be made available.

- The information required to be provided for online sales is now particularly detailed and includes clearly identifying where the trader is acting on behalf of another trader and the provision of contact details for both.
 - If a right to cancel exists, the consumer must be given a copy of the model cancellation form set out in the Regulations. A failure to comply may result in the cancellation period being extended and may even result in prosecution.
 - For online sales, at the point of order the consumer must be required to explicitly acknowledge that the order implies an obligation to pay. Therefore the wording of the payment function must comply with the Regulations. A failure to do so makes the contract unenforceable.
- For contracts for the sale of goods, the cooling off period ends 14 calendar days after the day on which the goods are delivered. If the goods are delivered in several instalments then it will be 14 days from receipt of the last instalment.
 - For contracts for the sale of digital content (which is not on disk or another tangible medium), the cooling off period ends 14 calendar days after the day on which the contract is entered into.
 - For contracts for the sale of services, the cooling off period ends 14 calendar days after the day on which the contract is entered into unless the consumer has expressly requested that the services commence before then and has waived his cancellation right.

Digital Content

- In addition to goods and services, the Regulations introduced a new category of “digital content” with its own specific requirements which apply to both paid for and free content such as music and film downloads. These requirements include providing purchasers of digital content with information about the functionality of the content and details of the compatibility of the content with hardware and software.
- Digital content cannot be made available during the cancellation period unless the consumer has given express consent and acknowledged a waiver of his right to cancel.
- A failure to obtain such consent and express waiver means the consumer does not have to pay for the download.

Cancellation Rights for distance and off-premises contracts

- **Length of cooling off period** - The cooling off period during which consumers can cancel orders for digital content, goods or services is 14 calendar days.

- **Standard cancellation form** – The Regulations contain a model cancellation form which as stated above should be provided to the consumer before the order is made and should be offered as a means by which can inform the trader that he wishes to cancel. However a trader can also inform the consumer of the right to cancel using its own wording if it chooses and allow for notifications of cancellation to be given by other means such as email or post.

Refund obligations for online and off-premises contracts

- Where a consumer has exercised his statutory right to cancel, the trader must reimburse the price paid together with the cost of standard delivery charges. If a consumer chooses a more expensive less common method of delivery then the trader need only refund the cost of standard delivery.
- Refunds must be made within the time limits specified in the Regulations.
 - For contracts for the sale of goods when the consumer is responsible for returning unwanted goods, the deadline for refunds ends 14 days

following receipt of the returned goods by the trader or, if earlier, the date on which the consumer provides evidence of having sent back the goods.

- For contracts for goods where the trader has offered to collect the unwanted goods, or contracts for services and digital content, the deadline for refunds ends 14 days from receipt by the trader of notification that the consumer wishes to cancel provided this notice was given within the cooling off period.

Inertia selling

- The Regulations protect consumers from unsolicited sales and additional charges which have not been agreed in advance.
- In such cases, the consumer is not required to pay for the unsolicited supply of products. Similarly, the consumer is not required to pay additional charges unless he gave express consent to such charges before the contract was concluded.

Helpline charges

- Where a trader offers consumers a helpline for queries concerning goods, services and/or digital content which the consumer has purchased, calls to such helpline by the consumer must only be charged for at the basic rate.

What does this mean for businesses?

Businesses should ensure that their sales processes and contract terms and their returns policies are compliant. A failure to comply may result in contracts being unenforceable and, in the worst case scenario, the trader may face a criminal conviction and fine.

FIND OUT MORE

If you require a review of your sales terms and procedures or require further advice on how the Regulations impact your business, please contact Nicola Broadhurst or another member of the commercial team at Stevens & Bolton LLP.



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