



BRIEFING PAPER

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Sale of consumer goods, services and digital content at a distance

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Summary

Many people shop at a distance, for instance, they may order goods or services over the internet, by mail order, by telephone, by digital television or fax. In the UK, distance selling transactions are generally covered by normal buying and selling legislation, predominantly the [Consumer Rights Act 2015](#).

However, consumers who enter into a contract at a distance for the sale of goods, services and digital content are given additional protections by the [Consumer Contracts \(Information, Cancellation and Additional Charges\) Regulations 2013](#) (known as “the Consumer Contracts Regulations”). The Regulations implement in the UK the [Consumer Rights Directive](#) (2011/83/EC). They came into force on 13 June 2014 and apply to contracts entered into on or after that date.

The [Consumer Protection \(Distance Selling\) Regulations 2000](#) (known as the Distance Selling Regulations) no longer apply in UK law, having been replaced by the new Consumer Contracts Regulations. However, for consumer contracts entered into before 13 June 2014, the Distance Selling Regulations 2000 will continue to apply.

In a nutshell, the Consumer Contracts Regulations require traders to give consumers certain information. The specific information varies depending on whether the sale is made at a distance (for example, online or over the phone) or face-to-face somewhere that's not the store or business premises of the trader (also known as 'off-premises').

This briefing paper provides information on the main provisions of the Consumer Contracts Regulations. It also outlines other legislation which regulates distance selling, namely, the [Consumer Rights Act 2015](#) (Parts 1 & 2) and the [Consumer Protection from Unfair Trading Regulations 2008](#).

1. Consumer Contracts Regulations 2013

1.1 Key consumer information

As already mentioned, the Consumer Contracts Regulations came into force on **13 June 2014** and apply to contracts entered into on or after that date.

The Regulations require traders to give all consumers certain information. The specific information varies depending on whether the sale is made at a distance (for example, online or over the phone) or face-to-face somewhere that's not the store or business premises of the trader (also known as 'off-premises').

In respect of distance or off-premises sales, **Box 1** sets out the key information which the trader must provide.

Box 1: Key information to be provided in distance or off-premises sales

For distance or off-premises sales traders must provide consumers with key information, including:

- A description of the goods, service or digital content, including how long any commitment will last on the part of the consumer.
- The total price of the goods, service or digital service or the manner in which the price will be calculated if this can't be determined.
- How the consumer will pay for the goods or services and when they will be provided to them.
- All additional delivery charges and other costs (and if these charges can't be calculated in advance, the fact that they may be payable).
- Details of who pays for the cost of returning items if the consumer has a right to cancel and changes his/her mind.
- Details of any right to cancel - the trader also needs to provide, or make available, a standard cancellation form to make cancelling easy (although you aren't under any obligation to use it).
- Information about the seller, including their geographical address and contact details and the address and identity of any other trader for whom the trader is acting.
- Information on the compatibility of digital content with hardware and other software that the trader is aware of (or can reasonably be expected to be aware of).

1.2 Delivery of key information

Failure to provide the required information, or to provide it in the way set out in the Regulations, could result in the consumer's cancellation rights being extended by up to a year. **Box 2** below sets out acceptable delivery methods.

Box 2: Delivery of key information to the consumer

- For the purposes of the Regulations, key information should be given to the consumer in writing in a 'durable medium' such as on paper or by email.
- Alternatively, it can be provided in a way appropriate to the means of communication, so verbally if the contract is made by phone.
- A consumer is entitled to confirmation of the contract and if the information wasn't initially provided in a durable form, the trader must provide it at the point of confirmation.

- In respect of 'on-premises' sales, the trader doesn't have to provide the consumer with as much information, but it must still provide certain information. For example, information about the goods or services being bought, the price, the compatibility of digital content and details of any delivery costs.

1.3 A consumer's right to cancel goods

Importantly, the Consumer Contracts Regulations give consumers cancellation rights when they enter into a contract with a trader at a distance (e.g. online, over the phone, from a catalogue) or face-to-face with a trader (or their sales representative) who has visited the consumer at home.

In respect of the purchase of goods, a consumer's cancellation rights are set-out in **Box 3** below. Whilst the minimum cancellation period that a consumer must be given is **14 days**, many traders choose to exceed this in order to promote good customer relations.

Box 3: Consumer Contracts Regulations: cancellation rights in respect of goods

In a nutshell, a consumer has the following cancellation rights:

- The right to cancel an order for goods made at a distance starts the moment the consumer makes the order and ends **14 days** from the day they receive the goods.
If the consumer's order consists of multiple goods, the **14 day period** runs when the consumer receives the last item in the batch.
- The right to cancel a service made at a distance starts the moment the consumer enters into the contract and lasts **14 days**.
- If a consumer wants to download digital content within the **14 day cancellation period** they must agree to waive their cancellation rights.
- Companies are not allowed to charge a consumer for items they put in their online shopping basket or that the consumer has bought as a result of a pre-ticked box.

It is important to note that for some types of goods cancellation rights under the Regulations will not apply. These include the following:

- The purchase of CDs, DVDs, computer games or software if the consumer has broken the seal on the wrapping.
- The purchase of perishable items and tailor-made or personalised items.
- The purchase of goods that have been mixed inseparably with other items after delivery.

On cancelling a contract, the consumer will seek a refund. A consumer's right to a refund on goods bought at a distance or off-business premises is set-out in **Box 4** below.

Box 4: A consumer's right to a refund

A consumer's right to a refund of the price paid:

- A consumer should receive a refund **within 14 days** of either the trader getting the goods back, or the consumer providing evidence of having returned the goods (for example, a proof of postage receipt from the post office), whichever is the sooner.
- A deduction can be made by the trader if the value of the goods has been reduced as a result of the consumer handling the goods more than was necessary.

A consumer's right to a refund of the cost of delivery:

- In addition to the price paid, the trader must refund the basic delivery cost of sending the goods to the consumer you in the first place. This means that if a consumer elected to pay for an enhanced delivery service (e.g. guaranteed next day delivery), the trader only has to refund the basic cost.

1.4 A consumer's right to cancel services

In respect of the purchase of services, a consumer's cancellation rights are set-out in **Box 5** below

Box 5: Consumer Contracts Regulations: cancellation rights in respect of services

In a nutshell, a consumer has the following cancellation rights:

- A consumer has **14 days** from entering into a service contract in which to cancel it.
- The trader shouldn't start providing the service before the **14 day cancellation period** has ended, unless the consumer has requested this.
- If the consumer requests that a service starts straightaway, they will still have the right to cancel, but they must pay for the value of the service that has been provided up to the point they cancel. (For example, if a consumer buys gym membership and then changes their mind within this **14 day time period**, they will be entitled to a refund but a deduction could be made for the amount of gym time they have used.)
- The right to cancel can be lost during the cancellation period if the service is provided in full before the **14 days** has elapsed.

Again, it is important to note that for some types of services cancellation rights under the Regulations will not apply. These include the following:

- Contracts for hotel bookings, flights, car-hire, concerts and other event tickets.
- Where the trader is carrying out urgent repairs or maintenance.

1.5 A consumer's right to cancel digital downloads

The Consumer Contracts Regulations contain specific provisions for digital content (such as music or software downloads or games). A summary of these rights are set-out in **Box 6** below.

Box 6: Consumer Contracts Regulations: cancellation rights in respect of digital downloads

In a nutshell, a consumer has the following cancellation rights:

- Retailers must not supply digital content within the **14 day cancellation period**, unless the consumer has given their express consent to waiver the cancellation period.

- The consumer must also acknowledge that once the download starts they will lose their right to cancel.
- If a consumer does not give their express consent, they must wait until the cancellation period has ended before they can download the digital content. This is to ensure the digital content is what the consumer wants before downloading it.

1.6 Pre-ticked boxes

Under the Consumer Contracts Regulations, traders are prohibited from using pre-ticked boxes in order to charge consumers for additional items selected for them as part of the purchasing process. Consumers can only be charged for items that they have actively chosen to add to their 'online' basket.

1.7 Excessive call charges

The Regulations also prohibit traders from using premium rate telephone numbers in respect of customer helplines. In practice, this means that if a consumer is telephoning the trader to make a complaint, check on the whereabouts of their order, or to cancel an order, a trader cannot use premium rate numbers. The trader must provide a basic rate number for consumers to call.

1.8 Faulty goods

It is important to note that a consumers' rights under the Consumer Contracts Regulations are in addition to their rights under the [Consumer Rights Act 2015](#) (see below).

2. Consumer Rights Act 2015

In addition to the Consumer Contracts Regulations, consumer contracts agreed at a distance are covered by the [Consumer Rights Act 2015](#) (CRA 2015). The CRA 2015 came into force on **1 October 2015** and (for contracts entered into on or after this date) has replaced the [Sale of Goods Act 1979](#) (SGA 1979).

The main provisions of **Parts 1 & 2** of the CRA 2015 are summarised below. More detailed information is provided in a separate [Library briefing paper](#).¹

2.1 Delivery of goods

The [CRA 2015](#) deals with the delivery of consumer goods. Specifically, it provides for the following:

- Under the CRA 2015, a trader must deliver ordered goods to the consumer within **30 days** unless a longer period has been agreed.
- If delivery is later than agreed and it was essential to the consumer that the item was delivered on time, then the consumer may have the right to cancel the contract and get a full refund.
- If the delivery isn't time essential but another reasonable delivery time cannot be agreed, then the consumer may also be entitled to cancel the contract and seek a full refund.
- The trader is responsible for the condition of the goods until the goods are received by the consumer. In practice, this means that the trader is liable for the services provided by the couriers it employs.

2.2 Returning faulty goods, services, digital content

The CRA 2015 creates new rights in respect of:

- consumer contracts for goods, services and digital content; and
- unfair terms in consumer contracts and notices

A consumer's legal rights under Part 1 of the CRA 2015 are summarised in **Box 7** below.

¹ "[Consumer Rights Act 2015](#)", (CBP 6588), 1 October 2015, [online] (accessed 20 October 2016)

Box 7: The CRA 2015 (Part 1) in a nutshell:

Since 1 October 2015, when the Act came into force, a consumer's legal rights include:

- **Right to get what you pay for** - all information about the main characteristics of the goods (including statements made in advertising or on labels) to form part of the contract.
- The right that goods and digital content be fit for purpose, and that services are provided with reasonable care and skill
- **Right to have product faults put right free of charge, or to be provided with a refund or replacement.** Clearer tiered remedies in the event that a consumer's rights are breached, including a **mandatory 30-day period** in which to reject faulty goods. Traders limited to one opportunity to repair/replace faulty goods (if possible), following which the consumer can demand a discount or return the goods and demand a refund.
- **Right that digital content is fit for purpose** – for the first time, digital content to have its own separate regime of rights and remedies to be applied both to paid-for content (including where paid for with 'virtual' currencies) and content that is provided free with paid goods, services or other digital content (e.g. apps and in-app purchases and open source software). Provisions have been drafted to accommodate future developments (for example, content provided in return for consumer data).
- **Right that traders perform services with reasonable care and skill, within a reasonable time**, with the consumer obliged to pay a reasonable price. The consumer has the right to ask for a repeat performance of services not performed properly or, if that is not possible or done within a reasonable time, a right to a price reduction.

2.3 Unfair contract terms

Prior to the introduction of the CRA 2015, the law on unfair terms was contained in two separate pieces of legislation:

- the [Unfair contract terms Act 1977](#) (UCTA 1977); and
- the [Unfair Terms in Consumer Contracts Regulations 1999](#) (UTCCRs)

The difficulty was that the UCTA 1977 and the UTCCRs had inconsistent and overlapping provisions, creating uncertainty for consumers and businesses.

With effect from 1 October 2016, the following legislative changes were made:

- The [Unfair Contract Terms Act 1977](#) (UCTA) has been replaced by **Part 2** of the CRA 2015 in respect of business-to-consumer contracts.
- The [Unfair Terms in Consumer Contracts Regulations 1999](#) were revoked altogether and replaced by the CRA 2015.

Part 2 of the CRA 2015 (including Schedules 2, 3 and 4) clarifies and consolidates the legislation on unfair terms in 'business-to-consumer' contracts and notices. The law is now set out in one place. The main points to note are as follows:

- Under **section 62** there is a requirement for consumer contract terms and notices to be fair. Terms will only be binding upon the consumer if they are fair. It defines

'unfair' terms as those which put the consumer at a disadvantage, by limiting the consumer's rights or disproportionately increasing their obligations as compared to the trader's rights and obligations.

This section also sets out factors that a court should take into account when determining whether a term is fair, notably that it should consider the specific circumstances existing when the term was agreed, other terms in the contract and the nature of the subject matter of the contract. This assessment is known as the '**fairness test**' (see also **section 63** as regards the 'grey list' of terms that may be used to assist a court when considering the application of the fairness test).

- Part 2 makes it clear that the main subject matter of the contract or terms that set the price are only exempt from the test of fairness if they are 'transparent' and 'prominent' (see **Box 8** below).

Box 8: Transparency and prominence requirements

A significant change in the CRA 2015 relates to 'relevant terms'.

'Relevant terms' are terms specifying the main subject matter of the contract or setting the price. These terms are not subject to the 'fairness' test provided that they are both:

- **Transparent:** in plain and intelligible language and, if in writing, legible;
- **Prominent:** brought to the consumer's attention in such a way that the average consumer (who is well informed, observant and circumspect) would be aware of the term.

Prior to the CRA 2015, the law included the 'transparency' requirement but not the 'prominence' requirement.

The fact that a relevant term does not meet these requirements does not make it automatically unfair; however, it exposes that term to additional scrutiny.

- Part 2 clarifies the role of and extends the indicative list of terms which may be regarded as unfair, the so-called 'grey list' found in Schedule 2 (see **Box 9** below). The terms on the grey list are not automatically unfair, but may be used to assist a court when considering the application of the fairness test to a particular case. Equally, terms not found on the list may be found by a court to be unfair by application of the fairness test.
- A court is now under an obligation to consider contractual terms for fairness, even if neither party to the proceedings raises fairness as an issue. This means that terms may be held to be unfair by the court even when the consumer has not complained of unfairness.

Box 9: Three additional terms to the grey list

Schedule 2 of the CRA sets out an 'indicative and non-exhaustive' list of terms in consumer contracts which may be regarded as unfair. This includes three new 'grey list' terms. These are terms which have the object or effect of:

- allowing the trader to decide the characteristics of the subject matter after the consumer is bound;

- allowing disproportionate charges or requiring the consumer to pay for services which have not been supplied when the consumer ends the contract;
 - allowing the trader discretion over the price after the consumer is bound
-
- Under the CRA 2015, the fairness test is extended to apply to consumer notices as well as contracts. A 'consumer notice' is a notice that relates to rights or obligations between the trader and the consumer or restricts the trader's liability.

3. Consumer Protection from Unfair Trading Regulations 2008

The [*Consumer Protection from Unfair Trading Regulations 2008*](#) (CPRs) came into force on 26 May 2008. They implement the [*Unfair Commercial Practices Directive*](#) in the UK, and replace several pieces of consumer protection legislation that were in force prior to 26 May 2008.

In a nutshell, the CPRs consist of:

- a general prohibition of unfair commercial practices - for a practice to be unfair, it must harm, or be likely to harm, the economic interests of the average consumer;
- prohibitions of misleading and aggressive practices; and
- list practices prohibited in all circumstances (as outlined in Schedule 1 to the Regulations)

In effect, the Regulations introduce a general duty on all traders not to trade unfairly and seek to ensure that traders act honestly and fairly towards their customers. The CPRs apply to any act, omission and other conduct by businesses directly connected to the promotion, sale or supply of a product to or from consumers (whether before, during or after a commercial transaction, if any).

Included within the specific trading practices banned outright in the Regulations (Schedule 1) are the following practices:

- faking credentials – for instance, a trader claiming to be a signatory to a code of conduct when he is not;
- a trader pestering the consumer, by making persistent and unwanted contact by telephone, fax, e-mail or other remote media;
- using guilt to make sales, explicitly informing a consumer that if he/she does not buy the product or service, the trader's job or livelihood will be in jeopardy;
- asking for payment when the recipient did not ask for the good;
- providing misleading after sales information, and so on

The Regulations repeal provisions in a number of overlapping laws, including most of the *Trade Descriptions Act 1968* and Part 3 of the *Consumer Protection Act 1987* (misleading price indications), they are replaced by this general ban on unfair trading. Traders must now act: "in a manner consistent with the reasonable expectations of the average consumer, enabling such consumers to make free and informed purchasing decisions."

A wide range of sanctions are available for a breach of the Regulations, depending on the seriousness of the offence, from guidance and codes of conduct to unlimited fines and prison sentences. As of 1 October 2014, new amendments have been made to the Regulations which gives the consumer new rights of redress if they have been the victim of misleading actions or aggressive selling. However, for the trader, there is a defence of due diligence and innocent publication of advertisements.

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