



# The New Consumer Regime

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14 October 2014

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# INFORMATION REQUIREMENTS



# 2013 Regulations

The 2013 Regulations govern:

- on-premises contracts
- off-premises contracts
- distance contracts

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# ‘Business premises’

“(a) any immovable retail premises where the activity of the trader is carried out on a permanent basis,

or

(b) any movable retail premises where the activity of the trader is carried out on a usual basis.”

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# ‘Off-premises contract’

A contract between a trader and a consumer which is any of these:

- a) a contract concluded in the simultaneous physical presence of the trader and the consumer, in a place which is not the business premises of the trader;
- b) a contract for which an offer was made by the consumer in the simultaneous physical presence of the trader and the consumer, in a place which is not the business premises of the trader;
- c) a contract concluded on the business premises of the trader or through any means of distance communication immediately after the consumer was personally and individually addressed in a place which is not the business premises of the trader in the simultaneous physical presence of the trader and the consumer;
- d) a contract concluded during an excursion organised by the trader with the aim or effect of promoting and selling goods or services to the consumer”.



# Test Drives

A customer takes a car for a test drive, and then proceeds to sign up to buy the car back at the dealership, immediately after the test drive

- There is:
  - *a contract concluded on the business premises of the trader (in this case, the dealership)*
  - *immediately after the consumer was personally and individually addressed in a place which is not the business premises of the trader (the car being test driven)*
  - *in the simultaneous physical presence of the trader and the consumer (that is, the salesman and the customer.)*



# Marketing Events

A business has a stand at a business development event, with the aim of signing up new customers. Here, there is:-

- a contract
- concluded during an excursion
- organised by the trader with the aim or effect of promoting and selling goods or services to the consumer



# On-premises contract

“A contract between a trader and a consumer which is neither a distance contract nor an off-premises contract.”

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# Parties

A **'consumer'** is:

*“an individual acting for purposes which are wholly or mainly outside that individual’s trade, business, craft or profession.”*

A **'trader'** is:

*“a person acting for purposes relating to that person’s trade, business, craft or profession, whether acting personally or through another person acting in the trader’s name or on the trader’s behalf”.*



# General Exclusions

The most relevant exclusions are as follows:-

- gambling under the Gambling Act 2005
- financial services such as banking, credit, insurance, personal pensions, investments or payments
- the construction and sale of immovable property including building new properties and barn conversions. (Note this exclusion only applies to “standalone” residential properties and contracts for jobs such as extensions, conservatories and so on will still be caught by the Regulations.)
- residential letting contracts (but estate agents’ contracts are caught.)
- package travel contracts
- single telecom connections



# General Exclusions

Note also:

- Contracts which involve a day-to day transaction that is performed immediately at the time the contract is made.
- Contracts where the payment to be made by the consumer is not more than £42

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# Information Requirements

## On-Premises Contracts- Regulation 9

Prior to a consumer being bound by a contract the trader has to:

- give or make available
- the information shown in Schedule 1
- in a clear and comprehensible manner



# Schedule 1 – Key Information

- a) the main characteristics of the good or services or digital content;
- b) the identity of the trader (such as the trader's trading name), the address at which the trader is established and the trader's telephone number;
- c) the total price of the goods or services inclusive of taxes or, where the nature of the goods, services or digital content is such that the price cannot reasonably be calculated in advance, the manner in which the price is to be calculated;
- d) where applicable, all additional delivery charges or, where those charges cannot reasonably be calculated in advance, the fact that such additional charges may be payable;



# Schedule 1 – Key Information

- e) where applicable, the arrangements for payment, delivery, performance, and the time by which the trader undertakes to deliver the goods or to perform the service;
- f) where applicable, the trader's complaint handling policy;
- g) in the case of a sales contract, a reminder that the trader is under a legal duty to supply goods that are in conformity with the contract;
- h) where applicable, the existence and the conditions of after-sales services and commercial guarantees;
- i) 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;



# Contractual Effect

- It is a contractual term that the trader has complied with the information requirements— action for breach if not disclosed
- All the ‘required information’ that is provided is treated as included as a term of the contract – action for breach if incorrect
- Any changes made to the provided information, prior to contracting or subsequently, have no legal effect unless there is an express agreement between the trader and the consumer



# On-Premises retailers

## What do you need to do?

- Consider whether the goods or services you sell are within those exempt from the Regulations.
- Think about the information you give to your customers now. Schedule 1 lists the information that you need to provide to the consumers you deal with.
- Consider how Schedule 1 works. The Regulations only require you to give the information in Schedule 1 where it is not obvious from the circumstances. So, you would not need to give information such as your address if the location of the premises is evident. Are there any items of information which are less evident, however?



# On-Premises retailers

## What do you need to do?

- For instance, is your price information clear? Are you giving your customers all the necessary information in relation to arrangements for payment, delivery and performance?
- In the case of a sales contract, are you reminding your customers that you are under a legal duty to supply goods in conformity with the contract?
- Think about how you deal with any changes to the required information? How are customers notified of this? Remember that none of the changes you make will be effective unless customers are informed of them



# Enforcement

- Enforcement authorities can take injunctive proceedings
- Enforcement orders can be sought under Part 8 of the Enterprise Act 2002
- Civil claims for breach



# Off-premises contracts – Regulation 10

Before a consumer makes an off-premises contract, the trader is required to:

- give the information listed in Schedule 2
- ensure that the information given is ‘in a clear and comprehensible manner’
- if there is a cancellation right (to be dealt with in a later segment), to give a cancellation form
- ensure that the information and cancellation form are:
  - legible
  - on paper or,
  - if the consumer agrees, on another durable medium



# Provision of copy or confirmation of contract - Regulation 12

The trader must also give the consumer:

- a copy of the signed contract, or
- confirmation of the contract, which must include all the Schedule 2 information, unless already provided on a durable medium before contracting.

It is a term of the off-premises contract that the trader has complied with regulation 12



# Schedule 2 Information

The trader must provide:

- The Schedule 1 information (as per the earlier slide).
- where a right to cancel exists, the conditions, time limit and procedures for exercising that right.
- where applicable, that the consumer will have to bear the cost of returning the goods in case of cancellation.
- where services have begun immediately, the fact that the customer will have to pay a reasonable charge for that work. (I will return to this point in the session on cancellation rights)



# Contractual effect

- It is a term of the contract that the trader has complied with the information requirements- action for breach if not disclosed
- The consumer does not have to pay any of the additional charges or costs mentioned in the list if these have not been indicated before contracting
- The information given by the trader to the consumer under the disclosure requirements is included as a contractual term
- Changes to the disclosed information by the trader will have no contractual effect unless agreed by the consumer



# An example

“Some of the contracts I deal with are off-premises contracts. What do I need to know?”

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# Off-premises contracts

- Firstly, check that the goods or services you sell are not within those exempt from all or part of the Regulations
- Before contracting, provide the information listed in Schedule 2, including a cancellation form
- The information and form should be provided on paper or, if the consumer agrees, another durable medium and in a manner which is clear for the consumer to understand
- Think about how you will ensure the information requirements are complied with in each case



# Off-premises contracts

- Make sure you make clear all costs, including potential ones the customer may incur in the future. If you cannot give a firm cost upfront, you must show on what basis the final cost will be calculated
- Once the contract is concluded you must provide a copy of the signed contract, or confirmation of the contract. This must be provided on paper or, if the consumer agrees, on another durable medium, not later than the delivery of the goods or commencement of services
- The burden of proof that the required information has been given rests with the trader so it is in your interests to keep good records



# Enforcement

- It is a strict liability, summary criminal offence, for failing to provide the information regarding cancellation rights
- Enforcement authorities can take injunctive proceedings
- Enforcement orders can be sought under Part 8 of the Enterprise Act 2002
- Civil claims for breach



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# DISTANCE CONTRACTS

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# Distance Contracts

“a contract concluded between a trader and a 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;”

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# Requirements for a distance contract

- Organised distanced sales or service provision scheme (if a trader only makes a one-off sale via a distance communication then it would not qualify)
- No simultaneous physical presence of the trader and consumer
- Exclusive use of one or more means of distance communication up to the time of contracting
- Phone and online sales, purchasing from a catalogue etc.



# Example

John visits a business premises to obtain information in respect of some goods. He then leaves the business premises and subsequently negotiates and concludes the contract at a distance.

**Is this a distance contract?**

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# Example

John visits a business premises to obtain information in respect of some goods. He then negotiates the contract at the business premises of the trader before leaving to think about it. John then concludes the contract at a distance.

**Is this a distance contract?**

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# Example

John decides to get a haircut and makes a reservation with a hairdresser over the phone.

**Is this a distance contract?**

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# Information Requirements for Distance Contracts

- Similar to off-premises contracts
- If limited by time or space, must still provide:
  - a) Main characteristics of the goods, services or digital content
  - b) Identity of the trader
  - c) Total price or how it will be calculated
  - d) Additional delivery charges and other costs or how they will be calculated
  - e) Costs where contract is of indeterminate duration or is a subscription
  - f) Information about the right to cancel (including the model cancellation form)
  - g) Contract duration and conditions for terminating



# Additional Requirements for Distance Contracts Concluded by Electronic Means

- online sales
- digital content provided via TV set-top boxes
- Information to be provided **before the order process**
  1. delivery restrictions; and
  2. the means of payment which are accepted



# Additional requirements for Distance Contracts concluded by electronic means

Information to be provided **directly before the consumer places the order**

- a) Main characteristics of the goods, services or digital content.
- b) Total price or how it will be calculated.
- c) Additional delivery charges and other costs or how they will be calculated.
- d) Costs where contract is of indeterminate duration or is a subscription.
- e) Contract duration and conditions for terminating.
- f) Minimum duration of contract



When placing an order, the trader must make sure that the consumer explicitly acknowledges that the order implies an obligation to pay.

For instance, through a **“PAY NOW”** button.

**If the trader has not made the consumer explicitly acknowledge that the order implies an obligation to pay, then the consumer is not bound by the contract**



# Telephone calls concluded by distance contract

Where a trader makes a telephone call with a view to concluding a distance contract, the trader must **at the beginning of the conversation** with the consumer disclose:

- the trader's identity and (if applicable) the identity of the person on whose behalf the trader is making the call; and
- the commercial purpose of the call



# Digital Content

- New regime specific to digital content.
- In all contracts traders are obliged to provide additional pre-contract information concerning the functionality of digital content (for example region restrictions etc.) and any relevant information about its compatibility with other hardware or software.
- If downloaded, trader should obtain the express consent from the consumer to waive the cancellation right. If such consent is not obtained, the trader should not enable the consumer to download the software until the end of a 14 day cooling-off period



# Confirmation of Distance Contracts

- The trader is required to give the consumer confirmation of the contract on a durable medium. This must include all Schedule 2 information (unless already provided on a durable medium before contracting)
- Confirmation must be provided within a reasonable time after the contract is made and no later than when the goods are delivered and before any service commences



# What if I fail to make the information available?

- It is a term of the contract that the trader has complied with the information requirements- action for breach if not disclosed
- The information provided by the trader to the consumer under the information requirements is included as a contractual term - action for breach if incorrect
- Any changes to disclosed information by trader will have no contractual effect unless expressly agreed by consumer



# Specific Consequences

## Delivery Charges

- trader fails to give or make available pre-contract all additional delivery charges and any other costs then Consumer is not liable for those charges of costs

## Costs of contracts of indeterminate duration

- total costs per billing period or total monthly costs not made available then Consumer is not liable for those charges of costs



# Specific Consequences

## Acknowledgement of obligation to pay

- trader not obtained customer's acknowledgement that placing the order implies an obligation to pay. Consumer not bound by the contract or the order
- Additional consequences with regards to failing to make consumers aware of their cancellation rights



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# CANCELLATION RIGHTS



# Exclusions

The exclusions which may be relevant are:-

- bespoke or personalised goods;
- goods once inseparably mixed with other items after delivery;
- audio, video and software products supplied sealed, once unsealed; and
- off-premises contracts where the consumer has to pay no more than £42



# On-premises contracts

The contract can only be ended if:

- both parties agree to end it;
- you, as a business, have your own returns policy; or
- the goods supplied are in breach of contract



# Off-premises and distance contracts

## The right to cancel – Regulation 29

- Consumers will now have the right to cancel a qualifying off-premises or distance contract at any time during the ‘cancellation period’
- Businesses will have to advise customers of the right to cancel before the contract is made, and must give a cancellation form
- No reason for cancellation is needed



# Cancellation period

This begins when the contract is made and ends at the end of 14 days

- The 14 days runs from the day after the day when:
  - the contract is made, in the case of
    - a service contract, or
    - for the supply of digital content
  - the goods are delivered, in the case of a standard sales contract
  - the last item is delivered, in the case of a sales contract where multiple goods are ordered and these are delivered on different days
  - the first item is delivered, in the case of a sales contract for the regular delivery of goods over a defined period.



# Cancellation period

- If notice of cancellation rights has not been correctly given then:
  - if the trader provides the required information within 12 months from the first day of the 14 day period, the cancellation period ends at the end of the 14 days after the consumer receives the information;
  - otherwise, the cancellation period ends at the end of 12 months after the day on which it should have ended



# An example

John is a supplier of kitchen equipment, selling door to door to customers in their homes. These are therefore off-premises contracts. On 1 October 2014, a customer places an order for a food processor, which John delivers on 10 October 2014.

If notice of cancellation rights has been given, the customer could cancel the contract on any date up to and including 24 October 2014.

If notice of cancellation rights has not been given, the customer could cancel the contract on any date up to and including 24 October 2015



# How to cancel

This can be done by:

- using the model cancellation form set out in the Regulations, or
- by making ‘any other clear statement setting out the decision to cancel the contract’



# Effects of cancellation

Once the contract is cancelled:-

- the obligations of both parties to perform the contract come to an end.
- There are then various related provisions regarding the parties' obligations to:
  - Refund monies paid
  - Return goods supplied



# Refunds

Following cancellation, the trader must, as a general rule, refund any monies paid by the customer

- The refund must be paid:
- by the same means of payment used for the original transaction, unless the consumer agrees otherwise;
- without undue delay and not later than:
  - in the case of a sales contract, 14 days after the day the trader gets
    - the goods back or
    - if sooner, evidence from the consumer that the goods have been sent back;
  - for other contracts, 14 days after the day the trader is told of the decision to cancel the contract.



# What if the goods have reduced in value?

If the use or handling of the goods is:

- “*beyond what is necessary to establish the nature, characteristics and functioning of the goods*”, in particular if “*it goes beyond the sort of handling that might reasonably be expected in a shop*” the trader can recover the lost value (up to the full price) from the consumer

This can either be:

- deducted from the money being refunded, or
- must otherwise be paid by the consumer



# An example

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



# Enforcement

- Enforcement authorities can take injunctive proceedings
- Enforcement orders can be sought under Part 8 of the Enterprise Act 2002



# Return of the goods

Following cancellation, the trader must collect the goods from the consumer only if:

- the trader has offered to collect them, or
- for off-premises contracts only,
  - the goods were delivered to the consumer's home,
  - at the time the contract was made, and
- that type of goods could not normally be returned by post



# Return of the goods

If the trader does not have to collect the goods, the consumer must either:

- send the goods back; or
- hand them over to the trader

This must be done:

- without undue delay, and in any case not later than 14 days after informing the trader of their cancellation
- at their own expense, unless the trader has:
  - agreed to pay for the return or
  - failed to inform the consumer that they will have to pay the cost of returns



# Enforcement

- Enforcement authorities can take injunctive proceedings
- Enforcement orders can be sought under Part 8 of the Enterprise Act 2002



# Supply of services

Traders are not permitted to begin supplying a service before the end of the cancellation period unless the consumer has specifically asked for the supply to begin.

If a service is supplied during the cancellation period and the contract is cancelled then:

- if there was a request that services began before the end of the cancellation period,
- the consumer has to pay for the services provided in that period
- the amount payable is worked out pro-rata, using the contract price as a basis



# Supply of services

On cancellation, the consumer pays nothing for services provided in the cancellation period if:

- there was no request to commence the service early; or
- the trader failed to provide the required information about cancellation rights or payment for services supplied during the cancellation period



# An example

Claire offers will-writing services online . She agrees to prepare a will for a customer who then changes their mind 10 days later. She had already started on the work.

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# Ancillary contracts

An ancillary contract is a contract where:

- the consumer gets goods or services related to the main contract and
- these are provided by the trader or
- by a third party under an arrangement with the trader



# An example

“I’m a retailer selling watches online. Customers can buy insurance for their purchases on my site. Insurance is a financial service. Does that mean none of the Regulations apply?”

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# What does this mean for me?

- Consider which types of contract you are dealing with
- In the case of professional advisors, consider which of your clients might be affected by the Regulations. What steps might they need to take? Do they need to seek any further advice?
- Consider whether your business comes within any of the exclusions set out in the Regulations
- Do you currently give customers notice of their cancellation rights?
- Consider using the model cancellation form set out in the Regulations
- Think about whom, within your business, is going to be responsible for communications relating to cancellation



# What does this mean for me?

- Consider how to protect your business from false claims from customers in respect of cancellation
- Think about the refunds associated with cancellation. Does somebody within your organisation need to be given specific responsibility for dealing with these?
- Consider how to deal with returned goods
- How will you deal with returned goods? In particular, how will you check whether or not use of the goods has been excessive?
- If you supply services, are there situations in which you might need to start work immediately (i.e. within the cancellation period?)





**Any questions?**



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