

Contents

Contents	1
Implementing the Consumer Rights Directive	4
Foreword	5
By Norman Lamb MP, Minister for Employment Relations, Consumer and Postal Affairs.	5
SECTION A - OVERVIEW	6
1 Executive Summary	6
CRD – A maximum harmonisation directive	7
2. Devolution	8
3. Aim of this consultation	8
Previous consultation 2008	8
What are we asking for in responses to this consultation?	8
4. Consultation Questions	10
Definitions and Interpretation	10
Scope of application of CRD	10
On-premises information requirements	11
Off-premises contracts	11
Ancillary contracts	11
Enforcement	11
Private Redress	12
General points	12
Impact Assessment	12
5. How to respond	13

6. Confidentiality & Data Protection	14
SECTION B: BACKGROUND TO THE CONSUMER RIGHTS DIRECTIVE (CRD).....	15
What is in the CRD?	15
What mandatory changes will the CRD introduce?	16
Overview of changes.....	21
SECTION C – PROPOSALS FOR IMPLEMENTATION.....	22
Summary of proposals	22
Application of CRD provisions to exempted sectors	22
Day-to-day transactions on trader premises	24
Low value off-premises sales.....	24
Emergency repairs in the home	25
Detailed rules around cancellation of ancillary contracts	25
Enforcement.....	25
Transposition and gold-plating.....	26
Definitions in the CRD – Article 2.....	27
The scope of the CRD – Article 3	28
Why are some sectors excluded from the scope of the CRD?	28
What healthcare contracts are within the scope of the CRD?.....	29
What social services are within the scope of the CRD?.....	30
Government proposal regarding application to sectors beyond scope of CRD	30
A. Extension of information and cancellation provisions to all healthcare goods and services sold off-premises and to social services sold off-premises	31
B. Extension to all Healthcare services and to social services contracts concluded at a distance.....	32
Options which the Government does not intend to pursue	33
C. Apply the express consent for additional payments provision, the basic rate telephone	

helpline provision, and the delivery provisions to healthcare goods and services, to social services, and to package travel and timeshare contracts (Proposals 3(iii)(iv)&(v) above	34
Government proposal on pre-contractual information for on-premises contracts	40
Government proposal regarding on-premises contracts which are day-to-day transactions	40
Government proposal regarding low value goods and services sold off-premises:	41
Government proposal regarding immediate repairs and maintenance in the home	43
Distance and off-premises sales: Cancellation of ancillary contracts	44
Enforcement.....	46
Private rights of redress	48
General comments on CRD	50
SECTION D – IMPACT ASSESSMENT QUESTIONS	51
Harmonisation of rules	51
Information on digital functionality and interoperability	52
Information requirements for off-premises and distance sales	52
Cancellation provisions for off-premises and distance sales	53
Off-premises sales only.....	53
For all sales of goods	53
For all sales of goods and services.....	54
Basic Rate customer helplines.....	54
SECTION E – NEXT STEPS AND ANNEXES	56
Annex I: List of Individuals/Organisations consulted.....	57
Annex II: Differing application of provisions of Distance Selling regulations, Off-premises regulations and CRD.....	60
Annex III : COMPARISON OF INFORMATION REQUIREMENTS IN CRD WITH THOSE IN EXISTING LEGISLATION.....	63

Implementing the Consumer Rights Directive

This consultation seeks views on Government proposals for transposing certain provisions of the Consumer Rights Directive (2011/83/EU) into UK law. The Directive was agreed by Member States in October 2011.

Issued: 20 **August 2012**

Respond by: **1 November 2012**

Enquiries and responses to:

Ms Stella D'Italia

Consumer and Competition Policy

Department for Business, Innovation and Skills

1 Victoria Street

LONDON SW1H 0ET

Tel: ++44 (0)20 7215 6056

Fax: ++44 (0) 20 7215 0480

Email: implementingthecrd@bis.gsi.gov.uk

This consultation is relevant to UK consumers and to all businesses selling to UK consumers. Many of the questions within the consultation will be particularly relevant to businesses selling off-premises (e.g. at consumer homes, at exhibitions) and at a distance (e.g. internet and telephone sales).

Foreword

By Norman Lamb MP, Minister for Employment Relations, Consumer and Postal Affairs.



Clarity generally makes life easier. We tell our children not to mumble, we clean our windscreens, and we look for the road signs in unfamiliar areas, all to help us properly understand what we are seeing and hearing, and take appropriate action to get it right first time.

The Consumer Rights Directive (CRD), with its focus on transparency, aims to help business and consumers to do just that, to get it right first time. It focuses on ensuring that consumers have the information and time they need to make good decisions, fully aware of all the costs they are committing to and any implications of entering into a contract. It helps ensure that those traders who treat consumers fairly and who highlight everything the consumer needs to know in a clear and straightforward way are not disadvantaged by those who use less transparent practices to lure consumers to less competitive offers.

Very importantly, for business and for growth, getting it right first time means fewer disputes, lower dispute resolution costs, and enhanced consumer confidence. These in turn deliver competitive markets and the innovation which leads to growth.

Despite its rather grand name, the CRD's focus is, in the main, on transparency, and enhancing the quality of decision-making. In those areas it will bring a single regulatory regime, across all 27 Member States. This means the same obligations on the trader whether they are selling in London, Rome or Budapest. Similarly, consumers, whether from Paris, Madrid or Newcastle will know what they can expect in terms of information, cancellation rights, and delivery terms, so enhancing consumer confidence to buy from new, innovative but perhaps unfamiliar suppliers. The CRD is about growth. The UK is a leader in retail and many other services. We want these measures to help and encourage UK businesses which export, or are thinking of exporting, to reach further, taking advantage of the enhanced consumer confidence and reduced compliance costs, that the CRD brings.

Together with the planned Consumer Rights Bill, these provisions are part of a package of measures to clarify consumer law for the sake of business and consumers alike. I very much welcome your comments to help us achieve this.

A handwritten signature in black ink, appearing to read 'Norman Lamb'.

Norman Lamb MP
Minister for Employment Relations, Consumer and Postal Affairs

SECTION A - OVERVIEW

1 Executive Summary

1. The Consumer Rights Directive (CRD) was agreed by all Member States of the European Union in October 2011¹. Despite its name, the CRD does not aim to be all encompassing with regard to consumer rights. Rather, its focus is on simplifying and harmonising rules in a limited number of key areas, to encourage growth and raise consumer confidence in buying across borders. Consumers will be better able to exercise choice, thus securing better deals. Enhanced competition will reward innovative businesses, who deal with consumers in a straightforward, honest way and strive to offer best value for money.

2. The CRD focuses on: the importance of transparency of information, in particular with regard to pre-contractual information for distance and off-premises contracts (but also for on-premises contracts); on express consent for any payments; on cancellation rights for distance and off-premises contracts; on prohibiting excessive fees for paying and contacting the trader. It also updates legislation to clarify the cancellation rights and obligations of buyers and sellers of digital products.

3. Importantly, the CRD seeks to ensure a fair balance of responsibilities between business and consumers when contracts are cancelled or deliveries are made. Its focus on transparency, requiring clear information including on costs and terms of delivery, and the consumer's express consent for payments, should ensure that consumers are clear about what they are committing to, thus reducing dispute resolution costs for business, and consumer detriment.

4. We are required to apply the provisions of the CRD to all contracts between traders and consumers, but with some exceptions. These are notably financial services, gambling, healthcare by regulated professionals, social services, package travel, timeshare, property transactions, and most aspects of passenger transport. Application of the CRD to these sectors is discretionary.

5. The provisions of the Directive affect the following aspects of the business-to-consumer transaction:

Information to be given before a consumer buys goods or services on the trader's premises

Information to be given before a consumer buys goods or services away from the trader's premises (e.g. at home or at a fair) or at a distance (internet, telesales etc.)

Cancellation rights and responsibilities where the consumer buys goods or services away from the trader's premises or at a distance

For all sales of goods and services within the scope of the Directive, whether or not

¹ See eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:304:0064:0088:EN:PDF

bought away from the trader’s premises or at a distance:

Fees charged for a particular method of payment (e.g. credit card surcharges). Under the CRD these must not exceed the cost to the trader of using that method ².

Delivery times for goods and passing of risk. These provisions will apply to all sale of *goods* contracts, not just those concluded at a distance. The CRD clarifies deadlines for delivery of goods and where responsibilities lie if there is a problem.

Post-contract customer helplines, which under the CRD must be charged to the consumer at no more than the basic rate for the telephone call.

Additional payments (i.e. payments additional to the main price for the goods or services) which must, under the CRD, be the subject of active or express consent by the consumer (for example, pre-ticked boxes which the consumer must ‘untick’ will no longer be permitted).

6. Many of the provisions simply reflect principles which are similar to those contained in existing legislation ³. However the CRD will also introduce changes. A number of the more important of these are summarised in Annex II.

CRD – A maximum harmonisation directive

7. The differing levels of consumer protection in the laws of Member States have created barriers to cross-border trade, for both business and consumers. Businesses wishing to export across the EU may be faced with up to 27 different consumer protection regimes. Consumer confidence to buy across borders is also reduced with adverse impact on both consumers and business. Consumers who are unsure of their rights will tend to “play it safe”, staying with companies that they know, and so lose out on greater choice and lower prices. UK traders with competitive offers and excellent products will also lose out on export opportunities.

8. To help address this, the majority of provisions in the CRD are maximum harmonisation measures, which means (subject to some limited derogations) that Member States must implement them as directed. As regards matters within the scope of the Directive, as set out in Article 3, the level of consumer protection provided in implementation must be no more and no less than that set out in the directive. Minimising the degree of deviation that Member States can introduce when transposing the Directive into national legislation, aims to address the impact of disjointed and uneven consumer protection legislation across EU Member States, reducing compliance costs and facilitating Single Market growth to the benefit of both business and consumers. This also limits the number of choices which Member States have available in implementing the Directive.

² Not covered here but the subject of a separate consultation to be published shortly.

³ As found in the Consumer Protection (Distance Selling) Regulations 2000 and the Cancellation of Contracts made in a Consumer’s home or place of work etc. Regulations 2008. Both are to be revoked when the CRD comes into effect. The CRD requirements also build on the information provisions in the Consumer Protection from Unfair Trading Regulations 2008 and the Provision of Services Regulations 2009.

9. Any requirements in other UK legislation which conflict with maximum harmonisation requirements in the CRD will need to be amended to ensure we do not breach our CRD obligations⁴. As well as the revocation of the existing distance and off-premises selling regulations, these are likely to include some amendments to the Sale of Goods Act 1979 (relating to the delivery of goods) and to the information requirements in Estate Agency legislation. The Government is also considering what changes may be needed to the Supply of Extended Warranties on Domestic Electrical Goods Order 2005.

2. Devolution

10. Broadly speaking consumer protection policy is not devolved to Scotland or Wales and is transferred to Northern Ireland. The Minister for the Department of Enterprise, Trade and Investment in Northern Ireland has given consent to extend this consultation to include Northern Ireland so that responses may inform any decision the Assembly may take to amend any legislation affecting Northern Ireland in this field.

11. The Government's aim is to ensure consistency of consumer rights across the UK whilst respecting the devolution settlements

3. Aim of this consultation

Previous consultation 2008

12. In November 2008, the Government issued a consultation to gather stakeholder views on the proposals for a Consumer Rights Directive. The UK Government, drawing on the views of a wide range of stakeholders⁵, sought to ensure that the Directive agreed provided a fair and effective framework for business whilst maintaining high levels of consumer protection. Other Member States and the European Parliament also favoured significant changes in some areas and the eventual Directive agreed by the Council and the European Parliament therefore looks very different from the initial Commission proposal.

What are we asking for in responses to this consultation?

13. As the CRD is largely a maximum harmonisation directive, there is little flexibility for the UK Government in implementation. This consultation seeks the views of stakeholders primarily on the Government's proposals for those areas where we have flexibility. The proposals are set out in **Section C** of this consultation, starting on page 23.

14. In addition, we would welcome:

- comments and evidence to help inform, improve or correct the assumptions, costs and benefits as set out in the impact assessments⁶ accompanying this consultation. Quantitative (monetised) information and evidence on costs and benefits would be particularly welcome. (See Section D

⁴ Article of the CRD 6(8) allows a derogation from this, permitting additional requirements which are in accordance with the Services Directive 2006 and E-Commerce Directive 2000.

⁵ Consultation on EU proposals for a Consumer Rights Directive- Nov 2008

⁶ See section D, starting on p 53, for links to Impact Assessments

for questions on the Impact Assessment)

- comments on potential ambiguities in the Directive and on any areas where clarification, either in guidance or, if possible and necessary, in the legislation itself, would be beneficial to business and/or consumers. Any such clarification would of course need to respect the meaning and intent of the Directive .

A full list of the questions on the proposals in this consultation is set out in Section 4 below.

4. Consultation Questions

Definitions and Interpretation

Q1. Given the copy-out principle [set out above], are there areas, provisions or issues in the Directive which you believe are, or may be, too uncertain or unclear and would benefit from guidance or elaboration on the face of the UK's implementing regulation?

Q2. Are the **definitions** [in the CRD] clear? Are there areas of potential ambiguity which might benefit from clarification in any guidance to accompany the forthcoming implementing legislation?

Scope of application of CRD

Q3. Do you agree with our preferred option that information and cancellation rights should continue to apply to all healthcare goods and services, including those provided by healthcare professionals, and to social services, where these are purchased by a consumer by means of an off-premises contract?

Q4. Do you agree with our preferred option that information and cancellation rights should continue to apply to all healthcare goods and services, including those provided by healthcare professionals, and to social services, where these are purchased by a consumer by means of a distance contract (e.g. by phone or internet)?

Q5. Can you offer supporting evidence (market size, degree of detriment, case studies, alternative protections etc.) to help inform our assessment of these issues and of your answers to Q3 and Q4?

Q6. It is our view that areas such as financial services and gambling, are better covered through existing, sector specific legislation and that, therefore, we should not pursue the option of extending the CRD information and cancellation provisions to these sectors. Do you have any comments on this, or on other areas including any not addressed in the proposals?

Q7. It is our view that cancellation rights are not appropriate with regard to distance selling of residential letting. Do you have any evidence you wish to present to support or to challenge this view?

Q8. Do you agree with our preferred option that delivery and passing of risk, express consent for additional payments and basic rate customer helpline provisions should apply to all healthcare goods and services and social services purchased by a consumer and to package travel and timeshare contracts?

Q9. Do you have evidence or data you can give us in support of your answer to Q8.

Q10: We are not aware of problems which would indicate the need to extend these provisions to excluded sectors beyond those set out above (healthcare, social services, package travel and timeshare). Do you have any comments on this or other areas, including any not addressed in the proposals?

On-premises information requirements

Q11. Do you agree with our preferred option that the information as set out in Article 5 is, together with other existing requirements, sufficient to allow consumers to make an informed choice? If not, what further information do you consider necessary?

Q12. What are your views on the proposed exclusion of day-to-day transactions performed immediately, from the application of CRD information requirements?

Q13. Can you give any cost data or other evidence to support your views in your response to Q12?

Off-premises contracts

Q14: What do you consider to be the benefits and/or costs to either consumers or traders in restricting the application of the information and cancellation provisions to off-premises contracts above 50 Euros, or in setting this threshold at a lower level? In your view, what would be the benefits and/or costs of removing the threshold and applying the information and cancellation provisions to all off-premises contracts, in your view?

Q15: Do you see any advantage to setting the threshold at a rounded figure of £40 rather than the maximum allowed, which would be in the region of £43?

Q16. Do you agree with our preferred option that immediate home repairs should be subject to the lighter information regime? What cost savings would result from this approach? Do you see risks to business or to the consumer from this approach?

Ancillary contracts

Q17. Do you agree that the suggested principles regarding the cancellation of ancillary contracts are clear and equitable? What additional/alternative steps or requirements do you think need to be introduced to bring clarity to the process of terminating ancillary contracts?

Q18. Do you think that there are types of ancillary contract which require more detailed rules than the principles here allow?

Q19. Where the ancillary contract is provided by a third party, what are your views over the respective responsibilities of the trader, consumer and the third party with regard to repayment of any monies once the main contract is cancelled? Should the trader, for instance, be responsible for refunds relating to the ancillary contract, or should the ancillary provider refund direct to the consumer? How best can we achieve a straightforward regime which consumers and business will most easily understand?

Enforcement

Q20. Do you agree that a specific injunction and interdict regime would be an appropriate supplement to Part 8 Enterprise Act powers?

Q21. Do you see any gaps that the combination of Part 8 powers and a specific injunctions regime would not address?

Q22. What other measures do you believe would usefully address gaps, acting as an

appropriate deterrent and sanction for breaches of the CRD?

Q23. What are your views on the proposal that failure to notify of cancellation rights for off-premises should remain a criminal offence?

Private Redress

Q24. With regard to private redress, do you consider the consequences provided for in the Directive for breaches of certain provisions to be clear and appropriate? Please explain your answer.

Q25. In your view, should the consumer have a private right of recovery and, if so, what form should that right take where a trader fails to comply with the obligation to reimburse payments following cancellation by the consumer?

Q26. With regard to private rights of the trader, should a failure by a consumer to return items, in breach of CRD obligations, be actionable as a breach of statutory duty or expressed in another way? What are your views regarding the imposition of penalties for such breaches? Please give your reasons.

General points

Q27. Are there any other issues or areas on which you would like to comment? If so, we would welcome your views.

Impact Assessment

Section D, starting on page 53, lists questions on which we would welcome your views regarding the Impact Assessments. Links to the Impact Assessment can also be found there.

5. How to respond

Please state whether you are responding as an individual or representing the views of an organisation. If you are responding on behalf of an organisation, please make clear who the organisation represents by selecting the appropriate interest group on the consultation form and, where applicable, how the views of members were assembled.

A copy of the Consultation Response form, should you wish to use it, is available electronically at www.bis.gov.uk/consultations (until the consultation closes). Your response can be submitted by email, post or fax to:

Stella D'Italia
Consumer and Competition Policy
Department for Business, Innovation and Skills
1 Victoria Street
London
SW1H 0ET
Tel: 020 7215 6056
Fax: 020 7215 0480
Email: implementingthecrd@bis.gsi.gov.uk

Please highlight this consultation to anyone you think would be interested in responding, and who is not already on the list as set out in Annex I, or let us know so that we can forward to them.

The consultation was published on **20 August 2012** and will run until **1 November 2012**.

Any complaints about the running of this consultation should be addressed to:

John Conway
BIS Consultation Co-ordinator
1 Victoria Street
London
SW1H 0ET

Telephone: 020 7215 6402

or email: john.conway@bis.gsi.gov.uk

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6. Confidentiality & Data Protection

Information provided in response to this consultation, including personal information, may be subject to publication or release to other parties or to disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004). If you want information, including personal data that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.

In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not be regarded as binding on the Department

SECTION B: BACKGROUND TO THE CONSUMER RIGHTS DIRECTIVE (CRD)

What is in the CRD?

1. The Consumer Rights Directive⁷, agreed in October 2011:

- amends and consolidates principles contained in the existing regulations for distance⁸ and off-premises selling to consumers⁹, replacing these with a single set of pre-contractual information and cancellation rights, applicable, in the main, to both distance¹⁰ and off-premises^{11 12} sellers of goods, services and digital content. (There is some overlap with information requirements in other regulations¹³) (*Articles 6-16*)
- sets out the pre-contractual information to be given for on-premises¹⁴ business-to-consumer contracts (as with article 6 information requirements, there is some overlap with existing regulation)¹⁵ (*Article 5*)
- sets out the respective responsibilities of traders and consumers with regard to delivery times and passing of risk for all contracts relating to goods within the scope of the CRD. (*Articles 18 and 20*)
- prohibits excessive charges for payment methods relating to all contracts within the scope of the CRD¹⁶ (*Article 19*)
- requires that where a customer telephone helpline is offered to deal with contracts concluded and these are within the scope of the CRD, the call must be charged at no more than basic rate (*Article 21*)
- requires that consumers must always give express consent for any additional payments (that is, payments additional to the main price for the goods or services) for all contracts within the scope of the CRD (so, for example, there should be no pre-ticked boxes which commit the consumer without their active consent) (*Article 22*)

⁷ See [See Eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:304:0064:0088:EN:PDF](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:304:0064:0088:EN:PDF) for full text

⁸ Consumer Protection (Distance Selling) Regulations 2000

⁹ Cancellation of contracts made in a Consumer's home or place of work etc. Regulations 2008 – more commonly known as the Off-Premises or 'Doorstep selling' regulations.

¹⁰ Any contract concluded between a trader and consumer under an organised distance sales or service provision scheme without the simultaneous physical presence of the trader and the consumer, with the exclusive use of one or more means of distance communication up to and including the time at which the contract is concluded. (Recital 20 explains further)

¹¹ Any contract between the trader and the consumer concluded in the simultaneous physical presence of the trader and consumer, in a place which is not the business premises of the trader, OR a contract which is concluded on the trader's business premises or by distance communication **after** the consumer was personally and individually addressed in a place which was not the trader's premises, but in the trader's physical presence. OR a contract concluded during an excursion organised by the trader with the aim or effect of promoting and selling goods and services to the consumer. (Recital 21 explains further)

¹² Business premises means any immovable retail premises where the trader carries out activity on permanent basis, or a movable retail premises where the trader carries out his activity on a usual basis. Recital 22 explains this further.

¹³ Notably with the Provision of Services Regulations 2009 and the Consumer Protection from Unfair Trading Regulations 2008

¹⁴ For the purposes of the CRD, we use the term 'on-premises' as a shorthand. In fact article 5 applies to all contracts in scope of the CRD, other than distance and off-premises contracts (see footnotes 10 and 11) and so would, for instance, cover a distance contract where there is no organised scheme i.e. where the vendor only exceptionally sells in this way.

¹⁵ See footnote 13.

¹⁶ Not covered in this consultation, but the subject of a separate consultation.

Article 27 also clarifies that there is no obligation on the consumer who has received unsolicited goods or services to either pay for them, return them or respond to the supplier. This is consistent with existing requirements in the Distance Selling Regulations 2000 (article 24) and the Consumer Protection from Unfair Trading Regulations 2008.

What contracts are not covered by the CRD?

2. The key exemptions to the mandatory application of the CRD are financial services, gambling, healthcare provided by regulated professionals, social services, package travel, timeshare, most aspects of passenger travel contracts, contracts for the sale or transfer of property¹⁷, building of new buildings¹⁸ and for residential letting.¹⁹

What mandatory changes will the CRD introduce?

3. Many of the information requirements and the concept of cancellation rights will be familiar to business. Below are summarised the principal ***changes*** which will apply to business and consumers as a result of the mandatory provisions of the CRD, once implemented and when the Distance Selling Regulations 2000 (DSRs) and Off-Premises Regulations 2008 (OPRs) are simultaneously revoked in June 2014). The existing and new legislation itself should be consulted for the detail.

a. Harmonised distance and off-premises rules, reducing compliance costs for exporters (Article 4)

By eliminating the fragmented framework of 27 national transpositions, the European Commission estimates that, if its initial proposals were implemented in full, the burden of compliance with this aspect of regulation per distance selling trader will drop to €2000. This will be the same whether the trader trades only nationally, or exports to all 27 Member States.

Under the current regime the European Commission estimates this burden to be around €9000 for those trading with only 1-2 Member States, rising to over €70000 for those selling to all 27.

The Commission's proposals have not, of course, been adopted without change, and some believe the Commission's estimates to be optimistic. However, even if such savings are not fully realised, there will certainly be compliance cost savings for businesses trading across borders as a result of harmonised provisions.

b. Enhanced information requirements (Articles 5(1) and 6(1))

¹⁷ Estate agency services are NOT exempt

¹⁸ Or substantial conversion of existing buildings

¹⁹ Article 3(3) sets out the full list of exemptions.

Some new information requirements such as that distance selling traders must, pre-contract, give an indication of the cost of returning items not normally returnable by post. Many of the rights of traders in the CRD are conditional on the consumer being given certain information. Thus the consumer is not liable for certain costs where they have not been told of withdrawal rights or obligations on the consumer, or certain formalities have not been dealt with. (see also Article 14(1)(2) and (4))

c. No refund until goods returned by consumer²⁰ (Article 13(3))

Distance and off-premises traders will only be obliged to refund money when goods have been returned by the consumer or evidence of the goods having been sent back has been provided.

Under the current regime, distance selling traders must refund monies within 30 days, whether or not the goods have been returned.

d. Consumers to return goods within certain time (Article (14(1)))

Consumer buying at a distance or off-premises²¹ will be required to return goods within 14 days of cancellation

Under current legislation, where goods are bought off-premises or at a distance, consumers need only make items available for collection

e. Traders may be compensated for diminished value of goods returned (Article 14(2))

Consumer returning goods bought at a distance or off-premises will be liable for any diminished value of returned goods that results from the consumer handling the goods beyond what is necessary to check them.

Current legislation requires the consumer simply to take reasonable care of goods to be returned. Whilst the effect may be similar, the new requirements are clearer for both trader and consumer.

f. Restriction on refund of delivery charges (Article 13(2))

²⁰ Goods received or proof of return, whichever is the earlier.

²¹ Where goods are delivered at the time the off-premises contract is agreed, the consumer is not obliged to dispatch if the goods, by their nature, cannot normally be returned by post. In such cases, they must make the item available for collection. (Article 14(1)).

Distance and off-premises traders will not be required to refund the extra cost of any express delivery which has been requested by the consumer.

g. Refunds to be effected within 14 days of cancellation (Article 13(1))

Distance and off-premises traders must refund monies within 14 days of receipt of cancellation (although trader can await proof of return of goods where this is longer than 14 days)

Currently, distance sellers must refund within 30 days.

h. Cancellation period increases from 7 – 14 days (Article 9)

The period within which consumers can cancel increases from 7 working days (for distance sales) and 7 calendar days (for off-premises sales) to 14 calendar days for both

i. Off-premises cancellation period (Article 9(2)(b))

For off-premises sales, the cancellation period will start from when items are delivered.

Currently, the 7 day cancellation period is measured from when the right to cancel is notified to the consumer, thus allowing the vendor to ‘wait out’ the cancellation period before delivering, reducing the rate of returns. The change will bring the period into line with that for distance sales.

j. Transparency of any obligation to pay (Article 8(2))

Distance sellers using electronic means must flag any obligation to pay clearly, with an ‘order with obligation to pay’ button or similar.

k. Provision of model withdrawal form (Article 6(1)(h))

Distance and off-premises sellers must now provide a link to a model cancellation form, which the consumer may, but is not obliged to, use.

Currently it is only off-premises sellers who are required to provide a specific cancellation notice as set out in schedule 4 of the Off-Premises regulations.

l. Extension of withdrawal period (Article 10 (1))

Where the consumer is not informed of the right to cancel, the right is extended for up to one year.

Under the current distance selling regime, the right is lost once (broadly) 3 months have elapsed.

m. Right to cancel a service (Article 14(3))

Consumer buying at a distance or off-premises can cancel a service which has started within the cancellation period (and will pay for proportion performed, provided they expressly requested early commencement)

This right already exists for off-premises consumers. However, under current distance selling regime, cancellation once a service has started (with the consumer's agreement) is not possible.

n. Ancillary contracts (Article 15)

Ancillary contracts are automatically terminated where the main contract is cancelled, without additional cost to the consumer.

Currently, only related credit agreements are automatically cancelled when the principal distance or off-premises contract is cancelled.

o. Additional payment only with express consent (Article 22)

For all contracts to which the CRD applies, all payments to be expressly agreed and not be default position which consumer is required to reject (e.g. no preticked boxes, or requirement to tick a box to avoid payment)

p. Help lines at basic rate only (Article 21)

Telephone customer services for calls about existing contracts must be charged at basic rates.

q. No excessive surcharges (Article 19)

There must be no excessive surcharges for use of payment cards or other means of payment.

r. Clarification of rights for digital products (Articles 5(1)(g)(h), 6(1)(r)(s) & 16(i)&(m))

Information provisions apply to digital content. Cancellation rights do not apply once digital downloads are started or where sealed software and video content are subsequently unsealed.

Overview of changes

4. Consumers will generally be able to return goods bought at a distance or off-premises, within a fortnight of receiving them, in order to receive a full refund. For services they will be able to cancel within 14 days from when the contract was agreed. Current laws give consumers the right to return or cancel goods and services only within 7 calendar days for off-premises sales and within 7 working days for distance sales. Customer-specified or personalised products are among the goods to which the right of return will not apply.

5. Traders will have to issue distance and off-premises consumers with a 'model withdrawal form' that can be used to return the goods or cancel the service. Before entering a contract with a consumer, distance and off-premises sellers must also provide certain information, which will form part of the contract. This information, much of which will already be familiar to business, includes such details as "the main characteristics" of the goods and services being sold, contact information such as name and geographical address of the business and the total price of what is being sold, including any extra fees and charges. It also includes new information such as a reminder of the guarantee of conformity (requirement for satisfactory quality etc.) for goods and on digital compatibility. A summary of the CRD information requirements, and a comparison with existing information requirements on traders, is set out in Annex III.

6. Consumers who want to cancel a contract for goods sold at a distance or off-premises should return goods within 14 days, and refunds should be effected within 14 days of receipt by the trader of the cancellation. Generally, traders may await the return (or proof of return) of goods before effecting the refund.

7. All traders within the scope of the CRD, however they sell, will generally²² be expected to deliver goods to consumers within 30 days of an order being placed. If the trader does not deliver on time, consumers will be entitled to terminate the contract and receive a refund if the business does not deliver the goods during "an additional period of time appropriate to the circumstances". In some cases the right to terminate will arise without allowing this additional period.

8. All traders within the scope of the CRD are also prohibited from introducing surcharges for payment methods (e.g. by credit or debit card) above what it costs them to use that means of payment. In addition, traders will not be able to charge consumers extra for communicating with them via telephone for post-contract queries, complaints or cancellation requests. In those circumstances the consumer should only have to pay "the basic rate" call charge.

9. All traders within the scope of the CRD must seek the express consent of the consumer for any payments which are additional to the main price for the goods or services provided under the contract. This means the consumer must not be required to take some action to avoid payment - such as un-ticking a pre-ticked box. Consumers will not be contractually bound to the additional payment obligation if the trader has not received their "express consent" to the additional charge.

²² Although parties will remain free to agree a longer time or specific date. It should also be noted that, if there is no agreed date, the requirement is to deliver "without undue delay", but in any event within 30 days.

SECTION C – PROPOSALS FOR IMPLEMENTATION

1. Most of the provisions in the Directive are maximum harmonisation measures, meaning that, subject to certain limited derogations, the UK's implementing law cannot go beyond, or indeed below, the level of consumer protection which the provision in the Directive aims to ensure. Therefore (other than within the scope of these limited derogations) the UK Government will not be able to adapt its approach to these maximum harmonisation measures as a result of this consultation.

2. The proposals below represent the main areas where the UK Government has discretion with regard to implementation of the CRD. **It is primarily on these points that we would welcome your views on implementation.** The proposals, highlighted below, are a summary of the Government's preferred options at this stage – each is followed by a description of envisaged alternatives.

Summary of proposals

3. In summary:

Application of CRD provisions to exempted sectors:

Information & cancellation rights for healthcare and to social services sold off-premises.

Preferred option:

(i) Extend the information and cancellation provisions (as set out in Chapter III of the CRD) to apply to all healthcare and social services sold to consumers off-premises. These sectors are covered by the current off-premises regime but exempt from the scope of the CRD.

As an alternative we could limit the application of the provisions only to areas within the scope of the Directive, which would mean reducing current levels of consumer protection for off-premises sales of healthcare and social services.

Information & cancellation rights for healthcare and social services sold at a distance.

Preferred option:

(ii). Extend the information and cancellation provisions (as set out in Chapter III of the CRD) to apply to all distance sales contracts for healthcare goods and services and social services. These sectors are covered by the current Distance Selling regulations but are exempt from the scope of the CRD

As an alternative, we could limit the application of these provisions only to sectors within the scope of the Directive. This would mean reducing current levels of consumer protection for distance sales of healthcare and social services.

Express consent provision applicable to healthcare and social services, package travel and timeshare contracts.

Preferred option:

(iii) For sales, however effected, apply the 'express consent for additional payments' provision to all sectors in the scope of the CRD and in addition to social services, healthcare services, package travel and timeshare contracts

We could, instead, restrict the application of this provision to sectors within the scope of the CRD.

Basic rate call provision applicable to healthcare, social services, package travel and timeshare contracts.

Preferred option:

(iv). For sales, however effected, extend the application of the requirement for access to basic rate customer help lines to social services, healthcare services, package travel and timeshare contracts

We could instead, restrict the application of these provisions to sectors within the scope of the

CRD.

Delivery provisions applicable to healthcare, social services, package travel and timeshare contracts.

Preferred option:

v. For sales of goods however effected, apply the delivery and passing of risk provisions to social services, healthcare, package travel and timeshare contracts

Alternatively, we could restrict the application of these provisions to sectors within the scope of the CRD.

Day-to-day transactions on trader premises

Preferred option:

vi. Exempt from the information requirements (Chapter II of the CRD) contracts concluded on the trader's premises which are day-to-day transactions, and which are performed immediately. Do not apply supplementary information obligations beyond those mandated in the Directive to any on-premises contracts

Chapter II provisions on information requirements are not maximum harmonisation provisions. We therefore have discretion to go further and require more (but not less) information than is required by the CRD for on-premises sales and we have the option of exempting 'day-to-day' transactions from the rules.

Low value off-premises sales

Preferred option:

vii. For off-premises contracts apply pre-contractual information requirements and cancellation provisions only to those contracts exceeding 50 Euros in value

We cannot increase the 50 Euro threshold. As an alternative, we could apply the provisions to all contracts below 50 Euros or set the threshold lower so as to apply the provisions to sales above a certain value (but below 50 Euros).

Emergency repairs in the home

Preferred option:

viii. Reduce the pre-contractual information requirements for solicited emergency repairs in the home, where the charge does not exceed 200 Euros

We cannot increase the 200 Euro threshold. However, we do have discretion on whether to apply the full information requirements to solicited emergency repairs under 200 Euros.

Detailed rules around cancellation of ancillary contracts

ix. Amend existing rules relating to automatic cancellation of credit agreements in distance and off-premises contracts as appropriate, and apply to all ancillary contracts

Subject to the requirement for automatic cancellation and to constraints around cost to the consumer, we have flexibility in setting out rules around the cancellation of ancillary contracts.

Enforcement

x. Enforce most of the provisions of the CRD through Part 8 of the Enterprise Act 2002 and through a specific injunctive (in Scotland, interdictive) regime, enforceable by Trading Standards and OFT. Maintain failure to notify an off-premises consumer of cancellation rights as a criminal offence (as is provided in the UK's current Off-Premises regulations).

Provided that measures are adequate to ensure compliance with the provisions, and that penalties are effective, proportionate and dissuasive, we are free to determine the appropriate enforcement measures.

Transposition and gold-plating

4. In line with Government policy for transposing European Directives, we are proposing generally to “copy out” provisions from the CRD unless this would not offer sufficient certainty or there are other overriding reasons not to do so. “Copying out” means keeping closely to the wording of the Directive, rather than elaborating upon it or adding substantively to the provisions of the Directive. Generally, this approach helps to ensure that UK law accurately reflects the intention of the Directive and at the same time does not go beyond the requirements of the Directive by “gold-plating” it. As explained earlier, the Consumer Rights Directive mostly requires maximum harmonisation, and this largely prohibits gold-plating in any event. In addition, where it is permitted, gold-plating could, in certain circumstances, leave UK business at a competitive disadvantage and so harm growth.

5. The starting point of the UK Government is therefore not to gold-plate directives and this is generally consistent with, and facilitated by, a “copy out” approach to transposition. However, the Government would consider elaborating on the wording of the Directive where a “copy out” approach would lead to unacceptable uncertainty or lack of clarity for business and consumers and this could not be adequately mitigated by other means such as guidance. In addition, where minimum implementation would lead to a likelihood of serious consumer or trader detriment, the Government would consider going beyond the strict minimum requirements of the Directive provided that this would not breach the Directive's requirements of maximum harmonisation. In the case of the CRD, five of the proposals above, (i),(ii),(iii),(iv) and (v), go beyond minimum implementation and would therefore be considered “gold-plating”. These proposals would not breach the Directive's maximum harmonisation approach because the additional sectors to which it is proposed to extend certain provisions of the Directive are sectors which fall outside its scope (see Article 3(3)).

6. This consultation welcomes stakeholder views on all the proposals above as well as on; (1) whether there are other areas where the UK's freedom to legislate is not restricted by maximum harmonisation and where minimum implementation might lead to significant consumer or trader detriment and, (2) areas stakeholders feel may lead to unacceptable uncertainty or lack of clarity where copy-out is applied and this could not be adequately mitigated by other means such as guidance.

Q1. Given the copy-out principle set out above, are there areas/provisions or issues in the Directive which you believe are or may be too uncertain or unclear and would benefit from guidance or elaboration on the face of the UK's implementing legislation?

Definitions in the CRD – Article 2

7. Article 2 of the CRD sets out definitions for the following terms:

- (1) consumer
- (2) trader
- (3) goods
- (4) goods made to the consumer's specifications
- (5) sales contract
- (6) service contract
- (7) distance contract
- (8) off-premises contract
- (9) business premises
- (10) durable medium
- (11) digital content
- (12) financial service
- (13) public auction
- (14) commercial guarantee
- (15) ancillary contract

Q2. Are the definitions clear? Are there areas of potential ambiguity which might benefit from clarification in any guidance to accompany the forthcoming implementing legislation?

The scope of the CRD – Article 3

8. The CRD will replace both the Distance Selling regulations and Off-Premises regulations, both to be revoked in June 2014. However, the scope of the CRD, as set out in Article 3, does not precisely mirror the scope of either of these (neither do they mirror each other) and the change in coverage may result in some changes to the rights and obligations of traders and consumers in those areas where the scope is different. The table in Annex II summarises the coverage of the CRD, Distance Selling Regulations²³ (DSRs) and Off-Premises Regulations²⁴ (OPRs). Key changes include exclusion of financial services from the CRD (some limited aspects of financial services are currently covered by Off-Premises regulations but not by Distance Selling regulations), the inclusion of online auctions where the seller is a trader (currently such auctions are excluded from the Distance Selling regulations), and social services and healthcare services which are excluded from the CRD but covered by both the Distance Selling and Off-Premises regulations.

Why are some sectors excluded from the scope of the CRD?

9. As the table in Annex II shows, a small number of categories of business-to-consumer contracts are excluded from the scope of the CRD. These have been excluded because:

- the sensitivity of the sector is such that maximum harmonisation measures are not appropriate and Member States should be able to impose additional measures (healthcare²⁵, social services²⁶, gambling), or
- measures already exist or might more appropriately be applied through sector specific legislation (financial services²⁷, package travel, timeshare, property rights including

²³ Consumer Protection (Distance Selling) Regulations 2000

²⁴ Cancellation of contracts made in a consumer's home or place of work etc. Regulations 2008"

²⁵ Healthcare services (and goods) sold by a regulated healthcare professional, as defined in Directive 2011/24 EU on patient rights in crossborder healthcare (doctors, nurses, dentists, pharmacists etc.), are exempted from the provisions of the CRD. The narrow definition of the healthcare exemption in the CRD means that commercial traders (rather than regulated professionals) selling healthcare products (e.g. mobility aids, vitamin supplements, diet plans etc.) do not fall within the exemption but are within the scope of the CRD. NHS services are not affected by the CRD which applies only to business-to-consumer contracts.

²⁶ This exemption refers to all social services where there is a business-to-consumer contract.

²⁷ The Financial Services (Distance Marketing) Regulations 2004 will remain in force, offering consumer protection for financial services sold at a distance. There are also additional protections through FSA rules, under the Financial Services and Markets Act 2000, offering protection for certain off-premises sales as well as on-premises sales. [

residential letting, passenger transport²⁸), or

- it would be inappropriate or disproportionate, given the nature of the contract, to apply such provisions (vending machines, one-off contracts with telecoms providers (e.g. payphones), supply of consumables on a regular basis (milk round, meals on wheels etc.), contracts requiring the involvement of a public office holder such as a notary.

Of these exempted sectors, and broadly speaking:

- social services, healthcare, public office holder approved contracts, and gambling²⁹, are currently covered by **both** the Distance Selling and Off-Premises regulations;

- some financial services, most passenger transport³⁰, package travel³¹, timeshare, vending machine/automated commercial premises sales are currently covered by the **Off-Premises regulations** but not the Distance Selling regulations.

- residential letting is currently covered by the **Distance Selling regulations** but not by the Off-Premises regulations.

10. The only new area to which the CRD applies, where the Distance Selling regulations do not, is auctions. Both online auctions and public auctions³² are within CRD scope although there are restrictions on cancellation rights for the latter. Broadly, there are no substantive new areas covered by the CRD which are not covered by the Off-Premises regulations.

What healthcare contracts are within the scope of the CRD?

11. All healthcare goods and services provided by a business which is NOT a regulated healthcare professional as defined in Directive 2011/24 EU (i.e. a qualified doctor, nurse, dentist, pharmacist etc.), ARE covered. The narrow definition of the healthcare exemption in the CRD means that commercial traders (as opposed to regulated professionals) selling healthcare products (e.g. mobility aids, vitamin supplements, diet plans etc.) will all be within scope. It is important to understand that the provision of free healthcare services by the NHS is not caught by the existing off-premises or distance selling rules, nor will it be affected by the CRD. It is where healthcare is sold for a fee or other price that the rules will apply because then there is likely to be a consumer contract and consumer rights become applicable. The Government takes the view that consumer law should apply to such contracts and therefore proposes to extend the CRD to keep them within the scope of its implementing legislation.

²⁸ Although a small number of CRD provisions regarding cost transparency and payment surcharges do apply to passenger transport

²⁹ Although distance selling withdrawal rights are not applicable to gambling contracts

³⁰ Information and cancellation provisions in DSRs do not apply to transport to be provided on a specific date or within a specific period

³¹ Package travel is not exempt from all DSR provisions but Article 6(2)(b) exempts contracts for the provision of accommodation, transport, catering or leisure services, where the supplier undertakes, when the contract is concluded, to provide these services on a specific date or within a specific period from, inter alia, its information and withdrawal provisions.

³² A public auction is defined in Article 2(13) of the Directive as an auction as one where the consumer attends or has the option of attending.

What social services are within the scope of the CRD?

12. All social services, whoever provides them, are exempt from mandatory coverage by the CRD. Although social services are not exhaustively defined, recital (29) of the CRD indicates a fairly broad interpretation of this category³³.

Government proposal regarding application to sectors beyond scope of CRD

13. In line with Government policy on transposition, to diminish regulatory burdens, we propose that our implementation should allow as far as possible all exemptions from scope permitted under the Directive. Only in a limited number of areas, where we consider that to exclude a sector from the application of certain provisions of the CRD would be injurious to the consumer and contradictory to our policy aims, are we proposing to go beyond the strict minimum application.

These limited areas are:

to apply the CRD information and cancellation provisions to healthcare sold off-premises by regulated professionals to consumers³⁴ and to all social services sold off-premises to consumer (both are covered under the current regulatory regime) (Proposal 3.i above)

to apply the CRD information and cancellation provisions to healthcare sold at a distance by regulated professionals to consumers³⁵ and to all social services sold at a distance to consumers (both are covered under the current regulatory regime) (Proposal 3 ii above)

to apply to healthcare sold by regulated professionals to consumers, to all social services sold to consumers, and to package travel and timeshare contracts with consumers (Proposals 3iii.iv and.v above):

the express consent for additional payments provisions³⁶ (e.g.banning pre-ticked boxes)

the basic rate telephone³⁷ helpline requirements (e.g. no premium rate numbers) and

the delivery provisions³⁸

³³ Social services include services for particularly disadvantaged or low income persons as well as services for persons and families in need of assistance in carrying out routine tasks, services for all people who have special need for assistance, support, protection or encouragement in a specific life phase. Social services cover services for children, youth, families, single parents, older persons, migrants. Short-term and long-term care services, are included, such as home care, assisted living facilities and housing and nursing homes. See Recital 29 for full description.

³⁴ Healthcare by traders is already covered by mandatory scope of CRD.

³⁵ See footnote 34 above

³⁶ Article 22

³⁷ Article 21

³⁸ Articles 18 and 20

Extending the UK's implementing law to these sectors would not breach maximum harmonisation because these sectors are outside the scope of the Directive.

A. Extension of information and cancellation provisions to all healthcare goods and services sold off-premises and to social services sold off-premises

14. We propose to retain information and cancellation rights and obligations for all healthcare goods and services sold to consumers off-premises, by regulated professionals as defined in Directive 2011/24/EU³⁹, and for social services sold to consumers off-premises. (Proposal 3(i) above). Healthcare and social services cover areas of particular consumer vulnerability. These were excluded from the scope of the CRD specifically to enable Member States to put in place **higher** consumer protections than the maximum harmonisation nature of the Directive would allow. Whilst we are not seeking to put in more onerous measures, neither would we wish to see the exemption used as a loophole to reduce protection where it is particularly needed.

15. In the UK, we do not currently have effective alternative protections available to consumers of these services who may well be vulnerable to robust sales practices in these sectors. The Off-Premises regulations give important protections which would disappear should the UK's legislation implementing the CRD be restricted to the scope of the Directive. These are sectors in which selling direct to the consumer is expected to expand significantly as a result of the changes to the way we pay for care and support services, by providing individuals who are eligible for publicly funded care with a personal budget (preferably in the form of a direct payment) in order to purchase the care they want in accordance with their care plan. Of course, this has historically been one way that people funding their own care choose to make purchases too. The number of providers of care and support services, offering their services direct to the individual, is therefore likely to increase.

³⁹ On application of patients' rights in cross-border healthcare. See footnote 25.

16. Although these changes mean that consumers will have more choice regarding healthcare and social care, with increased opportunities and freedom will come increased risk, in particular for this group where the demographic is likely to be made up of greater numbers of older, frail or otherwise vulnerable consumers. Legislation such as the Health and Social Care Act 2012 helps ensure quality standards in areas such as social care. However, legislation specific to the healthcare and social services sectors does not address the issue of how contracts are concluded and it may become more common in some areas for consumers to receive money or vouchers and then to transact directly with suppliers, even where the service is NHS supported. Other consumer protection measures which prohibit material misleading statements or omissions, or aggressive selling practices, will continue to apply. But none of these will address the circumstances where, for instance, an older person signs up to a homecare service following an unsolicited visit and where the sale was not aggressive but the consumer was persuaded of something which afterwards, or in discussion with family members, they no longer want. Without the “no fault” cancellation protection within the CRD, the vulnerable consumer is likely to remain bound to the contract.

17. This extension of the provisions of the CRD will help ensure that consumers, who are more likely to be within the vulnerable consumer category, buying at home, will continue to have clear information rights and cancellation rights, when buying social services and healthcare goods and services. Since those businesses affected by this extension are already covered by the existing Off-Premises regulations which the CRD is intended to replace, we would not expect any major new burdens on business.

18. Furthermore, if we do not extend the CRD provisions to all sales of healthcare and to social services, consumers would need to be alert to the fact that, in contracting off-premises and for identical goods and services, they would have different rights depending on who they are purchasing from – a distinction the consumer may find difficult to appreciate. Equally, having to distinguish between whether the service provided by a trader (who is not a regulated healthcare professional) is a healthcare service (and so covered) or a social service (so not covered) would also lead to confusion for both trader and consumer alike.

B. Extension to all Healthcare services and to social services contracts concluded at a distance

19. As for off-premises contracts, we propose extending the application of the information and cancellation provisions to regulated professionals selling healthcare goods or services at a distance, and to social services sold at a distance (e.g. on the internet or by telephone. (Proposal 3(ii)above). These sectors are currently covered by the provisions of the Distance Selling Regulations. Once the Distance Selling Regulations (DSRs) are revoked, there will be no longer be cancellation rights for such contracts.

20. Whilst acknowledging that for healthcare, regulated qualified professionals will be bound by professional standards and codes of conduct, so diminishing risk, maintaining this distinction for the purposes of application of the Directive is likely to lead to significant confusion for consumers, as well as increased uncertainty amongst businesses. It is likely that there will be online growth for both healthcare and social services and the continued application of these important protections will remain relevant and indeed grow in importance. This consultation seeks views and evidence on the nature and extent of online growth in health and social care.

21. There are notable benefits to extending the provisions of the CRD to distance sales in these sectors. Greater transparency which the information provisions will bring and alignment with consumer protection in distance selling more generally, and which is likely to be familiar to both traders and consumers, will both serve to decrease the potential for disputes. There will be coherence across the healthcare sector and consumers would not need to distinguish between identical healthcare goods and services, depending on who they are provided by (healthcare goods and services sold by traders who are not regulated professionals are in the scope of the CRD). Extension of the CRD provisions to these sectors also facilitates a better competitive environment since all businesses trading in the same market are subject to the same requirements.

22. These are sectors where the recipients of services are likely to be amongst the most vulnerable consumers. As families and support networks are often far apart, the use of technology to organise help and care across distances becomes particularly important. We want to ensure, for instance, that a family member located far away from an aged parent would be able to organise home care for that parent, using the phone, and benefit from the protections of these regulations.

Options which the Government does not intend to pursue

23. The UK could go beyond its proposal to apply the information and cancellation provisions in the CRD to the exempted sectors of healthcare supplied by regulated professionals and to social services. It could apply the provisions to all the sectors currently covered by the Off-Premises and/or the Distance Selling Regulations but exempt from the CRD. However the Government believes that appropriate measures already exist or can be better developed through sector-specific legislation, either because the area is particularly complex or sensitive - as for financial services or gambling - or is already addressed in targeted legislation, as for package travel and timeshare.

24. Residential lettings are covered by the Distance Selling Regulations but are in the list of CRD exempted sectors. We do not intend to extend the CRD provisions to such contracts. The removal of the right of cancellation for distance contracts should address potential detriment for traders in an area open to abuse. Potential tenants identifying properties online will no longer be able to put a variety of rental properties 'on hold' whilst they decide which to take, a practice which could significantly hinder the landlord's ability to find a tenant in a reasonable time period. Since tenants will, in the vast majority of cases, conclude a tenancy agreement either at the trader premises or off-premises, the loss of cancellation rights for distance contracts is not expected to impact significantly on potential tenants.

Q3. Do you agree with our preferred option that information and cancellation rights should continue to apply to all healthcare goods and services, including those provided by healthcare professionals, and to social services, where these are purchased by a consumer by means of an off-premises contract?

Q4. Do you agree with our preferred option that information and cancellation rights should continue to apply to all healthcare goods and services, including those provided by healthcare professionals, and to social services, where these are purchased by a consumer by means of a distance contract (e.g. by phone or internet)?

Q5. Can you offer supporting evidence (market size, degree of detriment, case studies, alternative protections etc.) to help inform our assessment of these issues and of your answers to Q3 and Q4?

Q6. It is our view that areas such as financial services and gambling are better covered through existing, sector specific legislation and that we should not pursue the option of extending the CRD information and cancellation rights to these sectors. Do you have any comments on this or other areas, including any not addressed in the proposals?

Q7. It is our view that cancellation rights are not appropriate with regard to distance selling of residential lets. Do you have any evidence you wish to present to support or to challenge this view?

C. Apply the express consent for additional payments provision, the basic rate telephone helpline provision, and the delivery provisions to healthcare goods and services, to social services, and to package travel and timeshare contracts (Proposals 3(iii)(iv)&(v) above.

25. These provisions bring a number of benefits to traders as well as consumers, as the changes set out in section B above indicate.

Delivery and passing of risk

26. Article 18 of the CRD requires that, unless the parties agree otherwise, the trader will deliver goods to the consumer without undue delay, but not later than 30 days from the date of the contract (but see paragraph 27). This will be a somewhat different position from the position which currently applies under section 29(3) Sale of Goods Act 1979, which provides that where no delivery time is fixed, the seller must deliver within a reasonable time.

27. Article 18 goes on to provide that, where the trader does not meet the delivery date agreed or the 30 day limit if no date is agreed, the consumer will call for delivery within an additional appropriate period and, if the trader again fails to deliver, the consumer will be entitled to terminate the contract (this does not affect a consumer's other remedies such as the ability to claim damages). In a number of exceptional cases, including where the originally agreed delivery period is essential, the consumer may terminate without allowing the additional period.

28. Article 20 of the CRD provides that, where the trader dispatches goods to the consumer, the risk of loss or damage will (with limited exceptions) pass to the consumer when physical possession is acquired. (This is broadly similar to the current position under the Sale of Goods Act 1979.)

29. The above provisions apply to all sales of goods within the scope of the CRD, not just distance and off-premises sales.

30. There will therefore be some enhanced clarity over delivery times, as well as some "second chance" deliveries for distance sellers – the current Distance Selling Regulations require delivery within 30 days, unless agreed otherwise - with an obligation to reimburse the consumer if that obligation is not met. Concerns around delivery affect consumer confidence and can be costly for traders, both in terms of reduced trade and in dealing with subsequent disputes which may arise. A 2011 report⁴⁰ found that one sixth of EU consumers (18%) – who bought from a national seller through the internet, postal service or phone in the past 12 months – had experienced a delay in the delivery of their order.

31. Of course we recognise that, as these extended sectors – healthcare, social services, package travel and timeshare - relate in the main to services, such benefits may be of limited relevance, but consistency in application of this provision will enhance simplicity and legal certainty.

32. Express consent for additional payments and basic rate telephone helpline charges

Article 22 of the CRD requires express (not inferred) consent from the consumer to any payments which are additional to the payment for the trader's main contractual obligation.

Article 21 of the CRD requires that, where a trader operates a telephone line to enable the consumer to contact the trader after a contract has been entered, the charge for the use of that line must be no more than the basic rate.

33. These provisions apply to all contracts within the scope of the CRD, not just to distance and off-premises sales.

⁴⁰ Flash Eurobarometer 299 – Consumer attitudes to cross border trade – March 2011

34. These provisions enhance transparency with regard to prices and therefore competitiveness of business offers. They therefore bring important benefits for both consumers and business. The proposed extension to additional sectors – healthcare, social services, package travel and timeshare - will help ensure that consumers, including many who are more likely to be considered vulnerable consumers, often buying health and social care services at home, will have the same protections from excessive call charges and hidden costs as the Directive gives to consumers buying other products. Purchasers of healthcare and social services may be more likely to be house bound and/or elderly and more reliant on telephone contact. They may not be so aware or attuned to the presence of pre-ticked boxes or other implied consent formulations, and may be more likely than some other categories of consumers to rely on the telephone to contact the trader.

35. In addition to the benefits above, it is the Government's view that extending the scope of the UK's implementing law in this way would decrease the likelihood of costly disputes which might flow from the lack of clarity about when such provisions would apply. Consumers would not be expected to understand that they have less rights with regard to helpline costs and additional payments when buying from a regulated healthcare professional rather than from a non-regulated healthcare trader, or when buying social services rather than healthcare services from non-healthcare professional traders. There seems no robust reason why a consumer contacting a gym about a personal fitness programme sold to them, should have more favourable protection (as regards the provisions addressed here) than a consumer contacting a private medical practice about a similar programme.

Package travel

36. In sectors such as package travel, pre-ticked boxes (carrying implied rather than express consent to additional payments) **are** particularly prevalent and can be problematic. Application of these provisions would ensure important protection and clarity. There could be a loss of revenue for some package travel operators, and indeed for all traders subject to the CRD express consent requirements who currently rely on consumer inertia or lack of understanding not to untick pre-ticked boxes and thereby purchase additional products or services that they may not otherwise have chosen to buy, to generate sales. Those operators who do not use such tactics, on the other hand, will benefit from fairer competition and pricing will be more transparent, improving competition and consumer confidence. There does not appear to be a compelling rationale for excluding these sectors from these provisions.

37. It is notable that, although passenger transport is generally excluded from the scope of the CRD, the Directive **does** specifically apply the requirement for express consent to additional payments to passenger transport contracts⁴¹. This reflects the fact that pre-ticked boxes are particularly prevalent in this sector and can give rise to confusion and unintended outcomes for the consumer. In this context, package travel sales can be reasonably considered as closely related to transport services in that the sales methods online are essentially the same, and the same rationale for applying this provision to transport services applies to package travel. It could be confusing for both traders and consumers, and possibly enhance compliance costs, if different rules were to apply depending on whether transport is sold separately or within a package. Such regulatory differentiation could distort the market. We intend to argue that European legislation be aligned in this respect in the context of forthcoming negotiations on a new Package Travel Directive.

Telephone charges

38. High telephone costs are often not obvious to consumers and mean they can be surcharged without the consumer actively choosing to incur extra expense. Ensuring that consumers can contact traders from whom they have bought, at a reasonable cost, wherever that trader is based, is important in enhancing consumer confidence. Providing consumers with the certainty that in case of something going wrong with their purchase, they can contact the trader without entailing significant costs, is likely to result in more active consumers who are certain about their rights, especially in distance and particularly cross-border purchases.

39. The intention of the basic rate call provision is that traders should not use high charges to deter existing customers with legitimate queries, complaints or cancellation requests from contacting them nor derive revenue benefit from such contacts. It does not mean that calls will always be cheap – consumers understand that the time they make a call, the telephone package (bundle) they are on, whether they call from a landline or mobile, and where they call from, all dictate the ultimate price of the call, and these factors will continue to be relevant. Nor does this provision require the trader to subsidise such calls in any way. The cost to the trader of this provision will be zero for the vast majority of businesses which do not use premium or revenue generating telephone services for their customer services functions. For those that do currently use such services, the cost will be more substantial and consist of the administrative cost of moving to a non-revenue generating telephone number plus the loss of income. The provision

⁴¹ Article 3(k)

will not affect the charges the telecoms provider can make for providing telecom services to the trader or to the consumer. Thus there is no expectation that calls to or from mobile phones, or from another Member State, should be cheaper than might be the case for calls made for non-commercial purposes.

40. This provision does not affect the trader's ability to use premium lines for pre-contract enquiries (sales etc.) or for those services which are specifically paid for through the cost of the call e.g. horoscopes, weather lines, directory enquiries, television voting, charity donations etc. In these cases, the caller does not have a contract with the provider at the time the call is made, and the call will not concern an existing contract. However, should a caller to, for instance, a horoscope line, subsequently have a complaint about that service, a separate basic rate (non-revenue generating) number should be given for the customer to call.

41. Traders can continue to offer post-contract helplines relating to advanced uses of complex products, (e.g. technical support) at a premium rate, provided they make clear that this is a separate service which is offered, payment for which the consumer must expressly consent to. Such helplines must be distinct from those which customers can use to make a complaint, cancel a contract, or to arrange delivery terms post-contract and which can never be premium rate.

42. The most significant cost to business is likely to be the loss of revenue from revenue-generating or revenue sharing arrangements for customer service lines. However, this should be mitigated by the fact that the Phonepayplus Code of Conduct⁴², applicable to regulated premium rate lines, already requires that customers have access to non-premium rate numbers for customer support. Some codes of practice, such as that operated by 'SafeBuy' for online retailers, also require that the customer should be charged at 'the normal rate for UK inland calls for queries relating to a transaction'. The Government believes, therefore, that most customer-orientated businesses will already offer basic rate call access.

43. PhonepayPlus regulates premium rate numbers. We do not currently have data on the number of businesses which use customer service numbers which fall outside the scope of Phonepayplus regulation - notably 084 and 087 numbers - but which may, nevertheless, derive some benefit through charges to the consumer. We would welcome any information respondents may be able to provide us with on this, and on the cost of switching to non-revenue generating numbers.

44. Requiring that consumers can contact the trader about a product they have purchased, at a reasonable cost, will help ensure that consumers are not deterred from exercising their legitimate rights, nor made to pay an excessive price for exercising them. This will raise consumer confidence, particularly when purchasing at a distance, or across borders, and will enhance transparency in the market, preventing any post-contract hidden costs specific to certain traders, so stimulating competition.

45. As in the case of the express consent provision, we see no compelling arguments to exclude the proposed sectors from the basic rate call provision. Package travel, and in particular timeshare sales and other long-term holiday contracts covered by the Timeshare Directive, can be especially problematic and it is important that consumers, who often conclude contracts far away from home, should not be deterred by premium rate call costs from contacting the sellers post-contract, in particular where phone may be their only method of contact. Long-term holiday product (holiday club) contracts of the type covered by the Timeshare Directive, if operated

⁴² Overseen by Phonepayplus, an agency of OFCOM

legitimately, invariably require ongoing contact with the consumer over the period of the contract and can include both transport services and package travel-like services.

Options which the Government does not intend to pursue

46. The Government does not intend to pursue the option of extending these provisions to business-to-consumer contracts generally (i.e. to all the exempted sectors such as financial services, gambling, items sold by vending machines, one-off telecoms contracts) as such an extension does not appear necessary to meet any identified need or problem. These provisions would either not be appropriate to the nature of those contracts or the sectors would be better served through sector specific legislation.

Q8. Do you agree with our preferred option that delivery and passing of risk, express consent for additional payments and basic rate customer helpline provisions should apply to all healthcare goods and services and social services purchased by a consumer under a contract, and to package travel and timeshare contracts?

Q9. Do you have evidence or data you can give us in support of your answer to Q.8?

Q10. We are not aware of problems which would indicate the need to extend these provisions to excluded sectors beyond those set out above (healthcare, social services, package travel and timeshare). Do you have any comments on this or other areas, including any not addressed in the proposals?

Government proposal on pre-contractual information for on-premises contracts⁴³

47. Chapter II, Article 5 sets out the pre-contractual information requirements which traders trading on their business premises must provide. (Annex III gives a summary of these requirements and how they compare to existing information obligations on traders).

48. Whilst the CRD is, in the main, a maximum harmonisation Directive, the information requirements for on-premises contracts are not subject to the maximum harmonisation requirement⁴⁴, which means that we have the discretion to go beyond the requirements. (We cannot, however, under-implement).

49. It is the Government's view that the information requirements set out in the CRD, as well as those in the Consumer Protection from Unfair Trading Regulations 2008 and the Provision of Services Regulations 2009, together provide sufficient transparency to allow consumers to make informed choices on-premises, and that increasing the information requirements would be an unwarranted additional burden on business (proposal 3(vi)).

Q 11. Do you agree with our preferred option that the information as set out in Article 5 is, together with other existing requirements, sufficient to allow consumers to make an informed choice? If not, what further information do you consider necessary?

Government proposal regarding on-premises contracts which are day-to-day transactions

50. Article 5(3) of the CRD allows Member States to exempt contracts concluded on the trader's premises which involve day-to-day transactions and which are performed immediately, from the information requirements in Chapter II, Article 5 of the CRD. (proposal 3.vi. above). The Government interprets "day-to-day" in the sense of "routine" rather than in the sense of transactions which a consumer would necessarily be expected to carry out every day. The additional requirement for immediate performance is also important: the exemption cannot apply unless both the trader and the consumer perform their obligations (normally payment in the case of the consumer) straight away.

⁴³ i.e. which are not distance or off-premises contracts as defined in the CRD

⁴⁴ Article 5(4) states that Member States may adopt additional informational requirements to those listed above, provided they do not conflict with other EU legislation, and apply these to the contracts covered by the CRD. Therefore Member States have the opportunity to extend the minimum pre-contractual information requirements as appropriate.

51. We intend to take advantage of this exemption in order to exclude transactions where the consumer is far less likely to require the level of information required by the Directive, and may even find it obtrusive. Even without CRD coverage, the information requirements in the Consumer Protection from Unfair Trading Regulations 2008 and Provision of Services Regulations 2009⁴⁵ will continue to apply to such transactions⁴⁶.

52. Day-to-day transactions will, by their nature, be familiar to consumers and will usually be for lower value contracts. Whilst there is potential benefit from improved clarity and certainty arising from the additional information requirements in some cases, it seems unlikely that the information provisions will be necessary or useful in the vast majority of scenarios. Article 5 states in any event that the information need only be given if it is not already apparent from the context. The nature of most day-to-day on-premises purchases performed immediately means that such information *will* be obvious. (The consumer buying a coffee knows it's a coffee, knows the location of the trader, can see the price of the coffee and issues such as duration of contract and interoperability of digital content are not relevant). Requiring businesses to review all day-to-day sales, for compliance purposes, will incur costs without notable compensatory benefits to consumers.

Q12. What are your views on the proposed exclusion of day-to-day transactions performed immediately, from the application of the CRD information requirements?

Q13. Can you give any cost data or other evidence to support your views as set out in your response to Q12?

Government proposal regarding low value goods and services sold off-premises:

Information and cancellation rights.

53. The Government proposes that, for off-premises contracts, the pre-contractual information requirements and cancellation provisions will only apply to those contracts exceeding 50 Euros in value (para. 3vii above)

⁴⁵ Retail is classed as a distributive service and covered by the Provision of Services Regulations 2009

⁴⁶ See Annex III for a comparison of information provisions.

54. The CRD allows the Government flexibility over whether to apply the information and cancellation provisions to off-premises contracts not exceeding 50 Euros.⁴⁷ We have no discretion to raise this threshold. We intend to take advantage of this derogation for low value contracts. This will broadly carry forward a similar exemption in the existing off-premises regulatory regime⁴⁸. The threshold could increase slightly from the current £35, to reflect the exchange rate as at the date the Directive was agreed on 25 October 2011 – a sterling equivalent of about £43. The information requirements in the Consumer Protection from Unfair Trading Regulations 2008 and in the Provision of Services Regulations 2009 will continue to apply to these low value transactions. We believe that extension of the application of the information and cancellation provisions to off-premises low value sales would place a significant new burden on business, in particular smaller traders. We do not have evidence to date of any notable benefit to consumers from removing this threshold or keeping it at £35 rather than raising it to the maximum level permitted by the Directive.

Q14. What do you consider to be the benefits and/or costs to either consumers or traders in restricting the application of the information and cancellation provisions to off-premises contracts above 50 Euros, or indeed in setting this threshold at a lower level? What would be the benefits and / or costs of removing the threshold and applying the information and cancellation provisions to all off-premises contracts, in your view?

Q15. Do you see any advantage to setting the threshold at a rounded figure of £40 rather than the maximum possible, which would be in the region of £43?

55. The drafting of Article 3(4) appears to be such that off-premises contracts with a value of less than 50 Euros could be read as being excluded from the application of the provisions of Chapter IV (relating to delivery and passing of risk, express consent for additional payments and excessive telephone helpline charges). We do not intend to apply such a derogation. We believe that this derogation is primarily targeted at the information and cancellation provisions in chapter III which relate specifically to off-premises (and distance) selling, and aims to carry forward the existing principle of a threshold for low value contracts as set out in the existing off-premises legislation. As set out above, we do not propose to impose the information and cancellation provisions in Chapter III for low value off-premises contracts because the consumer risk is less significant and the application of the provisions to such contracts would be a potentially disproportionate burden on business.

⁴⁷ Article 3(4)

⁴⁸ The current Cancellation of contracts made in a Consumer's Home or Place of Work etc. Regulations 2008, exempt transactions below £35.

56. We do not think that the same rationale for exempting off-premises low value contracts applies in relation to the Chapter IV provisions considered here. Exempting such transactions would not relieve a burden on small businesses in the same way as applying the derogation from information and cancellation provisions. It would also introduce significant complexity and risk for consumers relating to pre-ticked boxes and other inferred consents and to telephone help-lines. By excluding low value off-premises transactions from these provisions we would open up a potential loophole whereby unscrupulous traders could circumvent the Directive by, for instance, offering a good or service at an up-front deflated price but attach hidden costs which would considerably raise the price. This would not only create consumer detriment, it would also distort competition, undermining rival businesses that refuse to mislead consumers in this way, and damaging consumer confidence.

Government proposal regarding immediate repairs and maintenance in the home

57. In accordance with the derogation allowed in the CRD⁴⁹, we propose to reduce the pre-contractual information requirements for solicited emergency repairs in the home, where the charge does not exceed 200 Euros.(Proposal 3(viii) above)

58. We have no discretion to increase the 200 Euro threshold. However, we can slightly reduce the information to be given pre-contract for home repairs and maintenance where the value of the service does not exceed 200 Euros (around £173), the consumer has explicitly requested the service and the work is completed there and then. Under this lighter regime, the trader will need set out on paper⁵⁰ their name, contact details, and price. They will also need to provide information on the work to be carried out, and rights and restrictions with regard to cancellation. However, the latter requirements need not be on a durable medium if the consumer expressly agrees.

59. In practice, it is unlikely that this lighter regime will significantly decrease costs for businesses who take advantage of it, and all the information required under Article 6 must, in any case, be provided on a durable medium post-contract. However, we consider that traders should be given the option of using this lighter regime, and this option still affords the consumer adequate protection given the nature of the transaction (it is obvious for instance that the service will be carried out straight away and issues such as digital interoperability and duration of the contract are unlikely to be relevant), and the additional protections given by other consumer protection legislation⁵¹ should ensure no material information is omitted.

Q16. Do you agree with our preferred option that immediate home repairs should be subject to the lighter information regime? What cost savings would result from this approach? Do you see

⁴⁹ Article 7(4)

⁵⁰ Or other durable medium if the consumer agrees. A durable medium is defined as any instrument which enables the consumer or trader to store information addressed personally to him in a way accessible for future reference for a period of time adequate for the purposes of the information and which allows the unchanged reproduction of the information stored.

⁵¹ Provision of Services Regulations 2009 and Consumer Protection from Unfair Trading Practices 2008

risks to business or the consumer in this approach?

Note on contracts concluded by phone.

60. Article 8(6) allows Member States the discretion of requiring contracts made on the phone to become binding only once the consumer has signed an offer or given written consent. Member States are also given discretion to require that such confirmations are on a durable medium. The Government does not intend to adopt this measure, as it considers the lighter touch approach to be beneficial to both business and consumers. Business must, in any case, provide confirmation of the contract terms and consumers will benefit from the 14 day cancellation period in which to reconsider, should they choose to do so.

Distance and off-premises sales: Cancellation of ancillary contracts

61. Article 15 of the CRD states ⁵² “...if the consumer exercises his right of withdrawal from a distance or an off-premises contract in accordance with Articles 9 to 14 of this Directive, any ancillary contracts shall be automatically terminated, without any costs for the consumer that are not provided for in Article 13(2) and in Article 14 of this Directive”. The costs referred to in Article 13(2) are non-standard delivery costs and the costs referred to in Article 14 include the cost of returning goods, any diminished value of goods and a proportionate amount for services received before cancellation.

62. An ancillary contract is defined in the Directive as a contract by which the consumer acquires goods or services related to a distance contract or an off-premises contract and where those goods or services are provided by the trader or by a third party on the basis of an arrangement between that third party and the trader⁵³. Ancillary contracts could include credit agreements, extended warranties and maintenance/service contracts. The ancillary contract could be a contract which, in itself, would fall outside the scope of the CRD, for example an agreement for financial services. If an ancillary contract were not automatically terminated then this would limit the value to the consumer of the right of withdrawal under the Directive. Article 15 (2) requires Member States to lay down detailed rules on the termination of such contracts.

63. The current Distance Selling Regulations and Off-Premises Regulations contain detailed provisions on the cancellation of related credit agreements (Articles 15 &16 and 11 &12 respectively). It is already the case, under these instruments, that credit agreements linked to the main contract are automatically cancelled at the time of the cancellation of the main contract. Broadly speaking, we propose building on these existing provisions, which business and consumers will already be familiar with, and extend them to all ancillary contracts. It is our view that the exemption of financial services from the scope of the CRD,(Article 3(3)(d), does not mean that a financial services agreement cannot be an ancillary contract for the purposes of the CRD.

⁵² “Without prejudice to Article 15 of Directive 2008/48/EC ...on credit agreements for consumers...”

⁵³ Article 2 (15)

Thus it is proposed that:

- where the trader party to the main contract is not party to the ancillary contract, they must immediately communicate any cancellation to the trader who is party to the ancillary contract.
- the trader party to the ancillary contract must reimburse any monies (subject to deduction of costs as allowed under Article 13(2) or 14⁵⁴) paid to them by the consumer.
- any deposit or part-payment or security made or provided by the consumer is returnable to the consumer.
- where the ancillary contract involves a credit agreement on which interest is payable, if the consumer repays the total sum owed within a specified period of the cancellation notice, no interest shall be payable.
- except as necessary to achieve these effects, the ancillary contract is terminated.

Q17. Do you agree that the proposed principles above, regarding the cancellation of ancillary contracts are clear and equitable? What additional/alternative provisions or rules do you think need to be introduced to bring clarity to the process of terminating ancillary contracts?

Q18. Do you think that there are particular types of ancillary contract which require more detailed rules than the principles here allow?

Q19. Where the ancillary contract is provided by a third party, what are your views over the respective responsibilities of the trader, consumer and the third party with regard to repayment of any monies once the main contract is cancelled? Should the principal trader, for instance, be responsible for refunds relating to the ancillary contract, or should the ancillary provider refund direct to the consumer? How best can we achieve a straightforward regime, which consumers and business will most easily understand?

⁵⁴ As referred to in paragraph [46].

Enforcement

64. The CRD requires us to have adequate and effective measures to ensure compliance with its requirements, including effective, proportionate and dissuasive penalties (Articles 23 and 24). Member States are given flexibility on how appropriate enforcement and penalties are effected.

Part 8 of the Enterprise Act 2002

65. **Part 8 of the Enterprise Act 2002(EA)** provides an existing framework for the enforcement of certain consumer legislation. We propose to add the UK law implementing the CRD to the legislation that can be enforced under Part 8. Under Part 8, Trading Standards, the Office of Fair Trading (OFT) and the Department of Enterprise Trade and Investment in Northern Ireland (DETINI) are *general enforcers* with powers to apply for an enforcement order in respect of any domestic or Community infringement (section 215 EA). They⁵⁵ will have powers to enforce the UK measures implementing the CRD when these come into force, as will the designated enforcers in the EA (Section 215)⁵⁶.

66. Under Part 8 of the Enterprise Act, where there is collective harm to consumers, enforcement authorities are able to seek enforcement orders or undertakings where a trader has committed an infringement or is likely to do so. An enforcement order can require (among other things) that the trader does not continue or repeat the conduct. Case law suggests that collective harm is not to be assessed by reference to percentages of the population, statistics or geography. A limited course of conduct may be enough for an enforcement order to be granted if it potentially affects a wide group of consumers.

67. Enforcement orders under Part 8 are injunctive in nature and prohibit future breaches rather than penalising past breaches. The Government considers that enforcement orders are an important part of an effective, proportionate and dissuasive regime because breach of an enforcement order could lead to sanctions, including fines, for contempt of court.

Specific injunction and interdict regime

68. In addition to enforcement under Part 8 Enterprise Act 2002, we are also proposing to create a more specific regime of injunctions or, in Scotland, interdicts and specific implements. This would apply to all provisions of the Directive which apply to traders and would be similar to the regime which currently operates under regulation 27 of the Distance Selling Regulations. OFT, Trading Standards and DETINI would have powers to obtain undertakings from traders to

⁵⁵ When OFT responsibilities transfer, the proposed Competition and Markets Authority will retain a power to enforce the legislation where there are breaches that have an impact on the structure of competition in the market.

⁵⁶ At present these are Civil Aviation Authority, Director General of Electricity Supply for Northern Ireland(NI), Director General of Gas for NI, OFCOM, Water Services Regulation Authority (OFWAT), Gas and Electricity Markets Authority(OFGEM), Information Commissioner, Office of Rail Regulation, Financial Services Authority, Consumers Association ('Which?')

address breaches, and to apply to the court for an enforcement order to require the trader to meet their obligations. In contrast to the requirements of Part 8, enforcers would not need to show collective harm in order to apply for an enforcement order. However, an enforcer would only be able to apply to court for an order if there had been a breach, whereas under Part 8 there is the possibility of applying to court if there is *likely* to be a breach.

69. Trading Standards would have a duty to consider complaints made by consumers and these complaints could, in suitable cases, then form the basis for an application for an injunction or, in Scotland, an interdict or specific implement. Failure to comply with any court order could result in contempt of court for which there are sanctions including fines.

70. In line with wider policy on consumer law enforcement as set out in our March consultation this year -‘Consolidating and modernising consumer law enforcement powers’ - we would intend that enforcers should benefit from a single set of investigatory powers. Therefore, we would intend that investigatory powers with regard to breaches of the CRD would be consistent with these anticipated generic powers which are intended to be included in the proposed Consumer Bill of Rights.

Criminal offences

71. The failure to inform consumers of their right to withdraw from a contract concluded off-premises is currently a criminal offence⁵⁷. We are seeking views in this consultation as to whether this should remain the case. A common problem is for unscrupulous traders to hard sell, on the doorstep or in the home, an often expensive item to a ‘captive’ consumer and then fail to disclose the consumer’s right to withdraw. It is difficult for enforcement authorities to deal with these breaches without sanctions. Criminal sanctions represent an effective deterrent and send a strong signal to courts, which is why they have been favoured so far. An alternative might be enhanced civil sanction. The Government is considering whether enforcers may apply to civil courts for restorative sanctions against businesses that have broken the law. If potential civil sanctions were more dissuasive, it might be possible to remove the criminal deterrent in this area. A Consultation will be issued on the subject of enhanced civil sanctions in early Autumn 2012 .

72. Finally, criminal sanctions applicable to breaches of the Consumer Protection from Unfair Trading Regulations 2008, which include similar information provisions to the pre-contract information provisions in the CRD, would continue to apply, giving added powers to enforcers and providing a key deterrent. That is one reason why we do not generally favour an extension of criminal penalties for the UK law implementing the CRD.

Q20. Do you agree that a specific injunction and interdict regime would be an appropriate supplement to Part 8 Enterprise Act powers?

⁵⁷ Regulation 17 of Cancellation of Contracts made in a Consumer’s home or Place of Work etc. Regulations 2008

Q21. Do you see any gaps that the combination of Part 8 powers and a specific injunction and interdict regime would not address?

Q22: What other measures do you believe would usefully address gaps, acting as an appropriate deterrent and sanction for breaches of the CRD?

Q23: What are your views on the proposal that failure to notify of cancellation rights for off-premises should remain a criminal offence?

Private rights of redress

73. As well as on the provisions for public enforcement proposed above, the Government is also interested in views on the extent to which private rights of redress should be provided for breaches of the UK law implementing the CRD: both what those rights should be and on what legal basis they should be formulated. Comments about a number of particular provisions follow below.

Information requirements for distance and off-premises contracts and for contracts other than distance or off-premises contracts (CRD Articles 5 to 8)

74. In some cases, a failure by a trader to provide information has particular consequences which are specified in the Directive. For example:

- a failure by the trader to provide information about additional charges or costs, or on the costs of returning goods, means that the consumer will not have to bear those charges or costs (Article 6(6));
- a failure by the trader to ensure an explicit acknowledgement of an obligation to pay under a distance contract means that the consumer is not bound by the contract (Article 8(2));
- a failure by the trader to provide information on the right of withdrawal results in an extension of the right of withdrawal (Article 10);
- a failure by the trader to inform the consumer that the consumer must bear the costs of returning goods means that the trader will have to bear those costs (Article 14(1));
- a failure by the trader to provide notice of the right of withdrawal means that the consumer will not be liable for any diminished value of goods (Article 14(2));
- a failure by the trader to provide information or deal with certain other formalities relating to the supply of utilities or intangible digital content releases the consumer from costs which the consumer would otherwise have to bear (Article 14(4)).

75. The Government does not consider that a failure to provide pre-contract information should result in a contract as a whole being unenforceable. This would appear to be inconsistent with the Directive, given the particular consequences referred to above. It could also cut across, or at least confuse, the implementation by the Government of the Law Commission's proposals on private rights of redress for misleading and aggressive practices⁵⁸. The Government does not intend to add to the consequences provided by the Directive, as a matter of private law. However, any failure could be a matter for public enforcement, as explained in paragraphs 65-70 above.

76. Article 6(5) of the CRD provides that the pre-contract information referred to in Article 6(1) (for distance and off-premises contracts) will form an integral part of the contract. This means that, if that information is incorrect, the consumer may well have a claim for breach of contract. There is no equivalent of Article 6(5) in Article 5, for contracts which are not distance or off-premises contracts. Whether the information required by Article 5 would be incorporated in a contract would therefore be left as a matter of general contract law.

77. The Government is also considering the clarification of rights for consumers who are victims of misleading and aggressive practices⁵⁹.

Obligations in the event of cancellation (Articles 13 and 14)

78. If the consumer exercises the right to cancel a distance or off-premises contract, the trader must reimburse all payments received from the consumer. The Government considers that where a trader fails to comply with this obligation, the consumer should have a clear private right of redress, as well as this being a potential matter for public enforcement. However, the Government would welcome views on how the consumer's right of recovery should be expressed. Possibilities here include: a claim for breach of contract if the trader's obligation is expressed as a surviving provision of the otherwise cancelled contract; a claim in restitution; or a claim for breach of statutory duty.

79. The Government believes that it should also be clear that the trader has private rights of redress where a consumer who has cancelled a distance or off-premises contract fails to return goods, or to compensate the trader for the diminished value of goods resulting from unnecessary handling or use, or to pay for services received, all in accordance with Article 14. Again we would welcome views on how these rights should be expressed. In the existing Distance Selling and Off-Premises regulations (see regulations 17 and 13 respectively), the consumer's obligations as to the return of goods are expressed to be actionable as a breach of statutory duty. A failure to pay for services received should probably be actionable as a breach of contract.

80. Recital 48 of the CRD states that, in situations where the trader or the consumer does not fulfil the obligations relating to the exercise of the right of withdrawal, penalties provided for by national legislation should apply as well as contract law provisions. The possibility of penalties against traders is addressed in our comments above on public enforcement. The Government

⁵⁸ See Law Commission's report on Consumer Redress for Misleading and Aggressive practices, March 2012

⁵⁹ See above.

does not see breach by a consumer of provisions implementing Article 14 as a typical matter for public enforcement, but would welcome views on this. There would be the possibility of extending the specific injunction or interdict regime referred to in paragraph 63 above to consumers who breach these provisions, but this would be out of line with the rest of our consumer law. In a serious case where a consumer deliberately refused to return goods bought under a cancelled contract, there could be the possibility of a prosecution for theft or a related offence.

Delivery and passing of risk (Articles 18 and 20)

81. The Government's view is that private rights in respect of these provisions should simply arise as a matter of contract law.

Basic rate calls and additional payments (Articles 21 and 22)

82. The Government's view is that where a charge exceeding the basic rate is made, or an additional payment without express consent is sought, in breach of these respective provisions, any contractual term entitling the trader to recover these amounts should be unenforceable and that the consumer should have a contractual right to repayment of any such payments made.

Q24. With regard to private redress, do you consider the consequences provided for in the Directive for breaches of certain provisions to be clear and sufficient? Please explain your answer.

Q25. In your view, should the consumer have a private right of recovery? If so, what form should the consumer's right of recovery take, where a trader fails to comply with the obligation to reimburse payments following the exercise of a right of withdrawal?

Q26. With regard to private rights of the trader, should a failure by a consumer to return items, in breach of CRD obligations, be actionable as a breach of statutory duty or expressed in another way? What are your views regarding the imposition of penalties for such breaches? Please give your reasons.

General comments on CRD

Q27. Are there any other issues or areas on which you would like to comment? If so, we would welcome your views

SECTION D – IMPACT ASSESSMENT QUESTIONS

Four impact assessments accompany this consultation and can be obtained at the following URLs:

(a) Impact Assessment on pre-contract information for sales other than off-premises or at a distance;

<http://www.bis.gov.uk/assets/biscore/consumer-issues/docs/e/12-1000-eu-consumer-directive-pre-contractual-impact>

(b) Impact Assessment on information and cancellation rights for off-premises sales:

<http://www.bis.gov.uk/assets/biscore/consumer-issues/docs/e/12-1001-eu-consumer-directive-off-premises-contracts-impact>

(c) Impact Assessment on information and cancellation rights for distance sales:

<http://www.bis.gov.uk/assets/biscore/consumer-issues/docs/e/12-1002eu-consumer-directive-distance-contracts-impact>

(d) Impact Assessment on the delivery, express consent and excessive helpline charges provisions:

<http://www.bis.gov.uk/assets/biscore/consumer-issues/docs/e/12-1000-eu-consumer-directive-additional-payments-impact>

We would welcome any comments you may have on the assessments made, and any supporting evidence, in particular quantified costs and benefits, you can provide us with to underpin your comments. We would also welcome your views where you feel there are consequences not identified in the impact assessments.

Harmonisation of rules

Q1 What savings do you anticipate as the result of harmonising rules, in particular on distance and off-premises selling, across the EU?

On-premises pre-contractual information (Impact Assessment (a) above)

Q2. What do you expect the ADDITIONAL costs business of complying with the information

requirements as set out in option 1 to be⁶⁰?

Impact Assessments (b) and (c) above.

Information on digital functionality and interoperability

There is, in the CRD, a new explicit requirement (for **all** sales whether on-premises, off-premises or at a distance) to describe, if relevant, the functionality and interoperability of any digital content⁶¹. Functionality refers to the ways in which digital content can be used, for instance tracking of consumer behaviour, as well as to the absence or presence of any technical restrictions such as protection via Digital Rights Management or region coding. Relevant interoperability refers to information regarding the standard hardware and software environment with which the digital content is compatible, for instance the operating system, the necessary version, certain hardware features etc.

Although a new explicit requirement, such information would appear necessary to enable the consumer to select appropriate digital products, and as such is likely to already be supplied as a matter of routine by the majority of businesses, in accordance with existing legislation⁶².

Q3. Do you agree that information with regard to functionality and interoperability is necessary for consumers to make an informed purchase and, as such, is routinely given by business?

Q4. If not, what do you think the cost or benefit to business and consumers to be from this enhanced requirement?

Information requirements for off-premises and distance sales

Q5. Do you agree that the information requirements do not differ significantly from those to which businesses are already required to adhere?

Q6. What do you consider will be the additional costs, (or cost benefits) if any, from the information requirements? Will any such costs affect any sectors or businesses in particular and if so, why?

Q7. For distance sales, what do you anticipate to be the costs, both set-up and on-going, of the

⁶⁰ Given the existing information requirements in the Consumer Protection from Unfair Trading Practices Regulations 2008, Provision of Services Regulations 2009 – See Annex III for comparison of information requirements.

⁶¹ Article 5(g) and (h) relating to on-premises information and Article 6(r)(s) relating to distance and off-premises information, state that “ where applicable, the functionality, including applicable technical protection measures, of digital content” and “where applicable, any relevant interoperability of digital content with hardware and software that the trader is aware of or can reasonably be expected to have been aware of”.

⁶² Under regulation 6 of the Consumer Protection from Unfair Trading Practices Regulations 2008, to omit, hide or make ambiguous material information that the consumer needs to make an informed decision and which leads to the consumer taking a different decision to that they would otherwise have taken is a misleading omission, which breaches the Regulations.

requirement to present information as required in the Directive (e.g. with a link to model withdrawal form, with certain information immediately prior to confirming the order, and with an 'obligation to pay' button, or similar)?

Cancellation provisions for off-premises and distance sales

Q8 What do you envisage will be the costs or benefits resulting from the extension in cancellation period from 7 – 14 days? Please provide estimates of the size of these effects.

Q9 If you are a business, do you already work to a 14 day (or longer) cancellation period as part of your code of practice or other guidelines (please state which)? If so, please provide any estimates of the impact the additional 7 days has on returns and business costs.

Q10. If you are business, are you able to quantify the benefit of change which allows business to await the return (or proof of return) of an item before a refund to the consumer is effected?

Q11. Are you able to estimate the cost per business that familiarisation and any set up costs (staff training, reprinting of material, webpage editing) as a result of revised information and cancellation provisions?

Q12. What are the implications (both savings and costs) of requiring consumers to return unwanted items within 14 days of cancellation and of businesses to refund within 14 days of receipt of a cancellation notice?

Off-premises sales only

Q13. What do you expect the impact of the delay in the start of the cancellation period for goods from signing of contract to receipt of those goods to be? What will be the cost implications?

Q14. For off-premises sale of goods, what proportion of goods are delivered after the cancellation period has expired?

Impact Assessment (d) above.

For all sales of goods

Delivery

Q15. Concerns around delivery impact on consumer confidence and on business confidence in trading across borders. Do you see impacts, either savings or additional costs, which may come

from the measures to clarify (and extend⁶³) delivery times, and passing of risk?

Q16. For distance sales, how many contracts are currently cancelled once the existing 30 day deadline for such sales has elapsed?

For all sales of goods and services

Express consent for additional payments.

The express consent provision prohibits making payment the default option, i.e. practices which requires the consumer to act in order to avoid the payment (e.g. untick a pre-ticked box) will be banned.

Q17. What are the likely impacts of the proposals, on business costs, such as the cost of revising websites? Please quantify where possible or provide an indication of the size of the impact.

Q18. Are you able to offer evidence, provide estimates on the benefits of the enhanced transparency resulting from the express consent provision, for example enhanced competition, reduced consumer detriment etc.?

Basic Rate customer helplines

The CRD requires that existing customers must have access to a basic rate helpline, where phone contact is offered, for queries and complaints regarding a contract already entered into⁶⁴.

Q19. Please provide estimates of the number of businesses (or alternatively revenues raised from) charging customers above the basic rate for using post-contractual helplines.

Q20. What would be the cost of transferring from a revenue generating number for post-contract consumer queries to a non-revenue sharing number (such as 01/02/03)? Can any of these costs be mitigated? Please set out by type of cost. Are there any other practical implications for such a transfer?

Q21. Many businesses already build post-contract customer service costs into the headline price of the goods or service. For those businesses who, partially or wholly, fund customer services through revenue-generating customer helplines, what would be the cost impact of changing to such a model?

⁶³ For distance sales, in many cases traders will get a second chance to deliver once the 30 day period has expired. Under current regime, distance sellers have only 30 days.

⁶⁴ It will not affect services such as weatherlines, horoscopes, voting lines etc. where no contract exists prior to the call. Technical support can also be provided outside the basic rate provision, provided it is made clear to the consumer that it is a separate service. A basic rate line should still be available for the reporting of faults, or complaints, or the notifying of cancellations if appropriate.

Q22. What would be the costs and savings to consumers of a prohibition on revenue generating numbers, for post-contract consumer queries and complaints?

SECTION E – NEXT STEPS AND ANNEXES

This consultation will close on 1 November 2012. We will then publish a Government Response by 6 March 2013, setting out our planned approach in the light of responses. The Response will be available on the BIS website, and paper copies will be made available on request.

The deadline for the Directive to be incorporated into national law is December 2013, with provisions coming into force in June 2014. It is likely to be implemented through secondary legislation (under Section 2(2) European Communities Act) as part of the package of measures built around the Consumer Rights Bill, to clarify and simplify consumer law. However, the Government has not ruled out implementation of part or all of the Directive through the Bill itself.

Annex I: List of Individuals/Organisations consulted

ABTA The Travel Association
Actsmart
Age UK
Alliance Boots
Amazon
Apple
Association of Convenience Stores (ACS)
Association of District Judges
Association of Independent Tour Operators (AITO)
Association of Plumbing and Heating Contractors
Association of Train Operating Companies
BPI, The British Recorded Music Industry
British Antique Dealers' Association
British Art Market Federation
British Gas
British Healthcare Trades Association (BHTA)
British Hospitality Association (BHA)
British Independent Retailers Association (BIRA)
British Retail Consortium (BRC) and members
British Vehicle Rental and Licensing Association (BVRL)
BT
Care Inspectorate (Scotland)
Care Quality Commission
Citizens Advice
Citizens Advice Scotland
Competition Commission
Confederation of British Industry
Confederation of Passenger Transport UK (CPT)
Consumer Focus
Cosla
DHL
Fair Telecoms Campaign
Federation of Master Builders
Financial Ombudsman Service (FOS)
Financial Services Authority (FSA)
Funeral Planning Authority
Gambling Commission
General Optical Council

Healthcare Improvement Scotland
Holiday Travel Watch
Horticultural Trades Association
IMRG (Interactive Media in Retail Group)
Intellect
J Sainsbury Plc
John Lewis Partnership
Kingfisher
Local Government Association (LGA)
Marks & Spencer
Microsoft
National Association of Estate Agents
National Federation of Property Professionals
Northern Ireland Executive
Ofcom
PhonepayPlus
Prof Christian Twigg-Flesner, Hull University
Prof Ian Walden, Queen Mary, University of London
Prof Robert Bradgate, Sheffield University
Publishers Association
Resort Development Organisation
Royal Institution of Chartered Surveyors
SafeBuy
Tesco
The Association for UK Interactive Entertainment (UKIE)
The Centre for Commercial Law Studies (CCLS), Queen Mary, University of London
The Confederation of British Industry (CBI)
The Federation of Small Business (FSB)
The Forum of Private Business
the Institute of Directors
The Law Commission
The Law Society and members
The OECD Consumer Committee
The Office of Fair Trading (OFT)
The Office of the Gas and Electricity Markets (Ofgem)
The Property Ombudsman
The Publishers Association (PA)
The Retail Motor Industry Federation (RMI)
The Scottish Government
The Society of Motor Manufacturers and Traders (SMMT)
The Timeshare Association
The Trade Association Forum

The Travel Foundation
The Welsh Government
Trading Standards Institute
TrustMark
TSol
UK European Consumer Centre (UK ECC)
Which?
Wm Morrison Supermarkets Plc

Annex II: Differing application of provisions of Distance Selling regulations, Off-premises regulations and CRD

(The following table is in summary and note form. The regulations and the Directive should be consulted for the detail.)

	Distance Selling 2000	Off-Premises 2008	CRD
Out of scope	<ul style="list-style-type: none"> ▪ Auctions ▪ Sale of land, building construction involving sale of land ▪ Financial services ▪ Vending machines and automated premises ▪ Telecommunications by public payphone 	<ul style="list-style-type: none"> ▪ Sale or rental of property ▪ Property construction, with exceptions ▪ Goods for current consumption supplied by regular roundsman ▪ Trader catalogue where consumer on own and given 7 days to cancel and continuity of contract intended ▪ Insurance ▪ Most credit agreements under £35 ▪ Other contracts under £35 ▪ Most activities regulated under Financial Services and Markets Act 2000 ▪ Cancellable agreements under the Consumer Credit Act 1974 and similarly cancellable agreements ▪ Contracts made during 	<ul style="list-style-type: none"> ▪ Social services ▪ Healthcare ▪ Gambling ▪ Financial services ▪ Rights in immovable property including construction and substantial conversion of buildings; residential rentals ▪ Package travel ▪ Timeshare ▪ Contracts needing public office holder ▪ Goods for current consumption supplied by regular roundsman ▪ Passenger transport (with exceptions) ▪ Vending machines and automated premises ▪ One- off telephone and similar calls and connections

		<p>solicited visits relating to regulated mortgages, home purchase plans or home reversion plans, regulated or exempt consumer credit agreements secured on land and other agreements regulated under the Consumer Credit Act 1974</p>	
<p>In scope but exempt from application of:</p>	<p><i>Information and cancellation provisions:</i></p> <ul style="list-style-type: none"> ▪ Timeshare (performance also exempt) ▪ Goods for everyday consumption supplied by regular roundsman ▪ Accommodation, transport, catering, leisure for a specified date/period (and by virtue of this,package travel] 		
<p>Consumer who wants performance to begin during cancellation period must request this in writing.</p> <p>(If does so, must pay reasonable amount if cancels. If does not so request,</p>		<ul style="list-style-type: none"> ▪ Newspapers, magazines ▪ Advertising ▪ Goods where price depends on fluctuations in financial markets not controllable by supplier ▪ Goods supplied in emergency ▪ Personalised items ▪ Perishable goods 	<p>Express consent of the consumer required for commencement of a service within the scope of the CRD within the cancellation period.</p>

then no obligation on trader to begin performance and no obligation on consumer to pay).		<ul style="list-style-type: none"> ▪ Consumed goods ▪ Products no longer separable ▪ Funeral goods and services ▪ All other services 	
Exceptions to right to cancel	<ul style="list-style-type: none"> ▪ Where expressly request start of service ▪ Goods or services where price depends on fluctuations in the financial market not controllable by supplier ▪ Personalised items ▪ Items liable to expire or deteriorate ▪ Unsealed audio, video or software ▪ Newspapers and magazines ▪ Gaming, betting and lottery 		<ul style="list-style-type: none"> ▪ Where performance of service completed following express consent ▪ Where price fluctuations in financial markets not controllable by supplier ▪ Personalised goods ▪ Goods perishable or likely to deteriorate ▪ Unsealed goods for hygiene and health reasons ▪ Goods mixed inseparably with others after delivery ▪ Alcohol where price fluctuates and cannot be controlled by trader ▪ Where urgent home repairs are solicited ▪ Sealed audio, video and software which are unsealed ▪ Newspapers, magazines (not subscriptions) ▪ Where purchased at public auction⁶⁵ ▪ Accommodation, transport, car rental, catering, leisure where this is for specific date or period ▪ Intangible digital content where download has begun (where consumer received prior information of lack of cancellation right and gave express consent)

⁶⁵ Article 2(13) defines public auction. The consumer must be present or be given the possibility to be present.

Annex III : COMPARISON OF INFORMATION REQUIREMENTS IN CRD WITH THOSE IN EXISTING LEGISLATIONⁱ

Note: this summary is intended as an indicative guide. Not all differences are addressed in detail

<u>Precontractual Information Requirements in CRD</u>	DSRⁱⁱ_s	OPRⁱⁱⁱ_s	CPR^{iv}_s^{*v}	POS^{vi}
<p>For on-premises contracts</p> <p>To be provided In a clear and comprehensible manner, and only if that information is not already apparent from the context:</p>				
a. The main characteristics of the goods or services (appropriate to the product)			✓	✓
b. The identity of the trader, such as his trading name, the geographical address at which he is established and his telephone number;			✓ ^{vii}	✓
c. The total price of the goods or services including taxes, or where the total price cannot reasonably be calculated in advance, the manner in which the price is to be calculated. Also, where applicable, all additional freight, delivery or postal charges or, where these cannot reasonably be calculated in advance, the fact that such additional charges may be payable;			✓	✓ ^{viii}

<u>Precontractual Information Requirements in CRD</u>	DSR ii_s	OPR iii_s	CPR^{iv}_s *v	PO S^{vi}
d. Where applicable, the arrangements for payment, delivery, performance, the time by which the trader undertakes to deliver the goods or to perform the service, and the trader's complaint handling policy;			*ix	*x
e. Reminder of the existence of a legal guarantee of conformity for goods, and the existence and the conditions of after-sales services and commercial guarantees, where applicable.				*xi
f. The duration of the contract, where applicable, or, if the contract is of indeterminate duration or is to be extended automatically, the conditions for terminating the contract;				
g. Where applicable, the functionality, including applicable technical protection measures, of digital content;			*xii	
h. Where applicable any relevant interoperability of digital content with hardware and software that the trader is aware of or can reasonably be expected to have been aware of.			*xiii	
For off-premises and distance contracts To be provided In a clear and comprehensible manner:				
a. Main characteristics of product or service, appropriate to medium and type of product	✓		✓	✓

<u>Precontractual Information Requirements in CRD</u>	DSR ii_s	OPR iii_s	CPR^{iv}_s *v	PO S^{vi}
b. Identity and	✓		✓	✓
c. contact details of trader, including geographical address and	✓ ^{xiv}		✓	✓
d. including geographical address for complaints if this is different to trader's geographical address.	✓			
e. The total price of the goods or services including taxes, or where the total price cannot reasonably be calculated in advance, the manner in which the price is to be calculated. Also, where applicable, all additional freight, delivery or postal charges or, where these cannot reasonably be calculated in advance, the fact that such additional charges may be payable Where the contract is of indeterminate duration or is a subscription, the total cost per billing period should be given. If such contracts are fixed rate, the total price shall also mean total monthly costs.	✓ ^{xv}		✓	✓ xvi
f. The cost of using the means of distance communication for the conclusion of the contract where that cost is calculated other than at the basic rate	✓			
g. Arrangements for payment, delivery, and performance, the time by which the trader undertakes to deliver the goods or perform the services and, where applicable, the trader's complaint handling policy	✓ ^{xvii}		*xviii	xix
h . Where a right of withdrawal exists, the conditions, time limit and procedures for exercising that right in accordance with Article 11(1), as well as the model withdrawal form set out in Annex to the CRD.	✓ ^{xx}	✓ ^{xxi}	✓ ^{xxii}	
i. where applicable, that the consumer will have to bear the cost of returning the goods in case of withdrawal and, for distance contracts, if the goods, by their nature, cannot normally be returned by post, the cost of returning the goods				

<u>Precontractual Information Requirements in CRD</u>	DSR ii_s	OPR iii_s	CPR^{iv}_s *v	PO S^{vi}
j. that, if the consumer exercises the right of withdrawal after having made a request in accordance with Article 7(3) or Article 8(8), the consumer shall be liable to pay the trader reasonable costs in accordance with Article 14(3)		✓		
k. where there is no right of withdrawal (see Article 16 for contracts exempt from right to cancel), the information that the consumer does not have a right to cancel, or, where applicable, the circumstances under which the consumer would lose that right.				
l. Reminder of existence of legal guarantee of conformity for goods				
m. Where applicable, the existence and conditions of after sales customer assistance, after-sales services and commercial guarantees	✓			*XXIII
n. the existence of relevant codes of conduct, as defined in point (f) of Article 2 of Directive 2005/29/EC, and how copies of them can be obtained.				✓
o. the duration of the contract, where applicable, or, if the contract is of indeterminate duration or is to be extended automatically, the conditions for terminating the contract	✓ ^{XXIV}			
p. where applicable, the minimum duration of the consumer's obligations under the contract	✓			
q. where applicable, the existence and the conditions of deposits or other financial guarantees to be paid or provided by the consumer at the request of the trader;				

<u>Precontractual Information Requirements in CRD</u>	DSR ^{ii_s}	OPR ^{iii_s}	CPR ^{iv_s} ^{*v}	POS ^{vi}
r. where applicable, the functionality, including applicable technical protection measures, of digital content.			*XXV	
s. where applicable, any relevant interoperability of digital content with hardware and software that the trader is aware of or can reasonably be expected to have been aware of			*XXvi	
t. where applicable, the possibility of having recourse to an out-of-court complaint and redress mechanism, to which the trader is subject, and the methods for having access to it.				✓

ⁱ Consumer Protection from Unfair Trading Regulations 2008 (CPRs) and Provision of Services Regulations 2009 (POS) will continue in force once CRD comes into effect. Consumer Protection (Distance Selling) Regulations 2000 (DSRs) and Cancellation of Contracts concluded in the Consumer's home, or place of work etc. Regulations 2008 (OPRs) will be revoked.

ⁱⁱ Consumer Protection (Distance Selling) Regulations 2000

ⁱⁱⁱ Off-Premises Regs, or "Doorstep Regs", more properly known as Cancellation of Contracts concluded in the Consumer's home, place of work etc. Regulations 2008

^{iv} Consumer Protection from Unfair Trading Regulations 2008

^v Where there is an "invitation to purchase", failure to provide information under CPRs is subject to the test that the average consumer would not have taken the decision but for that information (or lack of). Failure by a trader to make available **material** information which causes, or is likely to cause the **average consumer** to take a different decision about the product, will be a breach of the CPRs.

^{vi} Provision of Services Regulations 2009

^{vii} Not phone number

^{viii} Where price not predetermined, information on price and how calculated, to be made available on request.

^{ix} Required where arrangements depart from requirements of professional diligence – broadly what is reasonably expected

^x Any relevant code of conduct or ADR scheme which the trader participates in, must be flagged up.

^{xi} 8(1) k requires the existence of any after-sales guarantee not imposed by law to be disclosed.

^{xii} Not specified but may go to materiality of information (see v above).

^{xiii} See endnote xii.

^{xiv} Address only needed if payment required in advance

^{xv} DSRs refer to delivery costs where appropriate

^{xvi} See note viii above.

^{xvii} DSRs do not specifically require information on time by which trader will deliver, nor on complaints policy, although address for complaints must be given.

^{xviii} See note ix above

^{xix} 8(1)i requires the trader to give any general terms and conditions used by the provider.

^{xx} DSRs require information on right to cancel, conditions and procedures for exercising right, if consumer must return goods and any costs to consumer for returning goods

^{xxi} OPRs require that consumer be told of right to cancel, that may need to pay for goods and services supplied during the cancellation period, a provided with model cancellation form

^{xxii} Trader must inform of any right to cancel

^{xxiii} See note xi above

^{xxiv} DSRs require conditions for cancellation for contracts of unspecified duration or where the contract is for more than one year.

^{xxv} See note v

^{xxvi} See note v

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Any enquiries regarding this publication should be sent to:

Department for Business, Innovation and Skills
1 Victoria Street
London SW1H 0ET
Tel: 020 7215 5000

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