



**Department
for Business
Innovation & Skills**

**Directive 2011/83/EU on
consumer rights:**

Draft Transposition Note

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Contents

Contents	2
DRAFT TRANSPOSITION NOTE	3
Directive 2011/83/EU on consumer rights: Transposition Measures.....	5
DEFINITIONS AND SCOPE	5
PRE-CONTRACTUAL INFORMATION	6
CANCELLATION RIGHTS.....	9
DELIVERY OF GOODS AND PASSING OF RISK	11
HIDDEN COSTS.....	12
GENERAL PROVISIONS	13

DRAFT TRANSPOSITION NOTE

Directive 2011/83/EU on consumer rights

1. This note describes the implementation in the United Kingdom of Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 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.¹

2. The Directive covers three main areas:

(1) Information which traders should provide to consumers

Traders need to give consumers upfront information before they enter into a contract, so that both are clear about the bargain they are making. The Directive updates and consolidates information requirements for sales at a distance and away from a trader's premises. It sets out details of the content, form and timing of information which a trader is required to provide to a consumer for most types of sales or service contracts.

(2) Cancellation rights and responsibilities for distance and off-premises sales

Consumers need a 'cooling-off' period during which they may cancel a distance or off-premises contract, so that they have a chance to inspect what they buy, and to guard against the risk of traders exploiting vulnerable consumers with pressure sales techniques. The Directive streamlines different rights to cancel distance and off-premises sales, consolidating the cancellation period to 14 days. The Directive also sets out how contracts made at a distance and off-premises may be cancelled.

(3) Measures to prevent hidden costs

Hidden costs mean that it is difficult for consumers to identify the most competitive offers, and traders who are genuinely competitive without hidden costs are also disadvantaged. The Directive prevents traders benefitting from hidden costs through excessive payment surcharges, charges imposed on calls to customer helplines, and pre-ticked 'tick

¹ OJ L 304, 22/11/2011, p. 64.

boxes' on their websites as a means of eliciting additional payments from consumers.

3. National legislation implementing the Directive must be made by 13 December 2013, and must enter into force by 13 June 2014.
4. It is intended that the Directive will be implemented in:
 - the draft Consumer Contracts (Information, Cancellation and Additional Payments) Regulations, as regards most provisions of the Directive;
 - the Consumer Rights Bill, as regards delivery of goods, transfer of risk, and incorporating information as terms of a contract;
 - the Consumer Rights (Payment Surcharges) Regulations 2012,² as regards payment surcharges;
 - the draft Consumer Protection from Unfair Trading (Amendment) Regulations, as regards inertia selling;
 - a future Order providing that the regime under Part 8 of the Enterprise Act 2002 for public bodies and consumer bodies to enforce consumer law applies in relation to the relevant provisions of the Bill and Regulations.

A draft of the Bill was published in June 2013 for pre-legislative scrutiny, and drafts of the Consumer Contracts (Information, Cancellation and Additional Payments) Regulations and Consumer Redress for Misleading and Aggressive Practices Regulations were published in July 2013.

5. The implementation goes beyond the minimum requirements of the Directive ('gold-plating') in two respects:
 - Applying the provisions to social services and to healthcare services provided by professionals (where these are off-premises or at a distance), so as to maintain current level of protection of vulnerable consumers and prevent distortion of competition with other sectors subject to these provisions;
 - Applying the 'hidden costs' provisions to off-premises contracts below £42, so as to ensure fairness and transparency, and avoid complexity of rules dependent on value of transaction.
6. The table below describes the main substantive provisions of the draft Regulations and Bill implementing the Directive. Except where indicated, the references are to provisions of the draft Consumer Contracts (Information, Cancellation and Additional Payments) Regulations.

² SI 2012/3110.

Directive 2011/83/EU on consumer rights: Transposition Measures

DEFINITIONS AND SCOPE

Article	Objective	Implementation
1	States purpose of Directive	No implementation required in national legislation.
2	Definitions of key terms	Regulations 4 and 5.
3.1	Defines scope of application	Regulations 7(1) and 26(1).
3.2	EU legislation for specific sectors to prevail	No specific implementation required in national legislation, as Bill and Regulations do not preclude this.
3.3(a) to (m)	Excluded contracts by subject-matter	Regulations 6, 7 and 26 (but see note on 'gold-plating' above).
3.4	Exclusion of low-value off-premises contracts	Regulations 7(4) and 26(3) (but see note on 'gold-plating' above).
3.5	National law of contract not affected	No specific implementation required in national legislation, as Bill and Regulations do not affect general principles of contract law.
3.6	Traders may offer consumers more favourable provision	No specific implementation required in national legislation, as Bill and Regulations do not preclude this.
4	National law may not include more or less stringent provisions than Directive, unless otherwise permitted by Directive.	No specific implementation required in national legislation, as Bill and Regulations respect this principle.

PRE-CONTRACTUAL INFORMATION

Article	Objective	Implementation
5.1(a) to (h)	Requirement to provide certain information for on-premises contracts	Regulation 9(1) and Schedule 1.
5.2	Application to other contracts	Regulation 9(1)
5.3	Exclusion of day-to-day transactions	Regulation 9(2)
5.4	Additional information requirements permitted	This is an option which the UK has chosen not to implement.
6.1(a) to (t)	Requirement to provide certain information for distance and off-premises contracts	Regulations 10(1) and 13(1) and Schedule 2.
6.2	Application to other contracts	Regulations 10(1) and 13(1).
6.3	Alternative option for public auctions	Note to Schedule 2.
6.4	Option of model instructions to cancel in Annex I(A) in place of information on cancellation rights	Regulations 10(3) and 13(3).
6.5	Information provided to be incorporated into contract	Clauses 10(4) and (5), 11, 39 and 52 of the draft Consumer Rights Bill.
6.6	Consumer not to bear costs or charges if trader fails to provide information on them	Regulations 10(4) and 13(5).
6.7	National language requirements permitted	No implementation required, as UK is not exercising this option.
6.8	Additional requirements under Services Directive or E-commerce Directive permitted	No specific implementation required.
6.9	Burden of proof on trader to show compliance	Regulation 17.
7.1	Required format of Article 6 information for off-premises contracts	Regulation 10(1) and (2).

Article	Objective	Implementation
7.2	Trader to give consumer copy of contract or confirmation	Regulation 12(1), (2) and (5).
7.3	Express consent of consumer required for early performance of contract	Regulation 35(1) and 36(1).
7.4	Optional exception for low-value emergency repairs	Regulation 11.
7.5	Additional information requirements not permitted	No specific implementation required in national legislation, as Bill and Regulations respect this principle.
8.1	Required format of Article 6 information for distance contracts	Regulation 13(1) and (2).
8.2	Clear and prominent information for contracts concluded by electronic means	Regulation 14(1) to (5).
8.3	Websites to indicate delivery restrictions and accepted means of payment at beginning of ordering process	Regulation 14(6).
8.4	Option to provide limited information where means of distance communication has limit on time or space to display information	Regulation 13(5).
8.5	Trader to disclose identity at beginning of sales call to consumer	Regulation 15.
8.6	Option for national law to require contracts concluded by telephone to be confirmed in writing	No implementation required, as UK is not exercising this option.
8.7	Trader to give consumer copy of contract or confirmation	Regulation 16(1), (2) and (3).
8.8	Express consent of consumer required for early performance of contract	Regulation 35(1) and 36(1).

Article	Objective	Implementation
8.9	Requirements without prejudice to Articles 9 and 11 of E-commerce Directive	No specific implementation required in national legislation, as Bill and Regulations do not affect these provisions.
8.10	Additional information requirements not permitted	No specific implementation required in national legislation, as Bill and Regulations respect this principle.

CANCELLATION RIGHTS

Article	Objective	Implementation
9.1	Consumer's right to cancel distance or off-premises contracts within 14 days	Regulation 28(1).
9.2	Calculation of cancellation period	Regulation 29.
9.3	Contractual obligations may be performed during cancellation period	No specific implementation required, as Regulations do not preclude this.
10.1	Extension of cancellation period of information on cancellation rights not provided	Regulation 30(1) and (3).
10.2	Calculation of extension if information on cancellation rights provided late	Regulation 30(2).
11.1	Consumer may cancel contract using model form in Annex I(B) or any other clear statement	Regulation 31(1) to (3).
11.2	Communication of cancellation to be sent before period expires	Regulation 31(5).
11.3	Trader may give option of cancellation through a form on website	Regulation 31(4).
11.4	Burden of proof on consumer to show that right to cancel exercised	Regulation 31(6).
12	Cancellation terminates the contractual obligations of the parties	Regulation 32.
13.1	Trader to reimburse all payments to consumer within 14 days of cancellation	Regulation 33(1), (4), (6) and (7).
13.2	Trader not required to reimburse costs of more expensive delivery if chosen by consumer	Regulation 33(2) and (3).

Article	Objective	Implementation
13.3	Trader may withhold reimbursement until goods returned	Regulation 33(5).
14.1	Consumer to return goods to trader within 14 days of cancellation. Consumer to bear costs of return.	Regulation 34.
14.2	Consumer liable for diminished value of goods	Regulation 33(9) and (10).
14.3	If obligations performed early at consumer's request, consumer to pay trader an amount proportionate to the service provided up to the point of cancellation.	Regulation 35(4) and (5).
14.4	Consumer not liable to pay trader for services performed during cancellation period of information or consent requirements were not met	Regulation 35(6).
14.5	Consumer not to incur any other liability as consequence of cancellation	Regulation 28(1).
15.1	Any ancillary contract automatically terminated on cancellation of main contract	Regulation 37(1).
15.2	National law to lay down detailed rules on termination of ancillary contracts	Regulation 37(1) and (2)
16(a) to (m)	Exceptions from right to cancel	Regulations 27, 35(2) and 36(2).

DELIVERY OF GOODS AND PASSING OF RISK

Article	Objective	Implementation
17.1	Scope of application	Clauses 3 and 4 of draft Consumer Rights Bill.
18.1	Default rule of delivery within 30 days	Clause 29(3) of draft Consumer Rights Bill.
18.2	If late delivery, consumer to nominate a further delivery period. Consumer may terminate contract if second failure.	Clause 29(4) to (7) of draft Consumer Rights Bill.
18.3	Trader to reimburse all payments to consumer on termination	Clause 29(8) and (9) of draft Consumer Rights Bill.
18.4	Consumer may have other remedies in national law	Clause 29(10) of draft Consumer Rights Bill.
20	Risk of loss or damage passes to consumer when consumer acquires possession of goods	Clause 30 of draft Consumer Rights Bill.

HIDDEN COSTS

Article	Objective	Implementation
17.2	Scope of application	Regulations 38(1) and 39(1); and regulation 5(1) of the Consumer Rights (Payment Surcharges) Regulations 2012.
19	Surcharges for use of a particular means of payment not permitted	Regulation 4 of the Consumer Rights (Payment Surcharges) Regulations 2012.
21	Consumer not to be charged more than basic rate for telephone calls to trader after conclusion of contract	Regulation 39.
22	Express consent of consumer required when contract concluded for any additional payments to trader	Regulation 38.

GENERAL PROVISIONS

Article	Objective	Implementation
23.1	Adequate and effective enforcement	Regulations 40 to 43; regulations 18 to 25; regulations 7 to 10 of the Consumer Rights (Payment Surcharges) Regulations 2012; clauses 10(4)-(6), 11, 39 and 52 of the draft Consumer Rights Bill; a future Order providing that the regime under Part 8 of the Enterprise Act 2002 for public bodies and consumer bodies to enforce consumer law applies in relation to the relevant provisions of the Bill and Regulations.
23.2	Enforcement by public bodies, consumer organisations, and professional organisations	A future Order providing that the regime under Part 8 of the Enterprise Act 2002 for public bodies and consumer bodies to enforce consumer law applies in relation to the relevant provisions of the Bill and Regulations.
24.1	Effective, proportionate and dissuasive penalties for enforcement.	Regulations 40 to 43; regulations 18 to 25; regulations 7 to 10 of the Consumer Rights (Payment Surcharges) Regulations 2012; clauses 10(4)-(6), 11, 39 and 52 of the draft Consumer Rights Bill; a future Order providing that the regime under Part 8 of the Enterprise Act 2002 for public bodies and consumer bodies to enforce consumer law applies in relation to the relevant

Article	Objective	Implementation
		provisions of the Bill and Regulations.
24.2	Provisions on penalties to be notified to Commission	No implementation required in national legislation.
25	Consumers' rights under Directive may not be waived	No specific implementation required in national legislation, as the provisions of the Bill and Regulations are mandatory.
26	Appropriate measures to inform consumers and traders of national law implementing Directive	No specific implementation required in national legislation. A number of measures will be taken to draw the Bill and Regulations to the attention of consumer and traders through the media, internet, and representative bodies of consumers and traders.
27	In cases of inertia selling, consumer's silence does not indicate consent and consumer is under no obligation to pay	Regulation 5 of the draft Consumer Protection from Unfair Trading (Amendment) Regulations.
28.1	National laws implementing Directive to be adopted and published by 13 December 2013, entering into force from 13 June 2014	No specific implementation required in national legislation.
28.2	Implementing provisions to apply to contracts concluded after 13 June 2014	Regulation 1(2).
29	Member States to inform Commission of options in Directive they have chosen to exercise; Commission to publish and circulate	No implementation required in national legislation.
30	Commission review of Directive by 13 December 2016	No implementation required.
31	Off-Premises Selling	Regulation 2.

Article	Objective	Implementation
	Directive and Distance Selling Directive repealed as of 13 June 2014	
32	Member States going beyond minimum requirements of Unfair Terms in Consumer Contracts Directive to report to Commission; Commission to publish and circulate	No implementation required in national legislation.
33	Member States going beyond minimum requirements of Consumer Sales Directive to report to Commission; Commission to publish and circulate	No implementation required in national legislation.
34	Directive enters into force 20 days after publication	No implementation required.
35	Directive addressed to Member States	No implementation required.

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