Business to Consumer – Distance and doorstep selling

This factsheet only covers transactions where the Trader is a business, and the buyer is a Consumer. A Consumer means an individual acting for purposes that are wholly or mainly outside that individual’s trade, business, craft or profession.

1. Distance and doorstep selling

The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations (“the Regulations”) came into force from 13 June 2014. They offer further protection for Consumers and are in addition to the statutory rights explained in our factsheet Business to consumer – Sale of goods. They abolish previous laws/rules relating to both distance and doorstep selling, and harmonise both of these areas under one set of regulations, amongst other things, by giving just one “cooling-off” period of 14 calendar days. Furthermore, the Regulations also now apply, in part, to “on-premise” (i.e. in-shop) contracts, where non “day-to-day” goods are sold, and whilst the Consumer does not have a right to cancel such contracts, they do now have a right to receive prior information.

Consumer protection

The Regulations give protection to buyers who are Consumers, not those acting in the course of a business. A Consumer is defined as “any natural person who is acting for purposes which are outside his business”. A limited company, therefore, would not be able to rely upon the Regulations but a sole trader or member of a partnership could, provided the purchase had nothing to do with their business. The Trader must be acting in the course of a business. A private sale by an individual of personal belongings will not be covered by the Regulations.

2. What is distance selling?

The Regulations provide an indicative list of what is meant by distance selling. They cover goods, services and digital content sold by means of the internet, digital television, mail order (including catalogues), and phone and fax communications.

3. What is doorstep selling?

The Regulations give Consumers additional protection when entering into a contract at their home, place of work, the home of another individual, or an excursion organised by the Trader away from the Trader’s business premises.

Exemptions

There is a blanket exemption, and the Regulations will not apply at all to contracts for:

- Gambling;
- Financial services such as insurance and banking services;
- The creation of immovable property or of rights in immovable property;
- Residential letting;
- Package travel;
- Timeshare;
- Supply of consumables by regular roundsmen such as milkmen.
4. The right to prior information

With both “distance” and “doorstep” contracts, the Trader must provide the Consumer with prior information before entering into a contract. This must be in a clear and comprehensible format. If the Trader has a website, this information should be on it, and should be clearly legible by the Consumer. However, with “doorstep” contracts, the prior information must be given on paper, unless the Consumer agrees otherwise, therefore putting it on a website won’t be sufficient. The prior information must include all items listed in Schedule 2 of the Regulations, as follows:

- The Trader’s name and address. Also, where payment is required in advance, the Trader’s postal address;
- A description of the goods and/or services;
- The price inclusive of any tax;
- Delivery costs if applicable;
- Arrangements for payment;
- Arrangements for, and date of, delivery;
- Details of the right to cancel the order, including (a) a cancellation form for use by the Consumer who wishes to cancel within the cooling-off period, provided as a detachable slip (a specimen form can be found in Schedule 3 of the Regulations) (b) a statement that the Consumer does not have to use the cancellation form but can also cancel by letter, email or fax;
- If appropriate, that the Consumer is responsible for the cost of returning the goods;
- The duration of the contract, where applicable;
- How long any offer or price will remain valid.

Once the contract has been entered into, the Consumer must be sent confirmation in writing or by some other durable form (fax/e-mail, etc.). The confirmation must reiterate the prior information above including notice of the right to cancel and who is to bear the cost of doing so (if applicable), what guarantees or after sales services there are, and how an open-ended service contract may be terminated. With regard to a “doorstep” contract only, a copy of the signed contract should be given, if one exists, or confirmation of the contract, on paper, unless the Consumer agrees otherwise.

5. The right to cancel – Sale of goods and provision of a service

Where the Regulations apply to the sale of goods, the Consumer now has a “cooling-off period” of 14 calendar days from day after receipt of the goods within which to cancel the contract and return the goods. Where the Regulations apply to the provision of a service, the consumer has 14 calendar days from day after the contract is entered into. There does not have to be any reason for the cancellation.

The Trader can stipulate in their terms and conditions and the prior information that the Consumer is responsible for the cost of returning any goods, and that this is at the Consumer’s own risk. If this is not stipulated then the Trader must bear these costs.

With regard to goods, once the Consumer has notified the Trader that they are cancelling the contract, and the Trader has either received the goods back or, if earlier, received evidence that the goods have been sent back, the Trader must refund any sum paid by the consumer within 14 calendar days. With a contract for services, the refund must be made within 14 calendar days of the trader being informed of the Consumer’s decision to cancel.

The Trader may make a deduction from a refund for any loss in the value of the goods supplied, if the loss is the result of unnecessary handling by the Consumer (beyond what is necessary to establish the nature, characteristics and functioning of the goods). This means if the Consumer has done something to diminish the value of the goods beyond what was necessary to reasonably inspect the goods, for example, the Consumer has worn or used the goods, and then the Trader may be entitled to make a deduction if this has decreased their value.

If the Trader has not provided the Consumer with the required information about their right to cancel, but does so within 12 months, the cooling-off period will be extended for 14 calendar days after the information is received. Otherwise the cancellation period ends at the end of 12 months after the day on which it should have ended had the information been provided within the correct timescale.

Exemptions to the right to cancel

The right to cancel does not apply to contracts for:

- Goods or services for which the price is dependent on fluctuations in the financial market which cannot be controlled by the Trader (other than the supply of water, gas, electricity or district heating).
- The supply of goods that are made to the Consumer’s specifications or are clearly personalised (bespoke goods).
Simply selecting an option that might be available such as the blue car and not the red one will not be considered a bespoke order and the Consumer will still be allowed to cancel under the Regulations. However, a request that the car be sprayed shocking pink with the Consumer’s name embossed in gold lettering down the side will be considered a bespoke order and the Consumer will not be able to exercise the right to cancel under the Regulations.

- The supply of goods which are liable to deteriorate or expire rapidly.
- In certain circumstances, the supply of alcoholic beverages.
- Where the Consumer has specifically requested a visit from the Trader for the purpose of carrying out urgent repairs or maintenance.
- The supply of newspapers, periodicals of magazines (with the exception of subscription contracts).
- Sealed audio or video recordings, or computer software, where the seal has been broken by the Consumer.
- The supply of accommodation, transport of goods, vehicle rental services, catering or services related to leisure activities, if the contract provides for a specific date or period of performance.
- Small contracts with a value of less than £42 (doorstep contracts only).

6. How does the Consumer cancel the contract?

If the Consumer wants to cancel the contract they must do so within the requisite period, ideally they should use the cancellation form, which the Trader is legally obliged to have made available (see above). However, they do not have to, and can communicate this by any clear statement (e.g. a letter sent by post, fax, or email). The prior information and confirmation will have provided the Consumer with the Trader’s contact details in order to do this.

What protection will a business receive against non-payment if they have already started providing services before the end of the cooling-off period?

This will be most common with “doorstep” contracts. If the Consumer wants the Trader to start within the relevant cooling-off period, the Trader should generally only begin providing the service if the Consumer has agreed to this in writing. In such circumstances, ideally the Trader should provide a further form, specifically for these scenarios, for the Consumer to complete.

This form should set out that:

- The Consumer wishes the Trader to commence the works before the cooling-off period has expired.
- The Consumer is aware that if they then cancel within the cooling-off period, but after the Trader has commenced works, they will be required to pay in accordance with the “reasonable” requirements of the cancelled contract for those services provided up to the point of cancellation.
- If the services are completed before the cooling-off period has expired, the right to cancel will then be lost.

The above information should also have been provided in the prior information before the contract was concluded. Technically if this is a “distance” contract rather than a “doorstep” contract the Consumer does not have to make their request in writing, but it is certainly best practice to get this in writing in all circumstances.

7. Digital Content

The Consumer Contracts Regulations created a new category for digital content.

What is digital content?

The Act defines ‘digital content’ as meaning ‘data which are produced and supplied in digital form’. This definition is therefore extremely wide, and includes, for example:

- Computer games.
- Virtual items purchased within computer games.
- Television programmes.
- Films.
- Digital books.
- Computer software.
- Mobile phone apps.
- Systems software for operating goods - for example, domestic appliances, toys, motor vehicles, etc.
Something else to consider

The general points about the right to prior information and ordering also applies to digital content. Additionally, Traders will need to supply information about the functionality and operability of the digital content: for example, its compatibility with hardware, software and its region code.

Criteria

Digital downloads have to adhere to the following criteria:

- it must be fit for its particular purpose;
- must be of satisfactory quality and;
- as described by the seller.

Free Content

These rights only apply to digital content that has been paid for by money, gift card or credits as part of the contract and also includes free digital content that is supplied with goods, services or other digital content for which you have to pay. An example will be buying a smart TV with digital content pre-installed.

A Trader is likely to be liable to pay compensation to a Consumer for damage caused by faulty digital content that has been downloaded – even if that content was provided free of charge.

This will apply to damage that could’ve been avoided had reasonable care and skill been exercised in the provision of the digital content.

Right to cancel digital downloads

If a Consumer wants to download digital content within 14 days of purchasing it, they will have to consent to waive their right to the 14 day cooling off period. If they don’t want to do that, the Trader will have to provide information on cancellation rights, with the model cancellation form and allow the 14 day cooling-off period.

With digital content that is in tangible format, for example a CD or DVD, the cancellation rights will apply. There is a cancellation exemption where the seal has been broken by the Consumer on audio, video and software (unless it’s faulty). The Trader still has to provide functionality and operability information.

Non-conforming digital content

The Consumer will be entitled to a repair or a replacement if the digital content does not conform to the above criteria and develops a fault.

In this happens the Trader will have one opportunity to repair or replace the digital content before the Consumer will have the right to claim a refund or a price reduction. The Consumer has the right to choose a repair or a replacement but the Trader can refuse if they can show that it’s a disproportionate cost compared to the alternative. The Trader must do the repair or replacement within a reasonable time, without significant inconvenience or costs to the Consumer.

If the repair or replacement is unsuccessful the Consumer will be entitled to a refund or alternatively a price reduction if they want to keep the product. The Consumer can request the Trader to make further attempts to repair or replace if they don’t want a refund immediately after the first attempt at a repair or replacement.

The Consumer cannot insist on a repair or replacement if it’s impossible or disproportionate compared to another remedy. If the digital content is faulty in the first 6 months of supply, it’s taken as being defective from the day it was supplied.

8. Price Reduction

The consumer has a right to a price reduction where a repair or replacement is not possible or where the consumer has requested a repair or a replacement but the Trader has failed to do this in a reasonable time and without significant inconvenience to the Consumer.

Where the right to a price reduction arises, the Trader must pay this without delay, and in any event within 14 days of agreeing the reduction (or full refund in some instances) with the Consumer.
**Miscellaneous other changes**

- Certain prior information (set out in Schedule 1 of the Regulations) now also needs to be provided for “on-premises” contracts (for example in-shop transactions) but **only** if the sale is of non “day-to-day” goods. As such, this will not apply to the purchase of a loaf of bread, but would apply to something that one buys infrequently, like a sofa or a car. Please note this does not include the right to cancel and is generally information about the Trader and the goods. If the Trader does not comply with these requirements then the contract could be invalid and unenforceable.

- Traders will no longer be able to have customer service telephone help lines which charge more than a basic rate for incoming calls. As such, the Consumer will not be expected to make an expensive telephone call to complain about or cancel.

- The Trader must deliver any goods (a) without undue delay and (b) in any event, not more than 30 days after the day on which the contract is entered into, unless otherwise agreed.

- Any “button” on a Trader’s website, whereby the Consumer is clicking to place an order, now needs to be very clear and stress that pressing it creates an obligation to pay.

9. **What are the penalties for Traders who do not adhere to the Regulations?**

A Trader who fails to provide a written “Notice of the Right to Cancel” or any other information required by the Regulations may be fined up to a maximum penalty of a level 5 fine (£5,000).

In addition, the Consumer’s right to cancel may be extended for up to 12 months, and the Trader will lose their right to make a deduction if say the Consumer has used the goods excessively.

Finally, depending on which part(s) of the regulations are breached, the entire contract can be held to be invalid and effectively unenforceable.

10. **Alternative dispute resolution and online dispute resolution requirements**

Dealing with consumer complaints can be a difficult process for traders and there are a range of options available for resolving customer disputes, without the need of involving the court. These options are often called ADR processes and it stands for ‘alternative dispute resolution’.

Using ADR is not mandatory for most traders but the regulations do require almost all businesses which sell directly to consumers to point the consumer to a certified ADR scheme – where they cannot resolve a dispute in-house – and declare whether or not they intend to use that scheme.

11. **What traders have to do?**

When traders reach “deadlock” with a consumer in dealing with a dispute, you have to supply the consumer with details of an appropriate certified ADR provider (the name and email address) in a durable medium, for example in a letter or an email, and you need to state whether you are obliged or prepared to submit to an ADR procedure operated by that provider.

A list of certified providers is maintained on the CSTI (Trading Standards) website and can be found by clicking **here**.

Traders are required to give consumers the details of an ADR provider but do not have to agree to use ADR.

If you trade online with consumers you also need to consider the following:

- Where a dispute cannot be settled directly, the trader should provide the consumer, on paper or another durable medium, with the information on relevant ADR entities and specify if he will make use of them.
- Provide consumers with an accessible electronic link to the ODR Platform on your website, the link: [http://ec.europa.eu/consumers/odr/](http://ec.europa.eu/consumers/odr/);
- Include your email address on your website;
- Provide a link to the ODR Platform in any emails regarding offers in relation to consumer sales or service contracts;
- Provide relevant information, where applicable, in your general terms and conditions applicable to the website operator’s online sales and service contracts.
For those committed to an ADR (Alternative Dispute Resolution) scheme, this will be in addition to giving details, on your website, of the certified ADR provider serving their sector. Further information can be found in our factsheet on Alternative Dispute Resolution (ADR) and Online dispute resolution (ODR) Platform.

This fact sheet was prepared by the **Information Unit** of **LHS Solicitors**. It is intended only as a guide and is not to be regarded as a substitute for consultation with one of our Legal Advisors, since every case will ultimately turn on its own particular facts and circumstances.

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