



Draft Consumer Contracts (Information, Cancellation and Additional Payments) Regulations

The draft regulations clarify the information which a trader must give to a consumer before and after making a sale, set out cancellation rights which apply when selling at a distance or off-premises, and prohibit certain hidden cost practices. Amongst other things, these regulations consolidate provisions currently within the distance selling regulations and off-premises regulations, which will be revoked. Key changes include:

Information:

- Many of the information provisions are already required by existing legislation and will be familiar to traders, but some are new. For example, information, when buying digital content, on what systems or hardware it will work with.

Cancellation rights:

- Cancellation rights will continue to apply to off-premises and distance contracts only. The cancellation period will extend from the current 7 days to 14 days to give consumers more time to change their minds.
- An online trader will need to make absolutely clear, through for instance a labelled 'pay now' button, where there is an obligation to pay.
- Online and other distance or off-premises traders will be able to withhold refunds until goods are returned and they can reduce the amount of money refunded for goods returned which show evidence of use beyond handling to see whether the goods are as expected, e.g. whether they fit.

Hidden costs:

- Traders will need the active consent of the consumer for all payments – pre-ticked boxes for instance will no longer be permitted.
- Where traders offer telephone helplines for consumers to contact them about something they have bought, they must be charged at the basic rate.

The new rights apply where the consumer has entered into a contract with the trader.

We are seeking comments on the detail of how the Regulations would apply, by 11 October.

Frequently asked questions

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What is a distance contract or an off premises contract?

I sell on the phone but also visit people to sell my products. What kind of contracts are these?

Phone and online sales, where the trader and consumer are not physically together, are distance contracts. Contracts concluded where both are present, e.g. when visiting homes, are off-premises contracts. Generally, the same information must be given for both, although requirements over the way information is given may be slightly different and it remains a criminal offence not to inform a consumer buying off-premises of their cancellation rights.

I sell from a regular pitch at a Saturday market. Am I selling off-premises?

No. Business premises includes movable premises provided you carry on your business there on a usual basis.

Extent of coverage

Which sectors are not covered?

Contracts exempt from the provisions in the regulations include gambling as covered by the Gambling Act 2005, immovable property contracts, including building of new properties, residential letting contracts, package travel and timeshare contracts. Supply of consumables by regular roundsmen such as milkmen, supplies by vending machines and single telecom connections (e.g. payphones) are also exempt. Financial services are generally exempt although warranties, credit agreements and insurance which are offered in conjunction with the sale of a non-financial goods or services, will still need to meet the requirements for cancellation of ancillary contracts and for express consent for additional payments, see the example below.

I'm a retailer selling white goods. Consumers can buy a warranty on my site at the same time that they buy an appliance. What do I need to do?

You must give all the information required in the regulations about the appliance you are selling, including guarantee arrangements. The warranty, however, is likely to be a financial product and so the draft regulations' information and cancellation rights will not apply to it. However, the warranty (or other form of insurance) **will** be an additional payment and, as such, if there is a tick box to be completed it is the consumer, and not the trader, who must tick it. In addition, if the appliance is sold with cancellation rights (e.g. online) and the consumer notifies the trader that they have changed their mind, both the contract for the appliance and the contract for the warranty are automatically terminated. This does not, of course, prevent the trader from contacting the consumer for their express consent should the consumer wish to keep the warranty, for instance if the warranty purchased will cover other items.

Formats constituting a durable medium

The purpose of the 'durable medium' requirement is to ensure that, should a dispute arise at some point after the contract has been concluded, both parties are clear about what was agreed at the time of purchase.

I sell home help services online. Do I need to send a confirmation letter in the post for my sales?

Whilst confirmation must always be provided for distance sales, it need not be in the form of a letter in the post. The important thing is that the consumer can refer to that confirmation, in the future, in an unchanged format. Thus, as well as paper, emails, USB sticks, CD-ROMs, DVDs, memory cards and secure

personal accounts which remain accessible to the consumer could all be acceptable ways of providing the confirmation. The confirmation is additional to the information you must give the consumer before making the sale. For online sales, the appropriate medium for this pre-contract information is likely to be an email or in another electronic form. You do not need to include this information in your confirmation if you have already provided it in an unchangeable form (such as one of those listed above) before making the contract.

I sometimes visit homes to sell services. Do I always need to hand over a confirmation letter or send one in the post for these sales?

Whilst confirmation must always be provided for off-premises sales, it need not be in the form of a letter in the post if the consumer agrees to receive it in another durable medium, like those listed above. Again, the confirmation is additional to the information you must give the consumer before making the sale but you do not need to repeat this information if you have already provided it in writing or an agreed durable medium.

Day to day transactions

I sell video games from high street premises. The regulations say I don't have to provide the information if the sale is a day-to-day transaction which is completed immediately? What information do I need to provide?

The principle behind the exemption for day-to-day transactions is that the consumer will be very familiar with the goods or services, and their cost, so that that the level of information required by the Regulations would be superfluous. Thus buying a cup of coffee, the daily paper, weekly groceries, a tube of toothpaste etc. would all constitute day-to-day transactions. By their nature, such transactions are likely to be low cost items.

However, even where a sale is not a day-to-day transaction, the regulations only require information to be given where it is not obvious from the circumstances. Thus, a seller of video games on the high street would not have to give information such as their address or nature of the game as that would be evident from the location of the shop and labelling on the game packaging respectively. They may, however, have to provide information on functionality of the game, if that is not evident from the packaging.

Timing of confirmations

I sell digital downloads. The time from agreement of contract to supply of content is very short. When do I have to supply confirmation of the contract?

Generally, confirmations should be sent to the consumer once the contract has been concluded and not later than the delivery of the goods or before the commencement of the service. In the case of digital downloads where performance is often immediate, the trader should ensure that the

confirmation is sent earlier than, or simultaneously with, the commencement of the download.

Cancellation rights for mixed contracts

I provide and install garage doors. Can my customer cancel once they've ordered and can I recoup any costs if they do?

That depends on where the contract was concluded and whether the door is specially made for the customer.

Firstly, if the contract was concluded at your sales premises then there will not be cancellation rights under the regulations although you must make sure you give all the information required by the regulations.

If, however, you agree the contract by phone or online or at the customer's home, then they will have a right to cancel unless the door has been specifically made to a non-standard specification.

If the door provided is prefabricated or is a standard size and specification (rather than made to the consumer's individual requirements) then you must tell the consumer that they have a right to cancel within 14 days from when they receive the door, and that if they want you to fit the door within that 14 days then they must give you express consent. Once the door is fitted they can no longer cancel the contract under the regulations as it has been fully performed.

Deductions for diminished value

A customer has changed their mind and returned a toaster. The box is intact but there are crumbs in the toaster. Can I deduct any money from the refund?

The consumer should be permitted to inspect the toaster in the same way that they might in a shop to ensure it is as described. Money should not therefore be deducted if it is reasonable for the consumer to remove the packaging to inspect the item. However, using the toaster goes beyond what is needed to ascertain the nature of the toaster, and is not something the consumer would do in a shop. Money can therefore be deducted to reflect diminished value. The consumer need not 'test' the toaster since, if the toaster proves to be faulty the consumer has rights under other legislation.

Nature of items made to a customer's specification

I sell premier league football shirts online. Customers can order a shirt with their own name on it or that of a premier league team player. Can the consumer change their mind after they have ordered?

Items made to a particular, often unique specification are exempt from cancellation rights on the basis that a trader might otherwise be left with a product so specific to a particular consumer's needs that there is no other market for it once the consumer has withdrawn from the contract. Judgements

of what is truly bespoke will, therefore, inevitably be on a case by case basis. In the above case, the customer should be able to cancel a shirt bearing a team player name on it. However, a shirt bearing their own name would be likely to constitute a personalised item to which cancellation rights do not apply.

An item made up following a consumer order is not necessarily exempt from cancellation rights. For instance, a sofa where the consumer chooses a fabric and colour from a range on offer will not be bespoke for the purposes of these Regulations. However, if the consumer asks the trader to source a special finish and which is not in the range generally offered by the trader, that is likely to be a bespoke item.

Limits to cancellation rights

Can my customer waive their cancellation rights?

Regulation 27 sets out those contracts and conditions where cancellation rights will not apply. Where cancellation rights do apply, the consumer cannot waive those rights (although the consumer is of course free to choose not to exercise their right to cancel). However, provided that the consumer has been made aware, pre-contract, of their obligations with regard to payment for services or products used, and the trader has obtained express consent for the commencement of services in the cancellation period, the trader may deduct money for goods used, or recoup the cost of any services delivered until the point of cancellation.

Prohibition of pre-ticked boxes

I use a pre-ticked box to sign up customers to our free online news letter. Will your regulations stop me doing that?

No. The regulation applies only where additional payment is being sought. What regulation 38 requires is that the consumer must actively agree any payment. There should not be a default option which they need to disapply in order to avoid the payment.

Customer helplines

Do the regulations say that I have to provide a telephone helpline?

No. Regulation 39 on charges for customer helplines only applies if you offer a telephone line on which consumers can contact you about something they have bought. If you do, it must be a geographic number or a mobile number, or a number to which calls must be free or charged at no more than rates for a geographic number (under OFCOM rules).

I sell computers and offer technical phone support. I use a revenue sharing arrangement with my telephone provider to fund this service. Does the number have to comply with regulation 39?

Where a trader offers a technical support line, this need not come under regulation 39, provided it is a discrete service, and not one on which the caller is also expected to call to discuss problems with a purchase. Provided the

trader makes it clear that the technical support line is a separate service for which a separate fee (paid for through the enhanced cost of the call) is payable regulation 39 will not apply.

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