

New distance selling rules in force from June 2014

What changes do you need to make?

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Important changes to EU distance selling rules take effect in June 2014. The changes “fine tune” existing rules on B2C information and cancellation – but businesses supplying goods, services and/or digital content to consumers need to start factoring in the necessary operational changes now. The design of websites and app order screens, ts & cs, policies for the return of goods, and the telephone numbers used for customer helplines will all need to be reviewed. We highlight the key changes that in-house lawyers need to make their sales and customer services teams aware of.

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For businesses which are already compliant with distance selling rules, the forthcoming changes represent evolution rather than revolution. However, some aspects of the new rules – such as the model withdrawal form, extended returns period, and the restrictions on customer service phone line numbers – may require design and operational changes which take time to factor in, in advance of the 13 June deadline.

Please contact us for more information on how the new rules impact your business.

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Is my business affected?



If you supply goods, services and/or digital content to consumers online, via call centre (or even mail order), then your operations almost certainly need to be reviewed for compliance with the new rules. The rules also apply to mobile transactions (and to transactions for the purchase of apps themselves). Most types of products and services are caught – although some sectors, including gambling and financial services (already subject to specific regulation) are exempt.

All suppliers need to comply with the new information and order process requirements. The cancellation and refund rules apply to all B2C contracts – but providers of pure services and digital content can mitigate the risk of customer cancellation – see “[Practical points](#)” below.

Complying with distance selling rules is a familiar hurdle for B2C businesses, the [current rules](#) having taken effect in 2000. The latest changes to the rules reflect the 2011 [Consumer Rights Directive](#), and must take effect in the UK and across Europe by 13 June 2014.

The UK will transpose the CRD by means of the [Consumer Contracts \(Information, Cancellation and Additional Charges\) Regulations 2013](#) (CCIACRs) which will replace the 2000 DSRs from 13 June 2014. The CCIACRs were published in December, along with [Implementing Guidance from BIS](#). The CCIACRs, like the underlying CRD, deal not only with rules on distance selling but also doorstep contracts. This update focuses on distance selling obligations only.

What are the risks if I don't comply?



Businesses run the risk of unwelcome commercial as well as regulatory consequences if their sales operations are not compliant with the rules. Risks include:

- The consumer not being bound by the contract (e.g. if the trader does not comply with the new “order with obligation to pay” button and related information requirements);
- The consumer not being liable for any delivery and other charges which have not been made clear up-front;
- Extending the consumer’s cancellation and refund window by a commercially disastrous 12 months, if the required information about cancellation rights is not given correctly; and
- Liability to reimburse customers’ call charges to customer services helplines which charge above the basic rate for calls.

Failure to comply could also expose a brand to regulatory action. Typically, enforcement bodies take informal steps first to request a trader to make changes to ts & cs and order processes, although formal undertakings may also be required. Either way, there is almost invariably some “naming and shaming” of the brand involved.

These risks can be avoided by reviewing order processes and ts & cs to ensure they provide consumers with all the correct information at the correct stage.

Changes affecting all B2C suppliers



The new rules take a similar approach to the current distance selling rules, but there are some significant new obligations. These include the following.

- **Information at the start of the order process:** information about any delivery restrictions and which means of payment are accepted must appear, at latest, at the beginning of the ordering process.
- **Pre-contract information requirements:** the list of disclosures about the supplier, the product or service, and about the consumer's rights has been significantly extended. This information must be given or made available to the consumer before the consumer is bound, in a *"clear and comprehensible manner...appropriate to the means of distance communication used"*. The information must also be given on a ["durable medium"](#) post contract (see page 8 for more details). For the full list of information, see [Schedule 2](#) to the Regulations.
- **"Pay now" type order button:** traders must ensure that consumers explicitly acknowledge that the order implies an obligation to pay, and that order buttons or similar ordering mechanisms are clearly labelled *"only with the words "order with obligation to pay" or a "corresponding unambiguous formulation indicating that placing the order entails an obligation to pay"*. The UK government guidance suggests that a button marked "pay now" would suffice.
- **Minimum information for m-commerce:** in a concession to apps and mobile commerce, the rules permit that (where there are space constraints) only certain information from the list in Schedule 2 needs to be provided pre-contract and on the relevant device. The other required information may be provided in another "appropriate way". For the minimum information which must be provided, even if there are space constraints, see ["Minimum information for mobile transactions"](#) on page 9.
- **Cancellation period extended to 14 days:** the "cooling off" period (during which consumers are entitled to change their minds and cancel the contract and receive a full refund, regardless of whether the product is defective) is harmonised across the EU at 14 calendar days. See below for more detail on how this applies to contracts for goods, services and digital content.
- **Model cancellation form:** consumers must be given certain information about their cancellation rights, and the model cancellation form, exactly in the form set out in [Schedule 3B](#) to the CCIACRs, e.g. via a website link, although suppliers may (in addition) continue to provide their own cancellation forms.
- **Avoid pre-ticked options and hidden charges:** the new rules make it clear that consumers are not bound by charges they have not expressly agreed to and that, for example, pre-ticked boxes will not bind a consumer.
- **Customer helplines:** ensure that only basic rate numbers are used – see page 8

Other practical points for goods retailers



In addition to the general points above, if you sell goods to consumers you will need to:

- Review your ts & cs, order screens and order confirmation email or text to reflect the new information requirements.
- Pay particular attention to information about delivery charges.
- Make it clear that, if exercising the right to cancel, the consumer bears any return costs (if that is to be your policy).
- Make it clear that, in the event of cancellation, only standard delivery charges will be refunded (as opposed to any added charges for express delivery, gift wrapping etc.).
- Provide a cooling off period of at least 14 calendar days running from the date when the consumer takes possession of the goods (you may still choose to provide a longer returns policy, provided it is otherwise consistent with consumers' new rights).
- Include a link to the mandatory model cancellation form (even if providing your own web form or other means for consumers to notify cancellation).
- Provide any refunds within 14 days of the customer returning the goods (or providing proof of postage.)
- Review delivery procedures against the new provisions on the passing of risk.
- Review returns policies against:
 - the updated list of goods exempt from cancellation; and
 - the right for retailers to make deductions for unreasonable handling or use of goods prior to return.

Distance selling cooling-off rights, which caused controversy when introduced in 2000, have become a fact of life for retailers over the past decade, with many brands making a virtue out of returns periods and policies which go far beyond the minimum standards required by law. The new rules do address some of the bugbears and ambiguities of the current rules. For example, the new rules:

- Introduce a new cancellation exemption for sealed goods which are not suitable for return due to hygiene reasons, and a new exemption for investment type products (e.g. vintage wines);
- Clarify that only standard delivery charges need to be refunded in the event of cancellation, and that any premium element, e.g. for next day delivery, does not need to be refunded; and
- Clarify that retailers are entitled to make a deduction from the refund for any diminution in value of the returned goods due to handling which *“goes beyond the sort of handling that might reasonably be allowed in a shop”*.

Other practical points for digital content providers



Addressing a gap in the current rules, the new rules deal expressly with digital content for the first time. Until now, providers of downloadable digital content (and regulators) have tended to treat digital content as a service for compliance and cancellation purposes. The new digital content rules are similar to the rules for services.

In addition to the general points about information and ordering above, digital content providers will now need to:

- Provide information about functionality (including region coding, restrictions incorporated for the purposes of DRM, and other technical restrictions) and where relevant about interoperability and compatibility with hardware and software; and
- For downloadable content, avoid the risk of cancellation by structuring the download process and transactional wording so as to get the consumer's agreement to waive the cancellation and refund right.

If the cancellation right is not waived in this way, the supplier would need to:

- Provide information on cancellation rights, including the model cancellation form; and
- Allow a 14 day refund period (14 days from the day after the contract is entered into).

If digital content is supplied on a tangible medium, e.g. CD or DVD, the cancellation rights for goods will apply. There is a cancellation exemption for sealed audio, video and software which the consumer has unsealed. Information about functionality and interoperability needs to be provided whether the digital content is provided on a tangible medium or via download.

Other practical points for providers of services



In addition to the general points about information and ordering above, providers of services also need to:

- Provide information about subscription charges, the minimum term of the contract or the conditions for terminating a rolling contract.

Suppliers also need to be aware of, and where possible mitigate, the impact of the cancellation and refund rights.

If the Service is capable of being fully performed within the 14 day cancellation period, a Supplier may avoid the risk of cancellation by structuring the order/subscription process and transactional wording so as to get the consumer's agreement to the commencement of the services and their acknowledgement that the cancellation and refund right will be lost.

If the Service is not capable of being fully performed within the 14 day cancellation period, a Supplier can only mitigate the risk of cancellation and refunds. The subscription process should be structured to so as to get the consumer's consent to the commencement of the services within the cancellation period, and to notify the consumer that he or she will still be liable for reasonable costs in the event of cancellation. A supplier would then be entitled to charge a consumer for the period for which the services had been enjoyed – calculated pro rata with the overall length of the charging period.

For services not capable of being fully performed within the cancellation period (or if the service provider simply chose not to oust the cancellation right) the supplier would need to:

- Provide information on cancellation rights, including the model cancellation form;
- Allow a 14 day refund period (14 days from the day after the contract is entered into).

Where goods and services are bundled together (e.g. an Internet or phone service and hardware), suppliers will need to comply with information and cancellation rules for the goods element, unless an exemption applies.

Telephone helplines



It is not mandatory for distance sellers to provide a telephone helpline for customer service, however where traders do operate one, there are new restrictions on the numbers which may be used. Under the new rules, any customer helplines must not charge more than the “basic rate”. Geographic numbers or 01, 02 or 03 numbers which are always set at the same rate, free phone numbers and standard mobile numbers are acceptable. However, premium rate numbers, revenue sharing numbers and 0870 numbers (which may be higher than a geographic number) may not be used. The new rules make traders contractually liable to refund the consumer any charges above the basic call rate.

Traders may provide an 0845 or similar number in addition to a basic rate number, provided the basic rate number is given equal prominence.

The new restrictions do not apply to technical support lines (provided these are separate from any numbers for reporting problems with orders or products purchased).

In terms of methods of contact for customer support, traders are still obliged (under the Electronic Commerce (EC Directive) Regulations 2002 to provide consumers with an email address by which the trader can be contacted “rapidly” and in a “direct and effective manner”. The CCIACRs require traders to provide a geographical address in all circumstances and to also provide telephone, fax and email contact details “where available”.

Clarification of “durable medium”

The requirement to confirm the pre-contractual information in a “durable medium” is not new. However the new rules provide welcome clarification about the methods that may be used: Durable medium is now defined as:

“paper or email, or any other medium that – (a) allows information to be addressed personally to the recipient, (b) enables the recipient to store the information in a way accessible for future reference for a period that is long enough for the purposes of the information, and (c) allows the unchanged reproduction of the information stored”.

The BIS guidance gives these additional examples of “durable media”: sending the information on a CD or DVD, a text message or placing the relevant information in the customer’s online account. Simply providing the information via a link to a website will not suffice.

Minimum pre-order information for mobile transactions



The CCIACRs set out a list of 24 pieces of information about the trader, the product, service or digital content, and about the consumer's rights, which must be provided pre contract and confirmed afterwards in a durable medium. See [Schedule 2](#) for the full list of required information.

In a concession to the practicalities of mobile transactions, however, the Regulations only require the following information to be provided before the order is placed and on the means of communication being used to transact. The remainder of the information may be provided "in another appropriate way".

- Main characteristics of goods or services.
- Identity of the trader (e.g. trading name).
- Total price of goods or services, inclusive of tax (or manner in which price is to be calculated).
- All additional delivery charges and other costs.
- For rolling contracts or subscriptions, total costs per billing period or for fixed charges, total monthly costs.
- Where cancellation right exists, the conditions, time limit and procedures for exercising it.
- Duration of the contract, or conditions for terminating a rolling contract.

Information which must be provided at the start of the order process:

- Any delivery restrictions
- Which means of payment are accepted.

What's changing?

Quick guide



The changes to distance selling rules in June 2014 are the most immediate changes on the horizon, but there are also a number of other reforms in the pipeline at UK level. Here's a non-exhaustive guide to some other changes that B2C businesses need to keep on their radar. Many of these changes will be effected by the **Consumer Rights Bill**, which was published in Summer 2013 and began its formal legislative process in January 2014. At this stage it is unclear when it will take effect, or what its final form will be. See our overview guide to the Consumer Rights Bill [here](#).

General rules for all consumer transactions	What's changing?
Unfair Terms in Consumer Contracts Regulations 1999	Will eventually be replaced by the Consumer Rights Bill. Unclear when the Bill – if passed – will take effect.
Unfair Contract Terms Act 1977	B2C rules on unfair exclusions will be replaced by the Consumer Rights Bill. Unclear when the Bill – if passed – will take effect. UCTA will be limited to B2B exclusions.
Consumer Protection from Unfair Trading Regulations 2008	Will remain in force. Increased remedies for victims of misleading and aggressive practices are planned under amending regulations. Unclear when these changes will take effect. A consultation on draft amending regulations took place in 2013.
Electronic Commerce (EC Directive) Regulations 2002	No changes to these rules.
Rules for goods	What's changing?
Sale of Goods Act 1979	Consumer Rights Bill will replace most of the Act's B2C provisions. Some B2C provisions of SGA will still apply. Unclear when the Bill – if passed – will take effect. The SGA will still apply to B2B contracts.
Supply of Goods (Implied Terms) Act 1973	Partly replaced by the Consumer Rights Bill. Unclear when the Bill – if passed – will take effect.

Continued.../

What's changing?

Quick guide (continued)



Supply of Goods and Services Act 1982	B2C provisions replaced by The Consumer Rights Bill. SGSA will still apply to B2B contracts. Unclear when the Bill – if passed – will take effect.
Sale and Supply of Goods to Consumers Regulations 2002	Will be replaced by The Consumer Rights Bill. Unclear when the Bill – if passed – will take effect.
Consumer Protection (Distance Selling) Rules 2000	Distance selling rules are being updated to reflect the Consumer Rights Directive 2011/83/EU. Changes will be made by the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 with effect from 13 June 2014 .
Rules on delivery and risk (under the Consumer Rights Directive 2011/83/EU)	Changes will be made by the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 with effect from 13 June 2014 .
Rules for services	What's changing?
Supply of Goods and Services Act 1982	B2C provisions will be replaced by Consumer Rights Bill. Act will be restricted to B2B contracts. Unclear when the Bill – if passed – will take effect.
Consumer Protection (Distance Selling) Rules 2000	Distance selling rules are being updated to reflect the Consumer Rights Directive 2011/83/EU. Changes will be made by the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 with effect from 13 June 2014 .
Rules for digital content	What's changing?
Information and cancellation	The Consumer Rights Directive 2011/83/EU will introduce express provisions on information and cancellation for digital content. Changes will be made by the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 with effect from 13 June 2014 .
Implied terms and remedies	The Consumer Rights Bill will introduce implied terms and remedies for digital content. Unclear when the Bill – if passed – will take effect.

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