

CONSUMER CONTRACT CHANGES TAKING EFFECT FROM 13 JUNE 2014

All UK businesses that contract directly with consumers must review their current trading practices to take account of the new Consumer Contracts (Information, Cancellation and Additional Payments) Regulations 2013. These new regulations replace the current Distance Selling and Doorstep Selling regulations. There is not much time to act and all contracts entered into after 13th June 2014 will be affected.

Most consumer contracts will be affected by this change (there are a few exceptions such as contracts for financial services) including doorstep/at home and internet sales. Some of these new regulations apply to in shop or other retail sales.

Headlines:

1. Period for cancellation extended from 7 to 14 days and instructions on how to cancel must be given with model cancellation forms to be made available. However, the consumer is responsible for returning the goods within 14 days to get a refund but the refund must be paid within 14 days of the goods' return.
2. Cannot use pre-ticked boxes that incur the consumer in additional charges.
3. The point at which an obligation to pay is incurred must be explicit (e.g. a clear PAY NOW button).
4. Changes to when and what information must be provided to consumers.
5. All goods must be delivered within 30 days, unless the consumer consents to a longer period.
6. Telephone helplines for contract queries can only be charged at standard basic rate.
7. Digital content will be dealt with differently to goods and/or services.

Information:

Few changes have been made to what information is required to be supplied (see attached list). However, failure to provide the requisite information will now be a breach of contract as well as a breach of the regulations. Failure to provide details of cancellation rights could mean that the consumer has 12 months to cancel.

Information now has to be by paper or email or other medium which is personally accessible by the consumer for a reasonable period. It will no longer be possible to refer the consumer to this information by putting it on a page on the seller's website and sending or referencing a link to the relevant page to the consumer (the information has to be in a format that is unchangeable by the sender). Although the information has to be directed to the consumer personally (i.e. email, letter, or as a message in a personal account on the seller's portal) it does not have to be tailored to that particular consumer and can be in generic form.

Clear point of Contract and Additional Payments:

The language used has to be clear and unequivocal, such as "Clicking here means you have to pay" or "PAY NOW" which DBIS have advised are the type of words that will be acceptable and not "join here" or "click here to buy", which could be considered to be ambiguous.

It is no longer possible to pre-tick boxes which oblige the consumer to pay more, even if that is for additional or enhanced services (such as express delivery). The requirement is now for “express consent” which means the consumer will only have to pay for it if they deliberately select the enhanced provision (and the seller will have to refund the extra charges if no express consent is given).

Delivery and Cancellation:

All goods (including retail shop sales) will have to be delivered within 30 days unless a later date has been agreed with the consumer. The seller retains the risk of damage to the goods until the consumer receives them (unless they provide their own courier to collect the goods). Any damage occurring to the goods before completion of delivery falls to the seller. This new provision regarding the risk falling on the seller until delivery completes also applies to shop sales.

The cooling off period is now increased to 14 days after the day of delivery (previously there were different rules for doorstep and distance selling and the calculations were either in working or calendar days).

Sellers will have to provide model cancellation forms for consumers to use (can be made available on the seller’s website).

Returns, Refunds and contract helplines:

Unless the seller has offered in their terms of trade to collect goods after cancellation it will be at the consumers cost and their responsibility to do so within 14 days of notifying cancellation. If the goods can’t be posted easily then this obligation does not apply and the seller must meet the costs of and organise collection. If the goods are not returned, or offered for collection (if not possible to post) then the seller may not need to pay a refund.

If cancellation is effected by the consumer on the proper form within 14 days of delivery then the seller must refund the purchase price within 14 days (that refund must include standard delivery charges). That period starts when the goods have been returned to the seller (or evidence of return has been supplied).

Cancellation by the consumer cancels any warranties or other guarantees also given at the time of sale but does not affect the consumers rights where goods are faulty, not of satisfactory quality, or do not meet the description given or sample seen.

Where there is an offer to help consumers who have queries about contracts that have been made then only basic rate phone charge can be applied (e.g. geographic or free numbers or standard mobile rates). That does not mean that premium rates cannot be used for sales or technical support phone helplines. This regulation also applies to on premises/shop sales.

Digital Content:

A completely new supply format is being created for digital content. They will no longer fall between the two alternatives of goods or services. When supplying digital content the seller will have to include much more information about its functionality and compatibility. Details will have to be given about use restrictions such as regional coding and technical measures to protect embedded IP.

If the digital content is to be supplied within the standard 14 day cancellation period then the consumer must be asked for their express consent to waive their right to cancel and get a refund. If this express consent is not obtained correctly then the consumer may be able to cancel and keep the digital content.

CD and DVD delivery of software or digital content are viewed as the supply of goods (and the current rules about the loss of cancellation rights after unsealing sealed goods applies). There are significant exclusion to the right to cancel in relation to downloadable or view only digital content.

If you would like further assistance in this area please contact your usual Touchstone Legal Services contact and your particular concerns can be reviewed on a case by case basis.

Sarah Staines LLM
Touchstone Legal Services
Tel: 07787 283749
sarah@touchstonels.com

This is a summary of the new Regulations and provided as general information only. It is not intended as legal advice for any particular seller or business. Please seek specific advice to determine your own applicable legal compliance requirements.